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1918.

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EDITED BY

HIS HONOUR JUDGE RUEGG, K.C.,

JUDGE OF COUNTY COURTS OF NORTH STAFFORDSHIRE AND JOINT JUDGE OF BIRMINGHAM.

WITH SPECIAL CHAPTERS

ON EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION,

BY

GILBERT STONE, B.A., LL.B.,

OF LINCOLN'S INN AND THE NORTH-EASTERN CIRCUIT, BARRISTER-AT-LAW;

ON COSTS AND COURT FEES,

BY

W. H. WHITELOCK, B.A., AND ARTHUR L. LOWE, M.A.,

REGISTRARS OF THE BIRMINGHAM COUNTY COURT;

AND

ON ADMIRALTY AND MERCHANT SHIPPING,

BY

H. H. SANDERSON,

SOLICITOR, OF HULL.

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PREFACE.

THE general scheme and arrangement of the book have not been altered.

No fresh jurisdiction has been conferred on the County Courts, with the exception of still further Emergency Legislation, chief of which is the Courts (Emergency Powers) Act, 1917.

The new County Court Rules of 1917 (dated March, 1917) have been incorporated in the existing Rules, which it is believed are now complete.

It should be noted that the County Courts have no longer jurisdiction under section 5 (2) of the Trading with the Enemy (Amendment) Act, 1914; also that section 2 of the Finance Act, 1912, is repealed as to these Courts (see Finance (No. 2) Act, 1915 (5 & 6 Geo. V. c. 89, s. 18)).

The special subjects of "Costs," "Employers' Liability and Workmen's Compensation," and "Admiralty," are fully and carefully dealt with by the respective editors of these parts of the book.

Mr. W. H. Whitelock and Mr. Arthur L. Lowe, Registrars of the Birmingham County Court have again undertaken the chapter on Costs, Mr. H. H. Sanderson, of Hull, that on Admiralty and Merchant Shipping, and Mr. Gilbert Stone, barrister, of the Northern Circuit, has brought the whole of the important and difficult subject of Workmen's Compensation fully up to date.

Attention is called to the Workmen's Compensation (War Addition) Act, 1917 (p. 1459), by which the amount of compensation payable during total incapacity during the war is increased by twenty-five per cent.

A new and enlarged index has been made.

The Editor-in-Chief desires again to thank the subscribers, members of both branches of the profession, for kindly criticism and valuable suggestions made to him during the past year with the view of increasing the efficiency of the book.

ALFRED HENRY RUEGG.

MANOR HOUSE,
UTTOXETER,
December, 1917.

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THE PRACTICE

OF THE

COUNTY COURTS.

PART I.

CHAPTER I.

THE COUNTY COURTS ACT, 1888.

51 & 52 Vict. c. 43.

An Act to Consolidate and Amend the County Courts Acts.

(Aug. 13, 1888.)

Whereas it is desirable to consolidate and amend the County Courts Acts:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

1. This Act may be cited as the County Courts Act, 1888. Short title.

The County Court, or *sciremote*, was instituted by Alfred the Great (Blackst. Comm. vol. iv. p. 411. For an account of the ancient county court, see also Reeves' History of English Law, vol. i. p. 7, and Bacon's Abridgement, tit. County Court, also Holdsworth's History of English Law, vol. i. pp. 38—42).

Its jurisdiction extended to both ecclesiastical and civil matters; the bishop and the earl or sheriff sitting in the same county court with equal jurisdiction, until the reign of William the Conqueror, when its ecclesiastical jurisdiction was taken away.

The county court was held once in every four weeks, and was presided over by the earl, or in his absence by the sheriff; the suitors, that is, the freemen or landholders, were the judges, and the sheriff sat only in a ministerial character, to pronounce the judgment of the suitors, and execute it (*Jones* v. *Jones*, (1839) 5 M. & W. 523). It continued the principal court for the civil business of the kingdom until in the reign of Henry II. justices of assize were appointed to visit annually the different counties, whereby the trial of issues was brought within each county, and the people were ensured the trial of their rights by the judges to whom were entrusted the highest questions of law.

Section 1 Notes.

From that time the county court, so far as its judicial functions were concerned, gradually fell into disuse.

The old county court was not a court of record; the process was by summons, attachment and distress. Pleas were held by plaint in debt, detinue or other personal actions (not being for injuries done *vi et armis*) under the value of 40*s*. By a writ of *justicies*, which was in the nature of a commission to the sheriff, but which did not alter the nature of the proceedings, he, together with the suitors of the court, might hold plea of certain real and personal actions, although for claims above 40*s*., or for injuries done *vi et armis*. The court had also jurisdiction in cases of replevin to any amount (2 Inst. 139, 312; Gilbert, Distr. 85); this action might be commenced either by writ, which was in the nature of a writ of *justicies*, or by plaint. A plaint in the county court might in all cases be moved into the Court of Queen's Bench by a writ of *recordari facias loquelam*. If the action was commenced by *justicies*, or where replevin was commenced by writ, the proper writ by which to remove it was a *pone*.

The proceedings in the county court being found expensive and dilatory, courts of request, in which parties might be examined and judgment awarded in a summary manner, were established. The first was created in the city of London by the 3 Jac. I. c. 15. From that period Parliament was from time to time applied to for Acts to establish local courts. In the year 1841 the local courts numbered 106, the jurisdiction of which varied from 40*s*. to 15*l*.

Statutes.

From 1842 to 1846 a measure for the establishment of local courts throughout the kingdom was considered from time to time by Parliament, and in 1845 the 8 & 9 Vict. c. 127, was passed. By sect. 9 of this Act the Queen in Council was enabled to extend the jurisdiction of certain courts of request and other courts to demands *ex contractu* not exceeding 20*l*., and to regulate their districts. Difficulties having arisen in dealing with the numerous petitions presented under this Act, the County Courts Act, 9 & 10 Vict. c. 95, was passed in 1846; and by Orders in Council on March 9th, 1847, county courts were established throughout the kingdom, except in the city of London. (Under the County Courts Act, 1888 (51 & 52 Vict. c. 43), sects. 185 and 186 a county court may be now said to exist for the city of London.) Provision for the surrender of manorial and other courts is made by the present Act (51 & 52 Vict. c. 43, s. 6.)

The statute 9 & 10 Vict. c. 95, was amended by numerous Acts, by one of which, the 19 & 20 Vict. c. 108, the expense of maintaining the county courts, which was before borne wholly by the suitors, was, with the exception of the salaries of the ministerial officers, to be defrayed by an annual vote. The whole of the provisions of these Acts are consolidated by the Act of 1888 (51 & 52 Vict. c. 43), and the jurisdiction has been extended by 3 Edw. VII. c. 42, which came into operation on January 1st, 1905, and is to be construed as one Act with the Act of 1888 (3 Edw. VII. c. 42, ss. 2, 8). By various other Acts, jurisdiction has been given to the county courts.

Courts are courts of record.

County courts are courts of record (see sect. 5). All summonses and other process must be under seal of the court (see sect. 180). The seal is judicially noticed (Taylor on Evidence, sect. 6), and all documents purporting to be sealed are admissible in evidence in England without further proof (see sect. 180).

The expression "county court" when used in an Act of Parliament, or Order in Council, means as respects England and Wales a court under the County Courts Act, 1888. See Interpretation Act, 1869 (52 & 53 Vict. c. 63, s. 6).

Commencement of Act.

2. This Act, save as in this Act otherwise expressly provided, shall come into operation on the first day of January, one thousand eight hundred and eighty-nine, which day is in this Act referred to as the commencement of this Act.

PART I.

COURTS.

3. This Act shall be in force throughout all those parts of England in which county courts have been established; and, subject to alterations made in pursuance of this Act, the county court districts existing at the commencement of this Act shall continue, and the county courts for such districts shall continue to be held at the places fixed at the commencement of this Act.

Section 3.

Existing courts continued.

Districts.]—By 9 & 10 Vict. c. 95, s. 2, power was given to the Queen, with the advice of her Privy Council, from time to time to order that the Act should be put in force in such counties as to her Majesty might seem fit; and also to divide the whole or part of any county, etc., into districts, and to order that the county court should be holden in each of such districts.

By Orders in Council of March 9th, 1847, the whole of England, with the exception of the city of London, was divided into 491 districts, and by subsequent orders various alterations were from time to time made, and additional courts established.

In the original division of the country the districts of the superintendent registrars of births, etc., were taken as the basis upon which to form the districts of the courts. In many cases, however, two or more registrars' districts were comprised in the district of one court, and in others a registrar's district was divided between two or more courts. The districts are described in the Order in Council by the name of the registrar's district, and this description, though convenient for some purposes, gave no information to those who were not acquainted with such districts and the parishes comprised therein. For the convenience of any person resident in one part of the kingdom desirous of suing another resident in some other part, an alphabetical index showing the name of every parish, township or place in the kingdom, and the court in the district of which it is situate, has been supplied by the Treasury to the different courts. The index is published by the Stationery Office, and can be obtained through any bookseller. Moreover every information as to the parishes and places comprised within the several districts can be obtained at the registrar's office.

The distribution of districts as they existed at the date of the commencement of the County Courts Act, 1888 (January 1st, 1889), is expressly confirmed by this section, and courts are directed to be held at the places fixed for them at such date.

4. It shall be lawful for her Majesty by Order in Council from time to time to alter the number and boundaries of the districts and the place of holding any court, and to order the discontinuance of the holding of any court, and the consolidation of any two or more districts, and the division of any district, and to order by what name and in what towns and places a court shall be held in such district.

Power to alter districts. 9 & 10 Vict c. 95, s. 2.

Any such order of her Majesty in Council may declare that a part of any county, liberty, city, borough, or district shall be within the jurisdiction of the court held under this Act for any adjoining county or district in like manner as if such part were a part of such adjoining county or district.

Section 4 Note.

Any Order in Council made for the purposes of the Act must be published in the *London Gazette* (see sect. 174).

Courts to have all jurisdiction of county courts, and to be courts of record. 9 & 10 Vict. c. 95, s. 3.

5. Every court held under this Act shall have all the jurisdiction and powers at any time prior to the coming into operation of the County Courts Act, 1846, belonging to any court for the recovery of debts and demands as altered by this Act throughout the whole district for which it is held, and there shall be a judge for each district under this Act, and the court may be held simultaneously in all or any of such districts ; and every court held under this Act shall be a court of record.

By sect. 13 the Lord Chancellor has power to re-distribute the districts among the judges.

Lords of manors, &c., may surrender courts. 9 & 10 Vict. c. 95, s. 14.

6. It shall be lawful for the lord of any hundred, or of any honor, manor, or liberty having any court in right thereof in which debts or demands may be recovered, to surrender to her Majesty the right of holding such court for any such purpose (with the consent of any steward or other officer, if any, having a freehold office in such court, or upon the next vacancy in any such freehold office) ; and from and after such surrender such court shall be discontinued, and the right of holding such court shall cease, and all proceedings commenced in such court may thereafter be continued, and shall be enforced and executed as if they were commenced under the authority of this Act in a court held for the district in which the cause of action arose ; but no person shall be entitled to claim any compensation under this Act by reason of any such surrender : Provided always, that the surrender of the right of holding any such court for the recovery of debts and demands shall not be deemed to infer the surrender or loss of any other franchise incident to the lordship of such hundred, honor, manor, or liberty, and that the court thereof may be held for all other purposes, if any, incident thereto, as now by law it may.

Power to exclude jurisdiction of court of local jurisdiction from that of county court in concurrent causes. 15 & 16 Vict. c. 54, s. 7.

7. If the council of any city or borough, or a majority of the ratepayers of any parish, within the limits of which a court of local jurisdiction, other than a county court, is established, or into the limits of which city, borough, or parish the jurisdiction of such court of local jurisdiction shall extend, shall petition her Majesty in Council that the jurisdiction of such court of local jurisdiction may be excluded in any causes whereof the county court has cognizance, and if notice of such petition shall be given two months before it is presented by public advertisement in such city, borough, or parish, and in some newspaper therein circulated, her Majesty, by Order in Council, may declare the exclusion of the jurisdiction of such court of local jurisdiction throughout the whole or any part of the district assigned or which may hereafter

be assigned to such county court, if no petition against declaring the exclusion is presented, and no caveat entered at the council office; and if any counter-petition is presented, or any caveat entered, then her Majesty may refer such petition and counter-petition to the Judicial Committee of the Privy Council, upon whose report her Majesty may make such Order in Council as she shall be advised touching the matter of the said petitions in respect of excluding the jurisdiction of such court of local jurisdiction, and may award compensation to any persons entitled to appoint officers of such court, or to any officers thereof appointed before the passing of this Act, to be given by the Treasury, who are hereby empowered to pay the same. Section 7.

In 1853, the town council of Birmingham, after much opposition, obtained the exclusion of the mayor's court in that borough from cognizance of all matters that could be heard in the county court, the petition and a counter-petition having been argued for and against before the judicial committee during two days. See order in *Gazette* of January 3rd, 1854. Subsequently similar orders were made respecting the Ipswich Court of Small Pleas, and the Court of Record of the town of Nottingham, and the Court of Pleas of the city of Worcester, in all matters where the amount claimed does not exceed 20*l.*, and in all actions of ejectment where the rent does not exceed 50*l.*; and excepting Oldham from the Salford Hundred Court.

The principal inferior courts, other than county courts, are certain courts of record attached to cities and boroughs, which have power by ancient charters to exercise jurisdiction in certain suits. Of these the chief are:

The Mayor's Court of London,
The Liverpool Court of Passage,
The Salford Hundred Court,
The Oxford University Chancellor's Court.

The Mayor's Court has a special Act, 20 & 21 Vict. c. clvii. The Liverpool Court of Passage has several special Acts. The Salford Hundred Court has special Acts. The Oxford University Chancellor's Court has a special Act, 25 & 26 Vict. c. 26.

Other inferior courts of record which have no special Acts governing their procedure, are the

Bristol Tolzey and Pie Poudre Court,
Derby Court of Record,
Exeter Provost Court,
Kingston-upon-Hull Court,
Newark Court of Record,
Northampton Borough Court,
Norwich Guildhall Court,
Peterborough Court of Common Pleas,
Preston Court of Pleas,
Romsey Court of Pleas,
Southwark Court of Record.

PART II.

Judges and Officers.

8. The Lord Chancellor shall from time to time appoint as many fit persons, not exceeding sixty, as are needed to be judges Appointment and qualification of judges.

Section 8.

9 & 10 Vict. c. 95, s. 16. 21 & 22 Vict. c. 74, s. 3. 25 & 26 Vict. c. 99, s. 4.

of the courts under this Act, each of whom shall be a barrister at-law of at least seven years' standing: Provided that where the whole of a district is within the Duchy of Lancaster the appointment of the judge for such district shall be made by the Chancellor of the said duchy. No judge shall during his continuance in the office of judge be capable of being elected or of sitting as a member of the House of Commons.

Owing to the abolition of certain circuits, or to their absorption in adjoining circuits, there are at present (excluding the judges of the City of London Court) only fifty-five county court judges.

Judge, Appointment and Removal.]—The necessary qualification of the judge of a county court is that he shall be a barrister of at least seven years' standing. The judge is appointed by the Lord Chancellor, except where the whole of the district of the court is within the Duchy of Lancaster, in which case he is appointed by the Chancellor of the Duchy. The Lord Chancellor may remove a judge from any district, and appoint him to any other district, or appoint him to additional districts, or direct that he shall sit as additional judge in any district (see sect. 13).

The Lord Chancellor or Chancellor of the Duchy respectively may remove a judge for inability or misbehaviour (see sect. 15). The order to remove a judge, when questionable at all, may be questioned by *quo warranto* to his successor. But if an inquiry has been held, and the judge has had full opportunity of being heard, and of calling witnesses, the court will not enter into the question whether on the mere balance of the evidence the charge of inability or misbehaviour has been made out (*Ex parte Ramshay*, (1852) 18 Q. B. 173; 21 L. J. Q. B. 238; 88 R. R. 563).

A judge cannot sit as a member of Parliament (*supra*) nor can he practise at the bar, or as a special pleader, or equity draftsman, or be directly or indirectly concerned as a conveyancer, notary public, or solicitor, nor may he act as arbitrator or referee for remuneration to himself (see sect. 14).

Title.

A judge is entitled to be addressed as "your honour" in court. He is also, in all places, entitled to be called and addressed as "His Honour Judge ——." He ranks in the table of precedence next after knights bachelors. (The words of the Royal Warrant, dated August 4th, 1884, are as follows:—"We do hereby declare our Royal will and pleasure that, in all times hereafter, the Judges of County Courts in England and Wales shall be called, known, and addressed by the style and title of 'His Honour' prefixed to the word 'Judge' before their respective names, and shall have rank and precedence next after Knights Bachelors.")

May be judge of assize, &c.

His name may be included in any commission of assize, oyer and terminer, or gaol delivery (see sect. 16). He may be appointed a justice of the peace for any borough, city, county, riding, or division of the county in which he holds a court, although he may not have the necessary qualification required for other persons (see sect. 17).

For what districts.

For what Districts.]—A judge is appointed for each district (see sect. 5). The Lord Chancellor may direct that there shall be two judges of a district (see sect. 12). After districts were created by Order in Council, the Lord Chancellor appointed sixty judges to the courts, and the number of districts to which they were respectively appointed varied from one to twelve. In some instances one judge was appointed to hold the courts in several districts. This mode of appointing is legal, and the same person may, at the discretion of the Lord Chancellor, be a judge of two different county court circuits (*R.* v. *Parham*, (1849); 18 L. J. Q. B. 281).

Jurisdiction of judge within or without his districts.

9. A judge shall, whether within the district of any of his courts or not, have jurisdiction to make any order, or exercise on an *ex parte* application any authority or jurisdiction in any action or

Section 9.

proceeding pending in any of the courts of which he is judge, which, if the same related to an action or proceeding pending in the High Court, might be given, made, or exercised by a judge of the High Court in chambers, and, with the consent of both parties to an action or proceeding, to hear and decide any matter at any place, either within or without any such district.

38 & 39 Vict. c. 50, s. 4.

Derivation of power to make interlocutory order.

The County Courts Act, 1888, contains comparatively few provisions expressly relating to the making of interlocutory orders. It provides, however, at the end of sect. 164, that in cases not provided for by Act or rules the general principles of the High Court practice may be adopted. Similar provisions under the 9 & 10 Vict. c. 95, s. 78, were held to empower the judge to allow a pauper to sue *in formâ pauperis* (*Chinn* v. *Bullen*, (1849) 8 C. B. 447; 19 L. J. C. P. 42; 79 R. R. 566). See now *Perry* v. *London General Omnibus Co.*, (1916) 2 K. B. 335; 85 L. J. K. B. 1609, judgment of Phillimore, L.J). Presumably, therefore, where necessary, great power might be derived from the section. Sect. 89 of the Judicature Act, 1873, however, enables the courts in any action or matter to give the same relief and remedies as could have been obtained in the High Court, if the action or matter had been pending there; and probably gives power to the courts to make many interlocutory orders which formerly could not have been made in a county court (see *Richards* v. *Cullerne* (C. A.), (1881) 7 Q. B. D. 623; *Martin* v. *Bannister* (C. A.), (1879) 4 Q. B. D. 491; 48 L. J. Q. B. 677). Moreover sub-s. 8 of sect. 25 of the same Act expressly confers power to grant a mandamus or an injunction, and to appoint a receiver on an interlocutory application.

The original County Courts Act conferred few powers of a judicial kind on registrars. They were, generally speaking, mere ministerial officers, judicial powers were reserved for the judges. The functions of registrars were by degrees greatly altered, and under sects. 74, 75, 86, 88, 89, 90, 92, 105, 118, and 157 of the County Courts Act, 1888, registrars now enjoy judicial, or *quasi*-judicial powers. Nevertheless, the power to order anything to be done in the course of an action is, by the Act, generally conferred on the judge (although by the use of the word "court" (see sect. 186), judge or registrar would have been meant), *e.g.*, amendment, sect. 87; order for trial by jury, sect. 101; for assessors, sect. 103; extension of time and adjournment, sect. 106. The Act, moreover, contains in this section, a special provision enabling the *judge*, in any action or proceeding, to make any order, or to exercise, on an *ex parte* application, any jurisdiction, which, if the action or proceeding had been in the High Court, might have been made or exercised by a judge at chambers. No similar provision is made in favour of the registrar, and the Act, moreover, contains no *express* power enabling the judge, or the rule committee, by rules of practice, to delegate to registrars interlocutory matters of any kind.

The powers of sect. 89 of the Judicature Act, 1873, are conferred on every "inferior court." Sect. 187 of the County Courts Act, 1888 provides that any reference to an "inferior court" in the Judicature Acts must be construed as referring to "courts" under the County Courts Act, 1888, whilst sect. 186 provides that "court" in the Act shall include and mean the judge or registrar. Possibly, therefore, by this means the powers given by sect. 89 of the Judicature Act, 1873, to the courts may be construed to be given to "judge or registrar." If not so given, a registrar can have no power to make an interlocutory order (except in the cases expressly provided for by the County Courts Act, 1888), unless the power to frame rules of practice (see sect. 164) gives power to delegate matters which are beyond doubt within the judge's functions to the registrars.

The rules have been framed upon this principle, as many interlocutory matters not mentioned in the Act are delegated to the "judge or registrar," whilst in many cases the rules confer on registrars power given by the Act

Section 9 Notes.

to the judge alone; *e.g.*, as to juries, sect. 101, and Order XXII. r. 3: orders for adjournment, sect. 106, and Order XII. rr. 12, 14, 15; extension of time for taking step, sect. 106, and Order LIV. r. 12. On the other hand, if the powers conferred by the Judicature Acts are conferred on judge and registrar, the rules in many cases take away the registrar's power, *e.g.*, Order XII. r. 6, as to injunctions.

Power to Stay Action as Frivolous and Vexatious.]—A judge of county courts has power to dismiss or stay an action as being frivolous and vexatious (*Norman* v. *Matthews*, (1916) 85 L. J. K. B. 857. And see remarks of Lord Selborne, L.C., in case of *Metropolitan Bank* v. *Pooley*, (1885) 10 A. C. 214; 54 L. J. K. B. 451.

Powers of Registrars.]—A sweeping provision in favour of registrars is made by Order XV., which seems to provide that the judge or the registrar may, under a notice for directions, make any interlocutory order prior to the trial. Whether so intended or not it is submitted that it alone cannot have such an effect, for it is directly opposed to many other rules which have expressly directed application to be made to the judge. Thus Order XII. r. 6, provides a special practice for orders for injunctions, for receivers, and for taking accounts, and provides for their being made by the judge. So under Order IV. r. 7, Order III. r. 34, Order VIII. rr. 1, 2, Order XI. r. 4, and many others, application must be made to the judge. There are other cases, too, where the County Courts Act has provided for the order being made by the judge, and where no particular rule of practice specially applicable to it has conferred or purported to confer power on the registrar, *e.g.*, sects. 62, 87, 94, 103, 104, 109, 112. In all these cases, it is believed that the registrar can have no power to make an order. There are other powers which the judge is entitled to exercise by virtue of sect. 89 of the Judicature Act, 1873, or some other Act, and as to which no rules are framed, *e.g.*, order for mandamus, inspection of bankers' books under 42 Vict. c. 11, s. 10. It is believed that in these cases the registrar can make no order, unless, as regards the Judicature Acts, the construction before mentioned be the true one.

To complete the discussion of the question of power or jurisdiction, it may be pointed out that Order XII. r. 11, confers no jurisdiction on registrars. It merely provides a practice for interlocutory applications authorised by some other rule to be made to them.

General practice. 51 & 52 Vict. c. 43, s. 9. *Ex parte* orders by judge.

The general practice on interlocutory applications is governed by sect. 9 of the County Courts Act, 1888, by Order XII. r. 11, and by Order XV. Sect. 9 enables the judge, whether within his district or not, to make any order, or to exercise on an *ex parte* application any jurisdiction which, if the action or proceeding had been in the High Court, could have been exercised by a judge at chambers. This practically enables the judge to make any interlocutory order *ex parte*, and it is believed that no rule of practice can take away his power.

The practice to be followed on an *ex parte* application, whether the power of the judge or the registrar to make the order be derived from the County Courts Act, or from any other statute, or from any other rule, is now prescribed by Order XII. r. 11. The rule also supplements the practice when a statute or another rule has only partially prescribed it. In such a case the statute and the rule or the two rules must be read together, and those parts (if any) of Order XII. r. 11, which are inconsistent with the statute or the particular rule must give way before it. The result is that nearly every interlocutory order may be obtained *ex parte*, and that very few cases exist in which Order XII. r. 11, is so entirely inconsistent with the prescribed practice as to be inapplicable.

There are many cases, however, in which no judge, even though he have the power to do it, will make the order without hearing the other side; and parties have therefore the option, under Order XII. r. 11, of applying on notice to the other party. Discretion should be used; trivial and pressing

matters should be dealt with *ex parte*, but where the other side ought fairly to be heard the application should be on notice if possible.

Section 9 Notes.

An attempt has been made in the table contained in Appendix B. to indicate, on the lines expressed in the preceding pages, to whom and how the various applications, prior to the trial, may be made, and to it the reader is referred (*post*, p. 877).

The right of appeal to the High Court against interlocutory orders generally, for error of law, is now fully established, and appeals have been granted against some of the minor interlocutory orders made during the progress of an action.

See notes to sect. 120.

10. The judge of each district shall attend and hold the court at each place where her Majesty shall have ordered that the court shall be held within the district, at such times as he shall appoint for that purpose, so that a court shall be held at every such place once at least in every month, or such other interval as the Lord Chancellor shall in each case order; and notice of the days on which the court will be held shall be put up in some conspicuous place in the court-house and in the office of the registrar of the court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in some conspicuous place in the court-house and in the registrar's office. Where, by reason of death or unavoidable absence, a judge at the sitting of a court is not present the registrar, after exercising his powers where the defendant does not appear or admits the debt, or in his unavoidable absence the high bailiff shall adjourn the court to such day as he may deem convenient, and enter in the minute book the cause of such adjournment.

Times of sittings.

9 & 10 Vict. c. 95, s. 56. 19 & 20 Vict. c. 108, s. 7. 30 & 31 Vict. c. 142, s. 19.

Sittings.]—Many of the smaller courts in the agricultural districts are held less frequently than once a month by order.

In order that the suitors may know, a convenient time beforehand, when the courts will be held, the rules of practice require the judges to appoint the days and hours for holding each of their courts. A notice of such appointment must, three calendar months before the holding of such courts, be affixed in some conspicuous place in the court-house and in the office of the registrar. Whenever any day or hour so appointed is altered, notice of the alteration must be immediately affixed in the same way. The judge may, however, from time to time hold additional and adjourned courts (see Order I. r. 1).

No two courts may be held before the same judge on the same day, unless by consent of the Lord Chancellor, but an additional or adjourned court may be held on the same day as another court. The rule does not apply to the city of London Court (see Order I, r. 2).

By consent of the parties a judge may hear and decide any matter at any place either within or without his district.

Courts need not be held in the month of September, unless the Lord Chancellor otherwise orders, and with his sanction the judge, if he holds courts in September, need not hold them during some other month in the year. The office must, however, always be open for the receipt and payment of money in and out of court pursuant to the rules, or for any proceedings before the registrar (see sect. 11).

Section 11.

Closing court for one month. 28 & 29 Vict. c. 99, s. 14.

11. No judge shall be obliged to hold any courts during the month of September in any year, unless he shall be ordered by the Lord Chancellor so to do; and if any judge shall be desirous of holding courts in the said month of September, and of being relieved from the obligation to do so at some other period of the year, it shall be lawful for such judge, with the sanction of the Lord Chancellor, to close the courts upon his circuit for any periods of time of which the Lord Chancellor shall approve, not exceeding in the whole four weeks in any one year: Provided nevertheless, that the office of every court shall always be open for the receipt and payment out of money due under any order of the court, pursuant to the rules and orders in force for the time being or for any proceedings before the registrar.

Two judges of one district. 21 & 22 Vict. c. 74, s. 2.

12. The Lord Chancellor may from time to time direct that there shall be two judges of a district or districts, and may make such regulations as to their respective sittings, or otherwise as to the division of their duties, as he may think right, and each of the judges when acting shall have all such powers and authorities as if he had been sole judge of such district or districts.

Power to re-distribute districts among judges. 21 & 22 Vict. c. 74, s. 1.

13. It shall be lawful for the Lord Chancellor from time to time to alter the distribution of the districts among the judges, and for that purpose to remove any judge from all or any of the districts of which he is the judge, for the purpose of appointing him to any other district or districts, or to appoint any such judge to be the judge of any district or districts in addition to the district or districts of which he is the judge, or to direct that any judge shall sit as an additional judge in any district or districts.

Judges not to practise. 15 & 16 Vict. c. 54, s. 16.

14. No judge shall practise at the bar, or as a special pleader or equity draftsman, or be directly or indirectly concerned as a conveyancer, notary public, or solicitor, or act as arbitrator or referee for any remuneration to himself.

Judges removable. 9 & 10 Vict. c. 95, s. 18.

15. It shall be lawful for the Lord Chancellor, or the Chancellor of the Duchy of Lancaster (as the case may be), if he shall think fit, to remove for inability or misbehaviour any judge already appointed or hereafter to be appointed by them respectively.

The order to remove a judge, when questionable at all, may be questioned by *quo warranto* to his successor. But if an inquiry has been held, and the judge has had full opportunity of being heard, and of calling witnesses, the court will not enter into the question whether on the mere balance of the evidence the charge of inability or misbehaviour has been made out (*Ex parte Ramshay*, (1852) 18 Q. B. 173; 21 L. J. Q. B. 238; 88 R. R. 563).

Judges may be named for assizes. 47 & 48 Vict. c. 61, s. 7.

16. Her Majesty may, if her Majesty shall so please, include in any commission of assize, oyer and terminer, or gaol delivery the name of any judge.

It is believed this has only been done on one occasion.

Section 17.

Judges in commission of the peace. 9 & 10 Vict. c. 95, s. 21.

17. Her Majesty may include in any commission of the peace for any borough, city, county, riding, or division of a county where a court is holden, the judge of such court for the time being, and he may and shall act in the execution of the office of justice of the peace for the said borough, city, county, riding, or division, [although he may not be qualified in such manner as is required by law in the case of other persons being justices of the peace.]

Words in brackets repealed by 6 Edw. VII. c. 16, which Act abolished the property qualification for justices of the peace for counties.

Appointment of deputy judge. 9 & 10 Vict. c. 95, s. 20. 19 & 20 Vict. c. 108, s. 6. 30 & 31 Vict. c. 142, s. 20.

18. In case of the illness or unavoidable absence of any judge it shall be lawful for such judge to appoint a barrister-at-law of at least seven years' standing to act as his deputy during such illness or unavoidable absence; provided that whenever any deputy is appointed, the fact of the appointment and the name of the deputy shall be forthwith communicated to the Lord Chancellor, and no deputy so appointed shall be entitled to act for more than fourteen days at any time, unless with the approval of the Lord Chancellor; provided also that, in the case of the judge's inability to make such appointment, the Lord Chancellor or the Chancellor of the Duchy (as the case may be) may make the same: and it shall also be lawful for any judge, with the approval of the Lord Chancellor or Chancellor of the Duchy (as the case may be), to appoint a barrister-at-law of at least seven years' standing to act as his deputy for any time or times not exceeding in the whole two months in any consecutive period of twelve months. Every deputy appointed under this section, during the time for which he shall be so appointed, shall have all the powers and privileges and perform all the duties of the judge for whom he shall have been so appointed.

It is a condition precedent to the appointment of a deputy judge that he should be a barrister-at-law of at least seven years' standing; a judge cannot, therefore, where the claim exceeds 2*l.*, appoint his registrar as his deputy, unless he has that qualification (*McInally* v. *Blackledge*, (1911) 2 K. B. 432; 80 L. J. K. B. 882).

The judge may appoint a deputy for a particular court in his district, without appointing him for the whole district; and he may appoint two deputies to act for the same period, provided they are to act for different courts (*R.* v. *Lloyd*, (1906) 1 K. B. 22; 75 L. J. K. B. 126; (C. A.), (1906) 1 K. B. 552; 75 L. J. K. B. 406).

Judgment of Deputy.]—Where a deputy presides at the trial, and after consideration prepares judgment, which is actually read and pronounced by the judge, the judgment of the deputy is the judgment of the court (*Rathbone* v. *Munn*, (1868) 9 B. & S. 708). It is conceived that a deputy becomes *functus officio* on the appointment of a new judge, and that neither he nor the new judge has power to deliver a reserved judgment. It seems that the new judge should rehear the case (*Hoey* v. *M'Farlane*, (1858) 4 C. B. N. S. 718; 114 R. R. 913).

Judges may act for one another.

19. Any judge shall be capable of acting for any other judge within or without the districts presided over by such other judge,

Section 19.

Substitute for deputy judge.

and where, in the absence of a judge, a deputy of such judge shall, from illness or otherwise, be incapable of performing his duties as such deputy, it shall be lawful for the Lord Chancellor to appoint another person duly qualified, to be the deputy of such judge.

30 & 31 Vict. c. 142, s. 20.

This probably enables one judge to act for another without express appointment, simply on request, and in other cases than those of illness or unavoidable absence. When he signs any order or document, the memorandum in Form 4 must be made by the registrar at the foot (see Order II. r. 15).

Deputy judge not to practise in district.

13 & 14 Vict. c. 61, s. 3.

20. No deputy judge, save and except of the Westminster county court of Middlesex, shall, during the time he acts or is entitled to act as such deputy, practise as a barrister in any court within the district for which he acts or is entitled to act as such deputy.

Deputy judge to act during vacancy. Remuneration.

19 & 20 Vict. c. 108, s. 11.

21. The appointment of a deputy of a judge, whether such deputy shall have been appointed by the judge, or by the Lord Chancellor, or by the Chancellor of the Duchy of Lancaster, shall not be vacated by the death or resignation of the judge, but the acts of the deputy done after such death or resignation shall be as valid as if the judge had not died or resigned, and he shall continue to act in all the courts to which he was appointed until the Lord Chancellor or the Chancellor of the Duchy of Lancaster (as the case may be) shall otherwise order, or a successor to such judge shall be appointed; and such deputy shall receive as remuneration for the period that he may act as deputy, after the death or resignation of the judge, a rateable proportion of the salary and travelling allowances attached to the office so vacant during any vacancy. If no such deputy shall have been appointed, the Lord Chancellor may appoint a deputy with the like powers and remuneration for any period not exceeding three months, if the office shall so long remain vacant.

This section was originally passed after the decision in *Hocy* v. *M'Farlane*, (1858) (4 C. B. N. S. 718; 114 R. R. 913), where it was held that a deputy's functions entirely ceased on the death of the judge, and that neither he nor the new judge had power to deliver, after the death, judgment in a case which the deputy had heard before, and that the proper course was for the new judge to rehear the case. The section, however, merely enables the deputy to act until a new judge is appointed, and it is conceived that the same difficulty would then arise in regard to judgments not delivered at the date of the appointment.

Court where judge can sue and be sued,

9 & 20 Vict. 108, s. 19.

22. A judge proposing to sue any person dwelling or carrying on business in any district of which he is the judge may bring his action in the court of any adjoining district of which he is not the judge; and any person proposing to sue a judge may bring his action in any court of a district adjoining the district of which the defendant is judge.

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It seems that by virtue of this section the plaintiff has a right to choose any adjoining district, even if in another county (*Partridge* v. *Elkington*, (1870) L. R. 6 Q. B. 82 ; 40 L. J. Q. B. 49).

The section applies to proceedings in equity (*Linford* v. *Gudgeon*, (1870) L. R. 6 Ch. 359 ; 40 L. J. Ch. 514).

Salaries and allowances of judges. 9 & 10 Vict. c. 95, s. 40. 19 & 20 Vict. c. 108, ss. 80, 81. 28 & 29 Vict. c. 99, s. 13.

23. The salary to be received by a judge shall be one thousand five hundred pounds a year : Provided that it shall be lawful for the Treasury to allow to a judge such sum as the Treasury shall in each case, with the concurrence of the Lord Chancellor, deem reasonable to defray his travelling expenses, with reference to the size and circumstances of the district for which he is judge, or in which, under the provisions of this Act, he is directed to sit. The salaries of the judges shall be paid out of the Consolidated Fund, and the Treasury shall pay the same accordingly ; and the sums which may be allowed to them for travelling expenses shall be paid out of money provided by Parliament.

Pension of judges. 15 & 16 Vict. c. 54, s. 15.

24. It shall be lawful for the Lord Chancellor from time to time, on a petition presented to him for that purpose, to recommend to the Treasury that there shall be paid out of the Consolidated Fund to any judge who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and who shall be desirous of resigning the same, an annuity or clear yearly sum of money for the term of his life, not exceeding two-thirds of the yearly salary which such judge shall be entitled to as a judge at the time of presenting his petition ; and such annuity or sum shall be paid out of the Consolidated Fund, quarterly or otherwise, as the Treasury may direct.

The pension is liable to sequestration for a judgment debt (*Willcock* v. *Terrell*, (1878) 3 Ex. D. 323).

Appointment of registrars. 9 & 10 Vict. c. 95, s. 24. 13 & 14 Vict. c. 61, s. 3. 19 & 20 Vict. c. 108, ss. 8, 9.

25. For every court there shall be a registrar who shall be a solicitor of the Supreme Court of at least five years' standing, and whom the judge shall be empowered to appoint, subject to the approval of the Lord Chancellor. No person shall be appointed registrar of more than one court ; and every registrar shall reside within the district of his court. In the case of any court where the number of plaints for the preceding year has exceeded eight thousand, the Lord Chancellor may in the case of any future appointment make it a condition of the appointment that the registrar shall not practise as a solicitor or notary, but nothing in this section shall be deemed to disqualify a registrar from holding any other public appointment.

[See proviso at end of sect. 31.—Ed.]

On any vacancy occurring notice must be given at once by the judge to the Lord Chancellor, and no new appointment must be made without the consent of the Lord Chancellor, for one month after the date of the notice (see *post*, sect. 31). No particular form of appointment is necessary.

Formerly one person might be registrar to several courts. Now no

Section 25 Notes.

registrar can be appointed to more than one court. Each registrar appointed after August 14th, 1850, must reside in the district for which he is appointed. See sect. 25, *supra*.

Duties of registrars. 9 & 10 Vict. c. 95, s. 27.

26. The registrar of each court, with such clerks as may be required, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the said court, and keep an account of all proceedings of the court and shall take charge of and keep an account of all court fees and fines payable or paid into court, and of all monies paid into and out of court, and shall enter an account of all such fees, fines, and monies in a book belonging to the court, to be kept by him for that purpose; and shall from time to time, as may be directed, submit his accounts to be audited or settled.

A registrar may, and must if appointed after April 23rd, 1866, on a vacancy in the office of high bailiff, exercise its powers and duties, unless the Lord Chancellor otherwise determines (see *post*, sect. 37).

In populous districts the Lord Chancellor may direct that two registrars shall be appointed to execute the office jointly (see *post*, sect. 29). On the death, removal or resignation of one of them, the remaining registrar will be sole registrar unless the Lord Chancellor otherwise orders (see *post*, sect. 30).

Consolidation of districts.

Where districts are consolidated, the Lord Chancellor, with the consent of the Treasury, may make such provision for the duties of the registrar and otherwise as he may think fit (see 3 Edw. VII. c. 42, s. 6 (1)).

The registrar must keep open an office except on certain specified days (see Order I. rr. 3, 4).

His duties generally are set out in Order II. rr. 2—16.

He has power to appoint a deputy (see sect. 31); to try undefended cases (see sect. 90); and, by leave of the judge, to try disputed claims not exceeding 2*l.* (see sect. 92).

As to his salary, see sects. 44, 45.

He is forbidden to act as solicitor in the court of which he is registrar (see sect. 41).

Removal of registrars. 13 & 14 Vict. c. 61, s. 4

27. It shall be lawful for the Lord Chancellor, or the Chancellor of the Duchy of Lancaster (as the case may be), when such Lord Chancellor or Chancellor of the Duchy shall in his discretion think fit, to remove the registrar of any court from his office, and from time to time to make orders as to the attendance of any registrar during the sitting of the court or otherwise.

The Lord Chancellor has absolute discretion in the matter of the removal of a registrar from office.

See *R.* v. *Owen*, (1850) 15 Q. B. 476; 19 L. J. Q. B. 490, as to the original power to remove.

Minutes of proceedings to be kept. 9 & 10 Vict. c. 95, s. 111.

28. The registrar of every court shall cause a note of all plaints and summonses, and of all orders, and of all judgments and executions and returns thereto, and of all fines, and of all other proceedings of the court, to be fairly entered from time to time in a book belonging to the court, which shall be kept at the office of the court; and such entries in the said book, or a copy thereof bearing the seal of the court and purporting to be signed and

certified as a true copy by the registrar of the court, shall at all times be admitted in all courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof. Section 28.

See Buckley, L.J., in *Rex* v. *Snagge*, (1909) 1 K. B. 644; 78 L. J. K. B. 562.
In merely signing and issuing an order of commitment, the registrar is acting ministerially and is not responsible for the error of the judge in making the order (*Dews* v. *Ryley*, (1851) 11 C. B. 434; 20 L. J. C. P. 264; 87 R. R. 718).
It is believed that a minute of any leave granted by the judge for the issue of a judgment summons ought, under this section, to be taken by the registrar and duly recorded.
A certified copy of minutes expressed to be of proceedings before the deputy of a county court judge was held to be sufficient evidence of the regularity of his appointment on an indictment for perjury (*R.* v. *Roberts*, (1878) 38 L. T. 690).

29. It shall be lawful for the Lord Chancellor, in populous districts in which it shall appear to him to be expedient, to direct that two persons shall be appointed to execute jointly the office of registrar, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of court in case of difference between them, each of such persons being qualified as is hereinbefore provided in the case of a single registrar. Appointment of joint registrars. 9 & 10 Vict. c. 95, s. 25.

30. Upon the death, resignation, or removal of any person being joint registrar with another, no other person shall be appointed to such office of registrar jointly or otherwise, until both the persons holding the joint office shall have died, been removed, or resigned, unless the Lord Chancellor shall otherwise order. On death of joint registrar survivor to be sole registrar. 30 & 31 Vict. c. 142, s. 23.

For the practice prior to 1867, see *R.* v. *Wake*, (1857) 8 E. & B. 384; 27 L. J. Q. B. 11; 112 R. R. 612.

31. It shall be lawful for the registrar of any court, with the approval of the judge, or in case of the inability of the registrar to make such appointment, for the judge, to appoint from time to time a deputy, qualified to be appointed registrar, to act for the registrar of the said court at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such deputy at his pleasure; and such deputy while acting under such appointment shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour as if he were the registrar of the said court for the time being. The appointment of a deputy of a registrar shall not be vacated by the death or removal of the registrar, but his acts done after such death or removal shall be as valid as if the registrar had not died or been removed, and he shall Deputy registrar. 9 & 10 Vict. c. 95, s. 26. 19 & 20 Vict. c. 108, s. 12.

Section 31.

continue to act until a successor to such registrar shall be appointed; and he shall receive as remuneration for his services during the period he may so act after the death or removal of the registrar, a rateable proportion of the salary attached to the office of registrar. Provided that notice of any vacancy in the office of registrar shall be forthwith given by the judge having the appointment, and no appointment shall be made to fill the vacancy within the period of one month after the date of the notice without the assent of the Lord Chancellor.

[This proviso relates to the matter dealt with by sect. 25.—Ed.]

As to the appointment by the judge of a deputy to act on behalf of the registrar when he or his deputy is absent, see Order II. r. 1. As to what constitutes such absence, see *Wetherfield* v. *Nelson*, (1869) L. R. 4 C. P. 571; 38 L. J. C. P. 220.

As to the provisional appointment by the judge of a registrar for a period not exceeding three months on the death or removal of a registrar who has not appointed a deputy, see *post*, sect. 32.

Where the registrar is also district registrar of the High Court, he may, with the Lord Chancellor's consent, appoint a deputy to perform such duties. See Appellate Jurisdiction Act, 1876, s. 22.

Deputy registrar provisionally appointed. 19 & 20 Vict. c. 108, s. 13.

32. On the death or removal of a registrar who shall not have appointed a deputy, the judge may, for a period not exceeding three months, provisionally appoint a person qualified to be a registrar to discharge the duties of registrar; and such person shall act as and have all the rights and liabilities of a registrar until a permanent successor shall be appointed, and shall receive as remuneration for his services during the period he may so act a rateable proportion of the salary attached to the office of registrar.

Appointment of bailiffs. 9 & 10 Vict. c. 95, s. 31. 13 & 14 Vict. c. 61, s. 4. 29 & 30 Vict. c. 14, s. 13. 30 & 31 Vict. c. 142, s. 22.

33. For every court there shall, unless otherwise provided by this Act, be one or more high bailiffs, whom the judge shall be empowered to appoint, and whom the Lord Chancellor or the Chancellor of the Duchy of Lancaster (as the case may be), may, if he shall think fit, remove from his office; provided that no person shall be appointed high bailiff of more than one court, and every person discharging the duties of high bailiff shall be empowered, subject to the restrictions hereinafter contained, by any writing under his hand, to appoint a sufficient number of able and fit persons, not exceeding such number as shall be from time to time allowed by the judge, to be bailiffs to assist him, and at his pleasure to dismiss all or any of them, and to appoint others in their stead; and every bailiff so appointed may be suspended or dismissed by the judge. Every bailiff duly appointed may serve or execute any process which by any act passed or to be passed is directed to be served or executed by a high bailiff, unless otherwise specially provided against therein.

In most cases, the office of high bailiff is now combined with that of registrar. See sect. 37.

No special qualification is necessary for the office of high bailiff.

On his death or removal, his bailiffs are to act until dismissed by his successor, or by the judge (see *post*, sect. 34); and the judge may appoint a person provisionally to discharge the duties of high bailiff for not more than three months (see *post*, sect. 36).

Section 33 Notes.

Office.]—In courts where the plaints entered in a year exceed six thousand, the high bailiff must keep his office open during such times as the registrar's office is open (see Order II. r. 20).

The duties of a high bailiff are set out in sect. 35, and in Order II.rr. 17—41.

Execution on Wrong Person.]—The high bailiff is responsible where process is served or executed upon a wrong person, resulting in an arrest or other trespass; but such person must not by his conduct contribute to the mistake, or cause the officer to continue the execution of process against him, or he will not be allowed to recover damages (*Kelly* v. *Lawrence*, (1864) 3 H. & C. 1; 35 L. J. Ex. 197; *Davies* v. *Jenkins*, (1843) 11 M. & W. 745; 63 R. R. 744; *Walley* v. *M'Connell*, (1849) 13 Q. B. 903, 911; 19 L. J. Q. B. 162; 78 R. R. 552); as where he failed to give notice to the officer of the mistake, and was afterwards arrested (see *per* Cockburn, C.J., in *De Mesnil* v. *Dakin*, (1867) L. R. 3 Q. B. 18; 37 L. J. Q. B. 42), or, all the process having been by mistake served upon him, he neglected to appear and to deny his liability (see *Davies* v. *Jenkins*, *Walley* v. *M'Connell*, *supra*). If, however, before execution, he did deny his liability, the high bailiff would be responsible, though judgment had been suffered by default (*Kelly* v. *Lawrence*, *supra*). If process were executed upon the wrong person through his representation that he was the person named in the order or warrant, the high bailiff would not be responsible (*Price* v. *Harwood*, (1811) 3 Camp. 108; *Dunston* v. *Paterson*, (1857) 2 C. B. N. S. 495; 26 L. J. C. P. 267; 109 R. R. 771); but he would be responsible if, after notice of the misrepresentation, he refused to withdraw or discharge the person from custody (*Dunston* v. *Paterson*, *supra*).

If a person sued by a wrong name, but, being the right person served with process, omits to take his objection as required by law, he acquiesces in the process and cannot retract it (*Fisher* v. *Magnay*, (1843) 5 M. & G. 778; 12 L. J. C. P. 276). Where a debtor paid a judgment debt to the plaintiff instead of paying it into court, and through ignorance of the payment a warrant was executed against the judgment debtor, the officers of the court were held not to be responsible (*Davies* v. *Fletcher*, (1853) 2 E. & B. 271; 22 L. J. Q. B. 429; 95 R. R. 538).

Bailiffs during vacancy of high bailiff. 19 & 20 Vict. c. 108, s. 14.

34. The appointment of the bailiffs who are appointed to assist the high bailiff shall not be vacated by the death or removal of the high bailiff, but their acts done after such death or removal shall be as valid as if the high bailiff had not died or been removed, and had authorised such acts, and they shall continue to act until they shall be dismissed by the successor of the high bailiff or by the judge; and they shall be paid for their services during the period they shall so act after the death or removal of the high bailiff the same wages as they were receiving at the date of such death or removal, and such wages shall be paid out of the salary and allowances attached to the office of high bailiff.

Duties of high bailiffs, &c.

35. The high bailiff shall attend every sitting of the court for such time as shall be required by the judge, unless when his absence shall be allowed for reasonable cause by the judge, and

Section 35.

9 & 10 Vict. c. 95, s. 33.

shall, by himself or by the bailiffs appointed to assist him as aforesaid, serve all summonses and orders, and execute all the warrants, precepts, and writs issued out of the court, except as hereinafter provided; and the said high bailiff and bailiffs shall in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings of the court as hereinafter provided, and, subject thereunto, to the order and direction of the judge; and every such high bailiff shall be responsible for all the acts and defaults of himself and of the bailiffs appointed to assist him in like manner as the sheriff of any county in England is responsible for the acts and defaults of himself and his officers.

See Order II. rr. 17—41, as to the duties of a high bailiff. As to penalties for assaulting him in the execution of his duty, see *post*, sect. 48.

As to remedies against him for misconduct, see *post*, sects. 49, 50.

As to his liability for escapes and neglects, see *post*, sect. 49.

As to service, endorsement, and affidavit of service, and notice of service or non-service, and proof of service, see Order II. rr. 5, 21—26, 31; and as to the penalty for neglecting to serve the summons of another county court, see Order II. rr. 27, 28, 29. As to delivering a list of the particulars of service or non-service of summonses before each court, see Order II. r. 30; and as to his duties as to warrants of execution, see Order II. r. 33; and as to non-execution in a foreign district, see Order II. r. 37; and as to paying over money received, see Order II. r. 34.

The high bailiff must at all reasonable times give information to suitors as to the execution or non-execution of warrants or orders (see Order II. r. 33).

A high bailiff is liable, to the same extent as a sheriff, for the wrongful acts of a person employed by one of his bailiffs to whom a warrant has been delivered for execution (*Burton* v. *Le Gros*, (1865) 34 L. J. Q. B. 91; and see *Smith* v. *Pritchard*, (1849) 8 C. B. 565; 19 L. J. C. P. 53; 79 R. R. 631).

On death, &c., of high bailiff, judge to appoint provisionally a deputy.

19 & 20 Vict. c. 109, s. 16.

36. On the death or removal of a high bailiff the judge may, for a period not exceeding three months, provisionally appoint a person to discharge the duties of high bailiff; and such person shall act as and have all the rights and liabilities of a high bailiff until a permanent successor shall be appointed, and shall receive as remuneration for his services during the period he shall so act a rateable proportion of the salary and allowances attached to the office of high bailiff.

When registrar shall perform duties of high bailiff.

Remuneration.

29 & 30 Vict. c. 14, ss. 11, 12.

37. Upon the happening of any vacancy in the office of high bailiff of any court, if the registrar of the court in which the vacancy shall occur shall have been appointed such registrar after the twenty-third day of April, one thousand eight hundred and sixty-six, or having been appointed before that day, shall be willing to perform the duties of the office of high bailiff of such court, no successor to such high bailiff shall, unless the Lord Chancellor with the consent of the Treasury shall otherwise determine, be appointed, but in either of such cases the registrar

shall perform the duties of the high bailiff of such court, and shall have all the powers and authorities vested by this Act or any other Act in a high bailiff, and shall be responsible for the acts and defaults of himself and his officers in like manner as the high bailiff is by law responsible for the acts and defaults of himself and his officers. Every registrar so invested with the powers and authorities of high bailiff shall receive, in addition to his net salary as registrar, a sum equal to one-fifth part of such salary, together with such sum or allowances for service and execution of process as the Treasury may determine; and such additional salary and allowances shall be paid out of the produce of the fees payable under the provisions of this Act. The appointment of a high bailiff as registrar shall vacate the office of high bailiff held by such appointee.

Section 37.

30 & 31 Vict. c. 142, s. 21. 38 & 39 Vict. c. 50, s. 9.

38. Whenever a treasurer of a court shall die, resign, or be removed, the vacancy caused by the death, resignation, or removal of such person shall not be filled up; and the accounts of the registrar and other officers of the court of which the person who shall have died, resigned, or been removed was the treasurer, shall be examined by such person or persons, at such time or times, and under the supervision of such person, as the Treasury shall think fit.

Vacancies in office of treasurer and examination of accounts of officers.

29 & 30 Vict. c. 14, ss. 1, 2.

Treasurer.]—The treasurer was appointed by the commissioners of the Treasury, and was removable at their pleasure. No special qualification was necessary. The number of these officers originally appointed was twenty-three, to each of whom a certain number of courts was assigned. It will be seen below that no new appointments may be made. The expression "treasurer" as used in the Rules includes any person appointed by the Treasury to perform the functions of treasurer.

In *Burridge* v. *Nicholetts*, (1861) 6 H. & N. 383; 30 L. J. Ex. 145; 123 R. R. 582, it was held, that where a registrar, to whom notice of the treasurer's intention to audit the books had been given, locked up his office and left at the time for closing appointed by the then 6th Rule of Practice, the treasurer was justified in breaking open the office to get at the books.

Duties.]—The duties of the treasurer, where there is one, consist in auditing and settling the accounts of the registrar and other officers of the court; in receiving the balances of the various moneys to be paid over to him (see *post*, sect. 171); and in accounting for and disposing of the balances and other sums in his hands, as directed by rules made by the Treasury for the control of all officers (see *post*, sect. 172). The books of the court, including the bankers' book and cash book, must be at all times open to his inspection (see Order II. r. 12).

Salary.]—The salary of the treasurer is determined by the Treasury. It was originally charged on the Consolidated Fund, but is now voted annually (see 17 & 18 Vict. c. 94). It varies from 700*l.* to 850*l.* Besides his salary, he receives the expenses he is out of pocket in travelling. He is also allowed for a clerk, but is bound to provide an office out of his salary.

39. Where it shall appear to the Treasury that greater efficiency and economy will be effected by permitting the retirement of a

Treasurer's superannuation.

Section 39.

29 & 30 Vict. c. 14, s. 3.
22 Vict. c. 26.

treasurer of a court, it shall be lawful for the Treasury to grant to any such treasurer, out of moneys to be provided for the purpose by Parliament, such superannuation allowance as the Treasury may determine, not exceeding such amount as might be granted under the Superannuation Act, 1859, to a civil servant retiring upon medical certificate.

Registrar and high bailiffs to give security.
9 & 10 Vict. c. 95, s. 36.

40. The treasurer, registrar, and high bailiff of every court who may receive any moneys in the execution of his duty, shall give security for such sum and in such manner and form as the Treasury from time to time shall order for the due performance of their several offices, and for the due accounting for and payment of all moneys received by them under this Act, or which they may become liable to pay for any misbehaviour in their office.

The Treasury is generally willing to accept a guaranty bond for the security required issued by an approved guaranty society.

Officers not to act as solicitors in the court.
9 & 10 Vict. c. 95, ss. 29, 30.

41. No registrar, treasurer, high bailiff, or other officer of any court shall, either by himself or his partner, be directly or indirectly engaged as solicitor or agent for any party in any proceeding in the said court. And every registrar, treasurer, high bailiff, or other officer of any court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as solicitor or agent for any party in any proceeding in the said court, shall for every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same by action of debt.

A registrar, who is a solicitor, may defend himself in person in an action brought against him in his own court, and may recover from the plaintiff such costs as a solicitor defendant is entitled to on taxation; in such a case he must, under sect. 118 of the Act, necessarily tax his own bill of costs (*Tolputt & Co.* v. *Mole* (C. A.), (1911) 1 K. B. 836; 80 L. J. K. B. 686). The application by a high bailiff for and the obtaining and issuing a warrant to arrest an absconding debtor under the 14 & 15 Vict. c. 52, was held not to be a proceeding in the county court within the above provision. The court said, however, that a high bailiff who had so acted, had acted very improperly (*Warden* v. *Stone*, (1857) 7 E. & B. 603; 26 L. J. Q. B. 200; 110 R. R. 750; see also *Longstaffe* v. *Woodrow*, (1894) 38 S. J. 275). An assistant registrar is within the section (*Ackroyd* v. *Gill*, (1856) 5 E. & B. 808; 25 L. J. Q. B. 111; 103 R. R. 757).

If officer plaintiff in his own court, defendant may remove action to an adjoining district.
19 & 20 Vict. c. 108, s. 20.

42. If an action be brought by an officer in the court of which he is an officer, except as official receiver, the judge shall, at the request of the defendant, order that the venue be changed, and that the action be sent for trial to the court of some convenient district of which he is not the judge; and the registrar of the first-mentioned court shall forthwith transmit by post to the registrar of such last-mentioned court a certified copy of the plaint as entered in the plaint book, the duplicate copy of the summons and particulars served on the defendant, and a certified

copy of the order for changing the venue as entered in the minute-book; and the judge of such last-mentioned court shall appoint a day for the trial, notice whereof shall be sent by post or otherwise by the registrar of such last-mentioned court to both parties.

As to the court in which the judge can sue or be sued, see *ante*, sect. 22.
As to actions to which any of the parties are officers of the court, see Order XXII. r. 23.

Where officer of county court may be sued.

43. If an action be brought against an officer of a county court, the summons may issue in the district of which he is an officer, or in any adjoining district, the judge of which is not the judge of a court of which the defendant is an officer.

19 & 20 Vict. c. 158, s. 21.

Provision for salaries.

19 & 20 Vict. c. 108, s. 84.

44. The salaries and remuneration of the registrars and high bailiffs shall be paid out of the produce of the fees payable under the provisions of this Act; and whenever the amount of such fees shall not be sufficient to pay the salaries and remuneration, the deficiency shall be made good out of any moneys to be provided by Parliament for that purpose; and the surplus which from time to time shall remain after payment of the salaries and remuneration shall be paid over to the credit of the Consolidated Fund.

Salaries of registrars.

28 & 29 Vict. c. 99, s. 12.
29 & 30 Vict. c. 14, s. 14.
50 & 51 Vict. c. 3, s. 2.

45. A registrar shall be paid by salary, and the principle upon which the said salary shall be regulated shall be, that if the plaints entered in the court of which he is registrar do not exceed in the year from the first day of January to the thirty-first day of December inclusive the number of two hundred, the salary shall be one hundred pounds for that year; and if the plaints so entered shall exceed two hundred, then such salary shall be increased by sums of four pounds for every twenty-five additional plaints up to six thousand inclusive; and such salaries shall be inclusive of all salaries to the clerks employed by the registrars in the business of their respective courts, and of all emoluments whatsoever, except as by this Act otherwise provided and except those that may be receivable, in respect of special duties under any Act of Parliament and in any court in which the plaints shall have at any time exceeded six thousand the amount of salary shall be fixed from time to time by the Treasury with the concurrence of the Lord Chancellor, but in no case shall the net salary, exclusive of clerks' salaries and office expenses to be allowed, exceed seven hundred pounds a year. In the case of any court where by reason of the amount of business therein, or of the union of the registrar's office with that of the district registrar of the High Court, or the district probate registrar, or any other public office, the Lord Chancellor shall at any time be of opinion that the whole time of the registrar ought to be given to the public

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service, the Lord Chancellor may by order to be laid before Parliament, direct that the registrar shall not practise as a solicitor; and thereupon the Treasury shall assign to the registrar such salary in respect of his public offices as they may think fit, having regard to all the circumstances of the case, but no such salary shall exceed fourteen hundred pounds a year; and every registrar to whom any such order shall apply shall, for all purposes, be deemed to be an officer of the Supreme Court within the meaning of the Supreme Court of Judicature (Officers) Act, 1879: Provided that no such order shall be made with respect to any registrar appointed before the passing of this Act without the consent of such registrar.

42 & 43 Vict. c. 78.

Where such an order is made by the Lord Chancellor, the registrar must account for and pay over to the Exchequer all fees whatsoever received by him after the date of the order in such manner as the Lord Chancellor, with the consent of the Treasury, may direct (see 3 Edw. VII. c. 42, s. 6 (2)).

By 3 Edw. VII. c. 42, s. 6, "(1) Where two or more districts are consolidated, notwithstanding anything in sect. 45 of the County Courts Act, 1888, contained, the Lord Chancellor, with the consent of the Treasury, may make such provision for the duties of the registrar and otherwise as he may think fit."

High bailiffs' salaries and fees.

46. The high bailiffs of the courts shall be paid by salaries to be fixed and regulated from time to time by the Treasury, with the concurrence of the Lord Chancellor, and shall, in addition to such salaries, receive, for their own use, besides any additional remuneration as hereinafter mentioned, the fees appointed for keeping possession of goods under executions, and such salaries shall include all payments made by the high bailiffs to their under bailiffs, or, with the like consent, the high bailiffs may be paid partly by salaries and partly by allowances for the execution of warrants, and for mileage on the service or execution of any process.

18 & 19 Vict. c. 108, s. 83. 28 & 29 Vict. c. 99, s. 12. 30 & 31 Vict. c. 142, s. 30.

Remuneration of officers.

47. The Treasury with the concurrence of the Lord Chancellor shall direct whether and what additional or other remuneration shall be allowed to any person performing any duties under this Act or under any Act passed or to be passed where by such Act no remuneration is or shall be given for the performance of duties by officers of the courts; and such remuneration shall be paid out of the fees which the Treasury, with the consent of the Lord Chancellor, is empowered to order to be taken on proceedings authorised to be taken in the courts. This section shall not apply to the city of London court.

28 & 29 Vict. c. 99, s. 12. 30 & 31 Vict. c. 142, s. 30. 38 & 39 Vict. c. 50, s. 7.

For these fees, see Part II. "Costs and Court Fees" (Schedule B), Part I.

By 35 & 36 Vict. c. 86, s. 8, the same fees are always to be taken in the city of London Court as are for the time being taken in the county courts.

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Penalty for assaulting bailiffs, or rescuing goods taken in execution. 9 & 10 Vict. c. 95, s. 114.

48. If any officer or bailiff of any court shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the court, the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the judge, or on summary conviction in manner provided by the Summary Jurisdiction Acts; and it shall be lawful for the bailiff of the court, in any such case, to take the offender into custody (with or without warrant), and bring him before such judge accordingly.

An order imposing a fine under this section is not subject to appeal (*Lewis* v. *Owen*, (1894) 1 Q. B. 102; 63 L. J. Q. B. 233).

The provision that the bailiff may take the offender into custody is a power given to the individual officer, and a wrongful exercise of it does not render the high bailiff responsible (*Smith* v. *Pritchard*, (1849) 8 C. B. 565; 19 L. J. C. P. 53; 79 R. R. 631).

It seems that the person committing the assault is liable to an action by the person assaulted as well as to a fine (*Box* v. *Green*, (1854) 9 Ex. 503; 23 L. J. Ex. 219).

A person assaulting a bailiff may be indicted for the assault instead of being proceeded against under these provisions (*R.* v. *Davies*, (1861) 8 Cox, C. C. 486; 30 L. J. M. C. 159).

The fine may be recovered in the same manner as a judgment debt, or a sum ordered to be paid on summary conviction under the Summary Jurisdiction Acts, 11 & 12 Vict. c. 43; 42 & 43 Vict. c. 49 (see *post*, sect. 167).

Bailiffs made answerable for escapes and neglect to levy execution. 9 & 10 Vict. c. 95, s. 115.

49. In case any bailiff of any court who shall be employed to levy any execution against goods and chattels shall, by neglect or connivance or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance, or omission (and the fact alleged being proved to the satisfaction of the court on the oath of any credible witness), the judge shall order such bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the court.

For form of summons, see Form 361.

For form of order, see Form 362.

See also Order LII.

Where a warrant is sent for execution to a foreign court, jurisdiction under this section can be exercised by the judge of the foreign court only (*R.* v. *Shropshire County Court*, (1887) 20 Q. B. D. 242; 57 L. J. Q. B. 143).

A party aggrieved is not deprived by this section of his common law remedy (*Watson* v. *White*, (1896) 2 Q. B. 9; 65 L. J. Q. B. 492).

Remedies against and penalties)

50. If any registrar, bailiff, or officer of any court, acting under colour or pretence of the process of the said court, shall be charged

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bailiffs and other officers for misconduct. 9 & 10 Vict. c. 95, s. 116.

with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs as he shall think just, and also, if he shall think fit, to impose such fine upon the registrar, bailiff, or officer, not exceeding ten pounds for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

For form of summons, see Form 363.
For form of order, see Form 364.
A mere error of judgment in levying is not "misconduct," as where a bailiff by mistake sold protected implements of trade (*Moore* v. *H. B. of Brompton*, (1893) 62 L. J. Q. B. 498).

Penalty on officers taking fees besides those allowed. 9 & 10 Vict. c. 95, s. 117.

51. Every treasurer, registrar, bailiff, or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the judge of the court, and in the case of a treasurer, registrar, or high bailiff, on allowance of the finding of the judge by the Lord Chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as in this Act before provided.

No officer shall be deemed a trespasser by reason of irregularity. 19 & 20 Vict. c. 108, s. 60.

52. No officer of any court in executing any warrant of a court, and no person at whose instance any such warrant shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it, but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity or informality against the party guilty thereof, and in such action he shall recover no costs, unless the damage awarded shall exceed forty shillings.

Where the irregularity or informality is in the judgment or in the proceedings prior to it, according to the rule of the common law, no action will

lie for acts regularly done under it, until the judgment has been set aside (*Riddell* v. *Pakeman*, (1835) 2 C. M. & R. 30; *Blanchenay* v. *Burt*, (1843) 4 Q. B. 707; 12 L. J. Q. B. 291); and on any application to set it aside, the judge may make it a term that no action shall be brought, if the applicant asks for costs, but not otherwise (*Rhodes* v. *Hull*, (1857) 26 L. J. Ex. 265; *Bartlett* v. *Stinton*, (1866) L. R. 1 C. P. 483; 35 L. J. C. P. 238).

Section 52 Note.

[**53**. Repealed by 56 & 57 Vict. c. 61 (the Public Authorities Protection Act, 1893), s. 2.]

54. No action shall be commenced against any bailiff, or against any person acting by the order and in aid of any bailiff, for anything done in obedience to any warrant under the hand of the registrar and the seal of the court, until demand has been made or left at the office of such bailiff by the party intending to bring such action, or by his solicitor or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same has been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith, by showing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such bailiff, or other person acting in his aid for any such cause as aforesaid, without making the registrar who signed or sealed the said warrant defendant, on producing or proving such warrant at the trial of such action, a verdict shall be given for the defendant, notwithstanding any defect of jurisdiction or other irregularity in the said warrant; and if such action be brought jointly against such registrar, and also against such bailiff, or person acting in his aid as aforesaid, then on proof of such warrant the finding shall be for such bailiff, and for such person so acting as aforesaid; notwithstanding such defect or irregularity as aforesaid; and if the verdict shall be given against the said registrar, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer as to include such costs as such plaintiff is liable to pay to such defendant for whom such verdict shall be found as aforesaid.

No action to be brought against bailiff, &c., acting under order of the court without notice; and registrar to be made defendant in the action. 13 & 14 Vict. c. 61, s. 19.

Ministerial acts.

It is a rule of the common law that no action will lie against a ministerial officer for acts done ministerially, without negligence (*Countess of Rutland's Case*, (1606) 6 Rep. 54a; *Drury's Case*, (1611) 8 Rep. 142a; *The Marshalsea Case*, (1613) 10 Rep. 76a; *Groenvelt* v. *Burwell*, (1699) 1 Ld. Raym. 471); and under the County Courts Acts it has been held that, in merely signing and issuing an order of commitment in compliance with the order of the judge, the registrar was acting ministerially, and was not responsible for the error of the judge in making the order (*Dews* v. *Ryley*, (1851) 11 C. B. 434; 20 L. J. C. P. 264; 87 R. R. 718). So, both at common law and under the County Courts Acts, the bailiff acting under the warrant of the court is acting ministerially, and is irresponsible for error in the judgment or order in pursuance of which it is issued (*Gold* v. *Strode*, (1690) 3 Mod. 324; *Parsons* v. *Lloyd*, (1773) 2 W. Bl. 845; *Andrews* v. *Marris*, (1841) 1 Q. B. 3;

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10 L. J. Q. B. 225; 55 R. R. 174; *Aspey* v. *Jones*, (1884) 54 L. J. Q. B. 98). It does not appear quite clear whether this rule applied at common law, where the error of the judge was the exercise of jurisdiction in a cause over which the court had none, and the officer was ignorant of it (see 10 Rep. 76; *Mayor of London* v. *Cox*, (1867) L. R. 2 H. L. 263; 36 L. J. Ex. 225, *per* Willes, J.; *Houlden* v. *Smith*, (1850) 14 Q. B. 841; 19 L. J. Q. B. 170; 80 R. R. 415). But apparently sect. 55, above-mentioned, especially when read in connection with 51 & 52 Vict. c. 43, s. 54, takes away all responsibility of registrar and bailiff (*Aspey* v. *Jones*, *supra*). It was held at common law that the rule did not protect if the warrant was erroneous on the face of it (*Grant* v. *Bagge*, (1802) 3 East, 128; 6 R. R. 569; *King* v. *Harrison*, (1812) 15 East, 615c; *Carratt* v. *Morley*, (1841) 1 Q. B. 18; 10 L. J. Q. B. 259; 55 R. R. 183); but the court overruled the point when made under the County Courts Acts (*Aspey* v. *Jones*, *supra*).

Plaintiff not responsible for trespass.

If the plaintiff, or his solicitor, merely institutes proceedings which he is entitled to commence, he does not become a trespasser, even if the officer of the court in execution of the process commit a trespass (see *Kinning* v. *Buchanan*, (1849) 8 C. B. 271; 18 L. J. C. P. 332; 79 R. R. 490; *Abley* v. *Dale*, (1851) 20 L. J. C. P. 253; 11 C. B. 378; 87 R. R. 697; *The Marshalsea Case*, (1613) 10 Rep. 68b, 76a); for the high bailiff or other officer is not the agent of the plaintiff so long as he does not personally interfere (*Wilson* v. *Tumman*, (1843) 6 M. & G. 236; 12 L. J. C. P. 306; 64 R. R. 770; *Whitmore* v. *Greene*, (1844) 13 M. & W. 104; *Woollen* v. *Wright*, (1862) 1 H. & C. 554; 31 L. J. Ex. 513; 130 R. R. 658); but if he does interfere, as by accompanying the officer, and pointing out the person to be arrested, who proves to be the wrong one, he becomes personally liable (*Walley* v. *M'Connell*, (1849) 13 Q. B. 903, 911; 19 L. J. Q. B. 162; 78 R. R. 552). A judgment creditor wrote to a high bailiff: "The plaintiff in this action has some reason to believe in the possibility of a third person claiming the goods at the address given on the back of the execution. He will, however, contest any claim that may be made, and he desires that the high bailiff at Liverpool should be so informed, that the officer who levies may not in any way be deterred from putting the warrant in force by reason of any party setting up a claim." The officer having seized the goods of a wrong person, as well as those of the judgment debtor, an action was brought against the writer of the letter. It was, however, held merely to amount to a direction to the officer to do his duty, and not such an interference as to render the writer personally liable for the trespass (*Cronshaw* v. *Chapman*, (1862) 31 L. J. Ex. 277). Where there has been no personal interference by the judgment creditor, his adoption and ratification of the officer's acts *after* a trespass has been committed will not render him liable for it (*Wilson* v. *Tumman*, *Woollen* v. *Wright*, *supra*).

It is not within the implied authority of a solicitor to direct the seizure of *particular* goods; if he do so without express authority, he will be personally liable for the consequences (*Smith* v. *Keal* (C. A.), (1882) 9 Q. B. D. 340; 51 L. J. Q. B. 487).

Procedure in Actions against Public Officers.]—The Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), **s. 1**, enacts, where any action, prosecution or other proceeding is commenced, against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, that:—(A) The action, prosecution or proceeding may not lie or be instituted unless commenced within six months, or in case of a continuance of injury or damage within six months next after the ceasing thereof: (B) If judgment is obtained by the defendant it will carry costs as between solicitor and client: (C) Where the proceeding is an action for damages, tender of amends before action may in lieu of or in addition to any other plea be pleaded. If the action was commenced after tender or is proceeded with after payment

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into court in satisfaction and the plaintiff does not recover more than the sum tendered or paid, he cannot recover costs incurred after the tender or payment, and the defendant is entitled to costs as between solicitor and client, as from the tender or payment; but this does not affect costs on any injunction in the action: (D) If, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the proceedings, the court may award the defendant costs as between solicitor and client. This section does not affect proceedings by a department of the Government against a local authority or officer of a local authority. Action includes all proceedings in the Chancery Division, but not appeals or interlocutory applications (*Harrop* v. *Mayor of Ossett*, (1898) 1 Ch. 525; 67 L. J. Ch. 347; *Fielden* v. *Mayor of Morley* (C. A.), (1899) 1 Ch. 1; 67 L. J. Ch. 611; affd. H. of L., (1900) A. C. 133; 69 L. J. Ch. 314).

This limitation applies though a longer period be allowed by the Act creating the liability (*Markey* v. *Tolworth Hospital Board*, (1900) 2 Q. B. 454; 69 L. J. Q. B. 738), but see *British Columbia Electric Rail.* v. *Gentile*, (1914) A. C. 1034; 83 L. J. P. C. 353, where this case was expressly disapproved by the Judicial Committee of the Privy Council. As to the date from which the period of limitation begins to run, see *Polley* v. *Fordham*, (1904) 2 K. B. 345; 73 L. J. K. B. 687; *Turley* v. *Daw*, (1906) 94 L. T. 216.

An order by consent dismissing an action is a judgment within the meaning of the section (*Shaw* v. *Herts County Council*, (1899) 2 Q. B. 282; 68 L. J. Q. B. 857; 81 L. T. 208). So is an order dismissing an action for want of prosecution (*Gilbert* v. *Gosport and Alverstoke Urban Council*, (1917) 86 L. J. Ch. 54. Aliter where an action is discontinued after a payment into court with denial of liability (*Smith* v. *Northleach Rural District Council*, (1902) 1 Ch. 197; 71 L. J. Ch. 8).

The provision in sect. 1 imposing the six months' limit is a "statute of limitations" within the meaning of Form 85, and a plea in general terms that the action is barred by "a statute of limitations" is good (*Gregory* v. *Torquay Corporation*, (1912) 1 K. B. 442; 80 L. J. K. B. 981). The Acts have no application to proceedings under the Workmen's Compensation Act (*Fry* v. *Cheltenham Corporation*, (1911) 81 L. J. K. B. 41).

Costs.

Sect. 2 repeals sect. 53 of the County Courts Act, 1888, and so much of any public general Act as contains a provision that notice of action shall be given.

This Act not only protects the public authority, but also subordinates carrying out their mandates (*Greenwell* v. *Howell*, (1900) 1 Q. B. 535; 69 L. J. Q. B. 461). The term "public authority" is not confined to municipal authorities (*The Johannesburg*, (1907) P. 65; (1906) 76 L. J. P. 67).

Notwithstanding sect. 1, the discretionary power given to a High Court judge to deprive defendants of their costs for good cause is not taken away (*Bostock* v. *Ramsey Urban Council* (C. A.), (1900) 2 Q. B. 616; 69 L. J. Q. B. 945), and under sect. 113 of the County Courts Act, 1888, presumably there is the same power No special direction or taxation is necessary (*North Metropolitan Trams. Co.* v. *London County Council*, (1898) 2 Ch. 145; 67 L. J. Ch. 447; *Chamberlain and Hookham, Ltd.* v. *Bradford Corporation*, (1900) 83 L. T. 518).

A company incorporated for the purpose of earning profits is not entitled to protection (*Attorney-General* v. *Margate Pier Co.*, (1900) 1 Ch. 749; 69 L. J. Ch. 331). A local authority, having power to carry on a business, is so entitled (*Parker* v. *London County Council*, (1904) 2 K. B. 501; 73 L. J. K. B. 561; approved by C. A. in *Lyles* v. *Southend Corporation*, (1905) 2 K. B. 1; 74 L. J. K. B. 484; and see *The Ydun*, (1899) P. 236; 68 L. J. P. 101), but an independent contractor, doing the work which a public body is authorized to do, is not (*Tilling* v. *Dick, Kerr & Co.*, (1905) 1 K. B. 562; 74 L. J. K. B. 484). Where there is no statutory or public duty to do the act in question, the protection does not avail. Where the servant of a public authority acting negligently in the course of a duty on which they sent him, viz., the delivery of a ton of coke bought from the public authority, but which such public authority was not bound to supply or deliver either in the execution

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of any Act of Parliament or in the discharge of any public duty or authority, it was held that the protection given by the Act did not apply (*Bradford Corporation* v. *Myers*, (1916) 85 L. J. K. B. (H. L.) 146). As to the meaning of the words *public* duty or authority, see judgment of Lord Shaw (*ib.*).

When protection of Act applies.

With respect to the words "done in pursuance of this Act," it has been held, upon like clauses in other Acts, that persons are within the protection, although their act be not legally justifiable under the statute, provided they act under an honest belief, whether reasonable or not, in the existence of a state of **facts** which, if it had existed, would have justified them in acting under the statute (*Herman* v. *Seneschal*, (1862) 13 C. B. N. S. 392; 32 L. J. C. P. 43; 134 R. R. 569; *Chamberlain* v. *King*, (1871) L. R. 6 C. P. 474), or with an honest intent to discharge their statutory duties and believe that they are discharging them, but have erred through a mistake of law (*Selmes* v. *Judge*, (1871) L. R. 6 Q. B. 724). Thus, the bailiff of a county court, if acting *bonâ fide*, is within this protection, although by mistake he has seized the goods of one person under an execution against another (*Burling* v. *Harley*, (1857) 3 H. & N. 271; 27 L. J. Ex. 258; 117 R. R. 684); nor is his right affected by the fact that he is indemnified in so doing by the party interested (*White* v. *Morris*, (1852) 11 C. B. 1015; 21 L. J. C. P. 185; 87 R. R. 854). A plaintiff obtaining judgment for want of appearance and execution thereon is within this protection (*Gayton* v. *Bayman*, (1859) 1 F. & F. 675).

Where an action was brought against the judge of a county court, for making an order for commitment after having been served with a prohibition, it was held that if the judge acted under a *bonâ fide* belief that his duty required him to make the order, it was an act "done in pursuance of the Act" (*Booth* v. *Clive*, (1851) 10 C. B. 827; 20 L. J. C. P. 151; 84 R. R. 795).

Where, however, a public authority employed a motor car for the purpose of carrying their officials, and a person was injured through the negligent driving of the chauffeur, it was held that the six months' limitation imposed by the statute did not apply (*Clarke* v. *St. Helen's Borough Council*, (1916) 85 L. J. K. B. 17; and see *Bradford Corporation* v. *Myers*, *supra*).

An action against a police authority to recover compensation under the Riot (Damages) Act, 1886, is not within the six months' limitation (*Kauffmann Brothers* v. *Liverpool Corporation*, (1916) 1 K. B. 860; 85 L. J. K. B. 1127.

Protection to officers. 15 & 16 Vict. c. 54, s. 6.

55. In any action commenced against any person for anything done in pursuance of this Act, the production of the warrant under the seal of the court shall be deemed sufficient proof of the authority of the court previous to the issuing of such warrant; and in case the plaintiff shall have a verdict or judgment pass against him, be nonsuit, or discontinue, the defendant shall in any such case be allowed full costs as between solicitor and client.

See *Aspey* v. *Jones*, (1884) 54 L. J. Q. B. 98, where it was held that this section affords protection from liability to be sued to any party who acts under a warrant signed by the registrar and under the seal of the court, although the judge had no jurisdiction to make the order upon which the warrant was founded.

PART III.

Jurisdiction and Law.

Ordinary jurisdiction of the court.

56. All personal actions, where the debt, demand, or damage claimed is not more than *one hundred* (*a*) pounds, whether on

balance of account or otherwise, may be commenced in the court, and all such actions shall be heard and determined in a summary way according to the provisions of this Act: Provided always that except as in this Act provided, the court shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or for any libel or slander, or for seduction, or for breach of promise of marriage. Section 56. 9 & 10 Vict. c. 95, s. 58. 13 & 14 Vict. c. 61, s. 1.

NOTE.—(*a*) Jurisdiction increased from 50*l.*: see County Courts Act of 1903, sect. 3.

The statutory county court, established by the 9 & 10 Vict. c. 95, is a court of record, and has all the jurisdiction and powers of the old county court for the recovery of debts and demands, as altered by that Act, throughout the district for which it is held (see *ante*, sect. 5). It has also by a series of statutes jurisdiction in many cases in which the old county court had no jurisdiction.

Right of Alien Enemy to Sue.]—An alien enemy in this country who has complied with the Aliens Restriction Order and registered himself thereunder, may enter into lawful contracts in this country and resort to the courts of this country for the purpose of enforcing his rights either under a contract made after the commencement of the war, or under a contract made before the commencement of the war (*Thurn and Taxis* (*Princess*) v. *Moffatt*, (1915) 84 L. J. Ch. 220; *Porter* v. *Freudenberg*, (1915) 84 L. J. K. B. 1001. If he is interned as a civilian prisoner of war he is still under protection and entitled to enforce any civil rights he may have. (*Schaffenius* v. *Goldberg*, (1916) 85 L. J. K. B. 374; see also *Halsey* v. *Lowenfeld; Leigh, Third Party*, (1916) 85 L. J. K. B. 1498). As to right of a limited liability company registered in England, but composed practically entirely of alien enemies abroad, suing in the English courts, see *Daimler Co., Ltd.* v. *Continental Tyre and Rubber Co., Ltd.*, (1916) 2 A. C. 307; also *Muhesa Rubber Plantations, Ltd., In re* (1917), 1 K. B. 48.

Effect of the Judicature Acts.]—The Judicature Acts, although they do not extend the number of heads of jurisdiction, affect the powers of the judge in exercising it in a very important manner.

The County Courts Act, 1888, prescribes the different kinds of common law and equity actions, and matters of which he may take cognizance; but the Judicature Act, 1873, has an overriding influence upon his treatment of them. Sect. 25 of that Act provided that in the High Court where law and equity were in conflict, the rules of equity should prevail; and sect. 24 also made provision for the due combination of legal and equitable remedies and defences "so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided."

Sect. 89 of the Judicature Act, 1873, compels the judge of a county court to grant in every proceeding, *i.e.*, action or suit (*Pryor* v. *City Offices Co.*, (1883) 52 L. J. Q. B. 362; 10 Q. B. D. 504), before him the same relief and remedy and combination of remedies, and to give effect to the same defences, equitable and legal, as if the action were in the High Court itself.

Relief to plaintiff.

It was thought that if the judge had once seisin of a claim, he could deal with it in the same manner as if the action were in the High Court. This view has been somewhat modified by a recent decision. A defendant entered into possession of a house, the value of which exceeded 500*l.*, under an agreement for a lease for three years to commence at a future date. He afterwards gave notice to quit, and quitted at the end of the first year. The landlord, treating him still as his tenant, sued in the county court for the quarter's rent accruing after he had quitted; but the Court o

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Appeal held that although, in the High Court, the plaintiff would by reason of the Judicature Acts have been able to maintain the action, he could not do so in the county court, because the judge had no jurisdiction to decree specific performance of the agreement, the value of the property exceeding 500*l.* (*Foster* v. *Reeves* (C. A.), (1892) 2 Q. B. 255; 61 L. J. Q. B. 763; and see *Angel* v. *Jay*, (1911) 1 K. B. 866; 80 L. J. K. B. 458). Unfortunately, the sections of the Judicature Act above mentioned do not appear to have been cited.

Relief to defendant.

Whatever the nature of the plaintiff's claim, the county court must give the same effect to every ground of defence, equitable or legal, as the High Court can do (see 36 & 37 Vict. c. 66, s. 89).

If the defendant, besides defeating the plaintiff's claim, wishes to establish a counterclaim, he will not be able to do so, unless the court has by statute jurisdiction over the subject-matter of it (*Davis* v. *Flagstaff Co.* (C. A.), (1878) 3 C. P. D. 228; 47 L. J. C. P. 503), if the plaintiff gives notice of objection to the jurisdiction of the court to try the counterclaim, or if the action be removed into the High Court (see 36 & 37 Vict. c. 66, ss. 89, 90; 47 & 48 Vict. c. 61, s. 18).

See as to the effect of the Judicature Acts in the administration of law and equity, *per* Lord Blackburn, in *Kendall* v. *Hamilton*, (1879) 4 App. Cas. 504; 48 L. J. Q. B. 705.

Actions for Debt or Damages.]—Subject to the exceptions following, the court, under the provisions of the County Courts Act, 1887, as extended by the County Courts Act, 1903, has jurisdiction generally in personal actions where the debt, demand or damage claimed is not more than 100*l.*, whether on balance of account or otherwise.

Personal actions are such whereby a man claims a debt or personal duty, or damages in lieu thereof; and likewise where a man claims satisfaction in damages for some injury done to his person or property (3 Blackst. Comm. 117; and see Com. Dig. "Action," D. 3; Bac. Abr. "Actions in General," A.).

Malicious prosecution and actions in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, are no longer excepted from the jurisdiction.

Title.]—Besides the limit as to amount, in actions in which the title to any corporeal or incorporeal hereditaments comes in question, or where an easement or licence is claimed, a further limit is imposed as to the yearly rent or value of the hereditaments: it must not exceed 100*l.* (see *post*, sect. 60; 3 Edw. VII. c. 42, s. 3). The courts have no jurisdiction to try actions for breach of promise of marriage, libel, slander, or seduction, or in which the title to any toll, fair, market, or franchise is in question. A patent is a "franchise"; hence the courts have no jurisdiction over an action for the infringement of a patent (*R.* v. *Halifax County Court* (C. A.), (1891) 2 Q. B. 263; 60 L. J. Q. B. 550). A registered trade mark is not a "franchise," but there is no jurisdiction to try an action for its infringement, it not being a personal action within the meaning of sect. 56 of the Act of 1888 (*Bow* v. *Hart* (C. A.), (1905) 1 K. B. 592; 74 L. J. K. B. 341).

The above provisions are subject to the powers enabling parties to give jurisdiction by consent, to the powers of defendants to object to a trial in a county court, to the powers of removal into the High Court, to the powers given to the High Court to send actions for trial to the county courts, and to the power to provide by Order in Council that the actions in which the plaintiff claims more than 50*l.* shall be tried in special courts of the district (3 Edw. VII. c. 42, s. 5; see *post*, pp. 217—222).

Personal actions.

The effect of the Act of 1846 was to give limited jurisdiction in every personal action then existing other than those above mentioned, even where the Act creating the obligation provided that actions in respect of it should be brought in the superior courts at Westminster (*Stuart* v. *Jones*, (1852) 1 E. & B. 22; 22 L. J. Q. B. 1; 93 R. R. 9). But the principle of this

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case was not followed by the C. A. in *R.* v. *Halifax County Court, supra.* The reasoning of the court in this case would seem to show that, treating the Consolidation Act as a new departure, the county courts have now jurisdiction over all personal actions (other than those above expressly excepted) which could be brought in any court at the date of the Act. So the courts will have jurisdiction, it is believed, over any new form of personal action arising under any new statute, *e.g.*, *Pickering* v. *James*, (1873) L. R. 8 C. P. 489; 42 L. J. C. P. 217, under the Ballot Act, 1872; *Mills* v. *Scott*, (1873) L. R. 8 Q. B. 496; 42 L. J. Q. B. 234, under the Contagious Diseases (Animals) Act, 1869, provided no provision be made in it which expressly or impliedly exempts the jurisdiction; or gives exclusive jurisdiction to another tribunal (*Crystal Palace Gas Co.* v. *Idris*, (1900) 82 L. T. 200).

Illegal Contract.]—An illegal agreement cannot be enforced. The test whether a claim connected with an illegal agreement is enforceable, is whether the plaintiff requires any aid from the illegal agreement to establish his case (*Farmers' Mart, Ltd.* v. *Milne*, (1915) A. C. 106; 84 L. J. P. C. 33).

Cause of Action arising out of a Felony.]—If in any case it appears that the cause of action arises out of an illegal act amounting to a felony, and that no prosecution for the felony has taken place, it is the duty of the court to stay the action until, either the defendant has been prosecuted, or reasonable excuse has been shown why a prosecution has not been instituted (*Smith and Another* v. *Selwyn*, (1914) 3 K. B. 98; 83 L. J. K. B. 1339).

Personal actions include actions of contract and of tort. The following are instances of claims recoverable in county courts in personal actions. Money collected by a curate for the purposes of a Sunday school and claimed by its managers (*Christie* v. *Sandberg*, (1880) W. N. 159); paving rates assessed under an Act of Parliament (*Baddeley* v. *Denton*, [1849) 4 Ex. 508; 19 L. J. Ex. 44); freight due under a charter-party (*R.* v. *Southend*, (1884) 13 Q. B. D. 142; 53 L. J. Q. B. 423); damages for collision between barges on the Thames (*Scovell* v. *Bevan*, (1887) 19 Q. B. D. 428; 56 L. J. Q. B. 604); an action against a bailiff who has distrained for poor rate to recover so much of his charge as is unreasonable (*R.* v. *Philbrick*, (1905) 2 K. B. 108; 74 L. J. K. B. 464). It is believed that an action against a married woman under the Married Women's Property Act, 1882, in respect of a contract made during marriage, is a "personal" action, although execution can only be levied against her separate property (see the judgments in *Holtby* v. *Hodgson* (C. A.), (1889) 24 Q. B. D. 103; 59 L. J. Q. B. 46; but see *Scott* v. *Morley* (C. A.), (1887) 20 Q. B. D. 120; 57 L. J. Q. B. 43; *Re Gardiner*, (1887) 57 L. J. Q. B. 149; 20 Q. B. D. 249).

Detinue. Detinue is a personal action (*Taylor* v. *Addyman*, (1853) 13 C. B. 309; 22 L. J. C. P. 94; 93 R. R. 547), the limit of jurisdiction being determined by the value of the goods detained: it must not exceed 100*l.* (*Leader* v. *Rhys*, (1861) 10 C. B. N. S. 369; 30 L. J. C. P. 345; 128 R. R. 749). In cases of breach of contract to deliver specific goods, specific delivery of the goods may be ordered in lieu of damages for the breach (57 & 58 Vict. c. 56, repealing 19 & 20 Vict. c. 97). The value of an instrument which is not negotiable, *e.g.*, a deposit note, is, for this purpose, the cost of proof of title, not the amount of which it is evidence (*Clegg* v. *Baretta*, (1887) 65 L. T. 775).

Special Acts.]—Under the Public Health Act, 1875, demands *below* 50*l.*, which may be recovered in county courts as if they "were debts within the cognizance of such courts" (38 & 39 Vict. c. 55, s. 261); the six months' limitation applies. Similar provisions for demands not exceeding 50*l.* are made by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76, s. 117). Under the Private Street Works Act, 1892, claims for expenses of works not exceeding 50*l.* may be recovered as simple contract debts (55 & 56 Vict. c. 57, s. 14). Under the Act for regulating the

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qualifications of pharmaceutical chemists, the penalty of 5*l.* imposed on non-registered persons for using the title "pharmaceutical chemist" is similarly recoverable (15 & 16 Vict. c. 56, s. 12); also under 23 & 24 Vict. c. 127, in actions to recover the penalty of 50*l.* for wrongfully acting as attorney or solicitor. Fines under the Alkali Act, 1881 (44 & 45 Vict. c. 37, s. 22), and the Hosiery Manufacture (Wages) Act, 1874 (37 & 38 Vict. c. 48, s. 3), are also similarly recoverable. And under the Friendly Societies Act, 1896, moneys payable by members to cattle assurance societies, and some other societies, are deemed to be debts, and are recoverable as such (59 & 60 Vict. c. 25, s. 31 (2)), as are moneys payable by members of Industrial and Provident Societies under the Act of 1893 (56 & 57 Vict. c. 39, s. 23).

No action is maintainable for money alleged to be due in respect of the sale of ale, porter, beer, cider, or perry consumed on the premises where sold or supplied, or in respect of money or goods lent or supplied, or of any security given for, in, or towards the obtaining of any such liquors (see *post*, sect. 182). The 24 Geo. II. c. 40, s. 12, as amended by 25 & 26 Vict. c. 38, prevents the recovery of sums under 20*s.* for spirituous liquors, unless delivered at the purchaser's residence in reputed quart bottles.

No action may be commenced in a county court on a judgment of the High Court (see *post*, s. 63), though committals on such judgments may be obtained; nor in the High Court upon an order of the county court for payment of costs (*Furber* v. *Taylor* (C. A.), (1900) 2 Q. B. 719; 69 L. J. Q. B. 898). Where the county court is exercising jurisdiction in bankruptcy an action may be brought to enforce the order (*Savill* v. *Dalton*, (1915) 3 K. B. 174; 84 L. J. Q. B. 1583).

Where claim reduced by set-off to 100*l.* court to have jurisdiction. 19 & 20 Vict. c. 108, s. 24.

57. Where in any action the debt or demand claimed consists of a balance not exceeding *one hundred* (*a*) pounds, after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, the court shall have jurisdiction to try such action.

NOTE.—(*a*) Jurisdiction increased from 50*l.* (see sect. 3 of County Courts Act of 1903).

Balance of Account.]—The words "balance of account" mean, "after payment of part, or after the allowance of a set-off as an item in account with the agreement of the parties, which is equivalent to the payment of part, and not when the plaintiff claims more than 50*l.* [now 100*l.*] and seeks to reduce it by giving the defendant credit for a simple set-off" (*per* Pollock, C.B., in *Avards* v. *Rhodes*, (1853) 8 Ex. 312, 316; 22 L. J. Ex. 106; see also *Turner* v. *Berry*, (1850) 5 Ex. 858; 1 L. M. & P. 744; 14 Jur. 1099; see also *per* Maule, J., in *Woodhams* v. *Newman*, (1849) 7 C. B. 654; 18 L. J. C. P. 213).

Set-off.]—Where a plaintiff's claim exceeded 50*l.* [now 100*l.*] and he offered to reduce it by admitting a set-off, never agreed to by the parties, so as to amount to a part payment, the court was held to have no jurisdiction, even if the plaintiff gave credit for the set-off in his particulars, or offered to assent to it after action (see *Avards* v. *Rhodes*, *supra*; *Woodhams* v. *Newman*, *supra*; *Beswick* v. *Capper*, (1849) 7 C. B. 669; 18 L. J. C. P. 216). It was nevertheless held that the judge had jurisdiction to inquire whether the defendant had consented to the claim being so reduced before action; and that if he so found, the court had jurisdiction, although the original claim exceeded 50*l.* [now 100*l.*] (*Kimpton* v. *Willey*, (1850) 9 C. B. 719; 19 L. J. C. P. 269; 82 R. R. 515; and see *Beswick* v. *Capper*, *supra*). Sect. 57 was apparently intended to extend the jurisdiction, but it is now clear that it does not, and that the set-off must still be admitted before action *Walesby* v. *Goulston*, (1866) L. R. 1 C. P. 567; 35 L. J. C. P. 302; *Hubbard* v. *Goodley*, (1890) 25 Q. B. D. 156; 59 L. J. Q. B. 285). A set-off

admitted on the writ by the plaintiff, and adopted and acquiesced in by the defendant, justifies the conclusion that it was an admitted set-off within sect. 57 (*Lovejoy* v. *Cole*, (1894) 2 Q. B. 861; 64 L. J. Q. B. 120).

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58. The jurisdiction of the court shall extend to the recovery of any demand, not exceeding the sum of *one hundred* (*a*) pounds, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will.

Cases of partnership and intestacy. 9 & 10 Vict. c. 95, s. 65. 13 & 14 Vict. c. 61, s. 1.

NOTE.—(*a*) Jurisdiction increased from 50*l.* (see sect. 3 of County Courts Act of 1903).

59. All actions of ejectment, where neither the value of the lands, tenements, or hereditaments, nor the rent payable in respect thereof, shall exceed the sum of *one hundred* (*a*) pounds by the year, may be brought and prosecuted in the court of the district in which the lands, tenements, or hereditaments are situate; provided that the defendant in any such action of ejectment, or his landlord, may within one month from the day of service of the summons, apply to a judge of the High Court at chambers for a summons to the plaintiff to show cause why such action should not be tried in the High Court on the ground that the title to lands or hereditaments of greater annual value than *one hundred* (*a*) pounds would be affected by the decision in such action; and on the hearing of such summons, the judge of the High Court, if satisfied that the title to other lands would be so affected, may order such action to be tried in the High Court, and thereupon all proceedings in the court in such action shall be discontinued.

Ejectment where neither value nor rent exceeds 100*l.* 30 & 31 Vict. c. 142, ss. 11, 12.

NOTE.—(*a*) Jurisdiction increased from 50*l.* (see sect. 3 of County Courts Act of 1903). See "Emergency Legislation" especially, "Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915," 5 & 6 Geo. 5, c. 97, as amended by the Courts (Emergency Powers) Act, 1917 (7 & 8 Geo. 5, c. 5).

Rent and Value.]—The rent payable means the rent payable as between the litigant parties, and not any rent that might be paid by a sub-lessee; and the latter rent, if above 100*l.*, though strong evidence of value, is not conclusive against the jurisdiction of the county court (*Brown* v. *Cocking*, (1867) L. R. 3 Q. B. 672; 37 L. J. Q. B. 250). The value of the tenements means the actual marketable value, and the rent which would be paid by the tenant in occupation is the best criterion of that value (*per* Cockburn, C.J., *Elston* v. *Rose*, (1868) L. R. 4 Q. B. 4; 38 L. J. Q. B. 6). The deduction of a yearly ground-rent payable by the landlord from the rent of the tenant, thereby bringing it within the prescribed limits, was, in the case last cited, held to be wrong.

Where the judge decided on the facts that the value of the premises did not exceed the limit of the jurisdiction, the Court of Queen's Bench held that it could not review the decision by prohibition (*Brown* v. *Cocking*, *supra*); but where the judge decided as to the value on a wrong assumption of a point of law, the court ordered a prohibition (*Elston* v. *Rose*, *supra*).

Where an application for a prohibition is made before the trial, on the

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ground that the annual value exceeds 50*l.* [now 100*l.*], and is refused, the defendant cannot at the trial impeach the jurisdiction, by evidence to show that the yearly value exceeds 50*l.* [now 100*l.*] (*Symons* v. *Rees*, (1875) 1 Ex. D. 416).

Procedure.]—The practice and procedure in an action for the recovery of land are in general the same as in other actions. There are, however, some variations, which will be pointed out in the following pages. Where an action of ejectment is brought, but in the opinion of the judge an action should have been brought for the recovery of possession, the plaintiff is not entitled to any further relief or to any further costs than he would have been in an action for recovery of possession (Order V. r. 3).

The action must be commenced in the district in which the land, tenement, or hereditament sought to be recovered is situate (sect. 59). The action is commenced by plaint, as in ordinary actions (Order V. r. 1), and all persons in whom title is alleged should be made plaintiffs, and the persons alleged to be in possession, or apparent possession, of the property sought to be recovered defendants.

Except by leave of the court (see Order XII. r. 11), no cause of action may be joined with it, except claims for mesne profits, or arrears of rent, or double value in respect of the premises claimed or some part of them, or damages for breach of any contract, under which the same or any part of them are held, or for any wrong or injury to the premises claimed (Order IV. r. 1). But in an action for foreclosure or redemption a plaintiff may join a claim for delivery to him of the mortgaged property on or after the order absolute for foreclosure or redemption, and such an action is not to be deemed an action of ejectment within the meaning of these rules. And if a mortgage security is foreclosed by reason of the default to redeem by a plaintiff in a redemption action, the defendant who has obtained an order of foreclosure may obtain from the judge an order for delivery of possession (Order IV. r. 1). The plaintiff, at the time of the entry of the plaint, must file particulars in writing (Form 6, Appendix A) containing a full description of the property sought to be recovered, and of the annual value thereof, and of the rent, if there be any fixed or paid, in respect thereof (Order VI. rr. 1, 3), and as many copies of the particulars must be filed as there are defendants (Order LIV. r. 13).

The summons must contain the names, addresses, and descriptions of all the plaintiffs and defendants; and have annexed to it a copy of the statement of the property sought to be recovered, sealed with the seal of the court. The summons should, in order to insure its service, be delivered to the bailiff forty clear days at least before the return-day (Order VII. r. 8; Order II. r. 8; Form 252. The rule avoids the point raised in *Barker* v. *Palmer*, (1882) 8 Q. B. D. 9).

Service must be made in the same manner as in other cases, except that the summons must be served thirty-five clear days before the return-day thereof (Order VII. r. 8); and, further, that in case of vacant possession, if it cannot otherwise be effected, service may be made by posting a copy of the summons on the door of the dwelling-house or other conspicuous part of the property (Order VII. r. 24). This rule does not render Order VII. r. 40 inapplicable to these actions.

Proceedings by Defendant after Service.]—The defendant or his landlord, within one month from the day of the service of the summons, may apply to a judge of the High Court at chambers for a summons calling on the plaintiff to show cause why the action should not be tried in the High Court, on the ground that title to lands or hereditaments of greater annual value than 100*l.* would be affected by the decision; and the judge may, if satisfied that title would be so affected, order the action to be tried in the High Court, and thereupon all proceedings in the county court must be discontinued (see sect. 59; 3 Edw. VII. c. 42, s. 3).

It is believed that such an order as the above puts an end to the pro-

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ceedings entirely, and obliges the plaintiff to commence *de novo* in the High Court.

Any person not named as defendant may, by leave of the court, be allowed to appear and defend, on filing an affidavit, showing that he is in possession, either by himself or his tenant, of the property or some part thereof, describing such part with reasonable certainty. The affidavit must be filed in cases where neither the value nor the rent exceeds 50*l.* a year twelve clear days, and in cases under the extended jurisdiction up to 100*l.* twenty clear days, before the return-day, together with a copy for each plaintiff and defendant (Order X. r. 4; Order XXIIA. r. 11; Form 254).

Upon leave being given, the registrar must enter the name, address, and description of the person filing the affidavit in the plaint book as defendant, in addition to the names of the original defendants, and must in the former class of case ten clear days, and in cases under the extended jurisdiction eighteen clear days, before the return-day give notice by post or otherwise to the plaintiffs and the original defendants of the filing of the affidavit, and that such person will appear and defend at the trial. A copy of the affidavit must be annexed to the notice. In all subsequent proceedings the person filing the affidavit must be named as a defendant (Order X. r. 4; Order XXIIA. r. 11; Form 254).

Limiting Defence.]—Where a defendant desires to limit his defence to a part of the property sought to be recovered, he must file a notice in writing (Form 255) with the registrar in cases under the old jurisdiction twelve, and in cases under the extended jurisdiction twenty clear days at least before the return-day, describing the part with reasonable certainty. He must also deliver to the registrar as many copies of the notice as there are plaintiffs, and an additional copy. The registrar must send one sealed with the seal of the court in the former class of case ten, and in the latter eighteen, clear days before the return-day to each of the plaintiffs (Order X. r. 5; Order XXIIA. r. 11; Order LIV. rr. 13, 14).

Confession by Defendant.]—Any defendant may at any time before the return-day confess the action as to the whole or any part of the land by signing in the presence of the registrar, or of one of his clerks, or of a solicitor, and attested by the person in whose presence it is signed, an admission of the title of the plaintiff, and of his right to possession (Forms 256, 274). The registrar, on receipt of such admission, must forthwith give notice by post to the plaintiff, and the judge or registrar may on the return-day, upon proof of the signature of the defendant by affidavit or otherwise, if not attested by the registrar or his clerk, and without any proof of the plaintiff's title (if no defendant other than such defendant defends), give judgment for the plaintiff for the recovery of possession and for costs. If the plaintiff receives the notice before the return-day he will not be entitled to any costs incurred subsequently to the receipt of the notice, except the costs of attending court, unless the judge or registrar otherwise orders. Where the admission is not signed by all the defendants, the trial will proceed against those who have not signed (Order IX. r. 7; Form 275).

Plaintiff not Proceeding as to Part or Whole.]—If a plaintiff desires to discontinue proceedings as to the whole or any portion of the property, he may discontinue in the mode prescribed by Order IX. r. 1 (Form 253).

Mortgagors.]—In actions by mortgagees against mortgagors, money may be paid into court pursuant to 15 & 16 Vict. c. 76, s. 219. See forms of orders and notice to mortgagee, Forms 276—278.

Evidence.]—The evidence necessary where a landlord is seeking to obtain possession of premises against a tenant who holds over is applicable to cases of ejectment between landlord and tenant. In all other cases the plaintiff in ejectment must recover upon the strength of his own title and

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not on the weakness of the defendant's (per Lee, C.J., *Martin* v. *Strachan*, (1743) 5 T. R. 107, 110 (note)), and he must prove either a title by estoppel or a right to actual possession. The right to possession must be proved to have existed on or before the date of the summons. If, therefore, any notice or demand be necessary to give the plaintiff a right as against the defendant to actual possession, it must be shown that it was served before the date of the summons.

If a landlord seeks to recover possession from a tenant pursuant to a right of re-entry or forfeiture under any proviso or stipulation in a lease for breach of covenant or condition, his right of action is materially affected by the Conveyancing Act, 1881 (44 & 45 Vict. c. 41). The Act does not apply to cases of non-payment of rent, nor to breaches of covenant or condition against assigning, underletting or parting with the possession or disposing of the land leased, nor to forfeiture on bankruptcy, or on the taking in execution of the lessee's interest (44 & 45 Vict. c. 41, s. 14 (6), (8); 55 & 56 Vict. c. 13, s. 2): in all other cases (excepting under certain conditions in mining leases) the lessor must, before commencing his action of ejectment, serve notice on the lessee specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring the lessee to make compensation in money for the breach. As to what is sufficient notice of breach of covenant to repair, see *Fox* v. *Jolly*, (1916) A. C. 1. If the lessee fails within a reasonable time after notice to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach (44 & 45 Vict. c. 41, s. 14 (1); 55 & 56 Vict. c. 13, s. 4), the lessor is then at liberty to bring his action. The court may, however, on terms relieve against the forfeiture whilst the action is pending (see *Quilter* v. *Mapleson* (C. A.), (1882) 9 Q. B. D. 672, 678; 52 L. J. Q. B. 44, for terms imposed); but not after judgment and execution completed by re-entry (*Rogers* v. *Rice* (C. A.), (1892) 2 Ch. 170; 61 L. J. Ch. 573). It seems, however, that this relief can be granted only by the High Court (44 & 45 Vict. c. 41, s. 2 (18)).

The above provisions do not apply to mere agreements for leases, nor to tenancies from year to year without actual lease (*Swain* v. *Ayres* (C. A.), (1888) 21 Q. B. D. 289; 57 L. J. Q. B. 428). The law as settled by this case has received some modification from 55 & 56 Vict. c. 13, s. 5; it would be unsafe to say what.

Hearing.]—The action of ejectment is tried in the same manner as ordinary actions in the county courts are tried, and either party may require a jury (Order XXII. r. 3).

Where any defendant appears, and the plaintiff does not, the case will be struck out, and the defendant appearing will (at the discretion of the court) have judgment for his costs (Order XXII. r. 6; Form 149). If the plaintiff appears, and no defendant appears, the plaintiff, on proof of service of the summons and of his title, will be entitled to judgment for the recovery of possession.

Where the title of the plaintiff appears to have existed as alleged in the summons, at the time of the entry of the plaint, but to have expired before the return-day, the plaintiff will be entitled to judgment according to the fact that he was so entitled, and for his costs of the action, unless the judge otherwise orders (Order XXIII. r. 16; Form 260).

Execution.]—Where judgment is given for the plaintiff, execution may issue upon a day to be named in the judgment; and if no day be named, then it may issue after the expiration of fourteen clear days from the day on which judgment shall have been given (Order XXV. r. 65; Forms 264, 265). The judgment is enforced by warrant of possession.

If costs have also been awarded to the plaintiff, there may be either one warrant or separate warrants of execution for the recovery of possession, and for the costs, at the election of the plaintiff (Order XXV. r. 66).

Where judgment is for the defendants or any of them, with costs, execution may issue for the costs upon a day named in the judgment; and if no day be named, then after the expiration of fourteen clear days from the day on which judgment was given (Order XXV. r. 67). Section 59 Notes.

Death of Parties.]—The ordinary practice, in case of death before judgment, applies. For forms of orders to continue proceedings in case of death before judgment, see Forms 268, 269, 272; and for forms of judgment, Forms 270, 271. The practice in cases of death after judgment is governed by Order XXV. r. 14 (see Form 265).

Appeal.]—An appeal lies to the High Court, in all actions of ejectment, in the same manner and subject to the same provisions as described under sect. 120. The appeal lies as of right, irrespective of the value or rental of the premises sought to be recovered (51 & 52 Vict. c. 43, s. 120; *Millett* v. *Ballard* (C. A.), (1904) 2 K. B. 593; 73 L. J. K. B. 989, overruling *Earl Shrewsbury* v. *Garfield*, (1891) 60 L. J. Q. B. 765).

Costs.]—The provisions of Order LIII. rr. 8, 10, and 11 as to costs apply to actions of ejectment.

60. A judge shall have jurisdiction to try any action in which the title to any corporeal or incorporeal hereditaments shall come in question where neither the value of the lands, tenements, or hereditaments in dispute, nor the rent payable in respect thereof, shall exceed the sum of *one hundred* (*a*) pounds by the year, or in case of an easement or licence, where neither the value nor reserved rent of the lands, tenements, or hereditaments in respect of which the easement or licence is claimed, or on, through, over, or under which such easement or licence is claimed, shall exceed the sum of *one hundred* (*a*) pounds by the year. Title where neither value nor rent exceeds 100*l.* 30 & 31 Vict. c. 142, s. 12.

NOTE.—(*a*) Jurisdiction increased from 50*l.* (see sect. 3 of County Courts Act of 1903).

Provisions of County Courts Act.]—The Acts of 1888 and 1903 extend the jurisdiction in actions in which title is in question; but, except as provided by the Act of 1888, county courts have no jurisdiction in actions in which "the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise," is in question (see *ante*, s. 56). The Act, however, provides that, by consent of the parties, *any* action assigned to the King's Bench Division of the High Court may be brought in a county court (see *post*, s. 64); and that when "the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise," *incidentally* comes in question in any action, the judge shall have power to decide the claim, if both parties consent in writing at the trial (see *post*, s. 61); this consent is apparently necessary even where the action has been remitted from the High Court (*Toon* v. *Stanbury Eardley*, (1906) 22 Times L. R. 536). It is also provided by sect. 60, as amended by sect. 3 of the Act of 1903, that county courts shall have jurisdiction to try any action in which the title to any corporeal or incorporeal hereditaments shall come in question, where neither the value of the lands, tenements, or hereditaments in dispute, nor the rent payable in respect thereof, shall exceed the sum of 100*l.* by the year, or in case of an easement or licence, where neither the value nor reserved rent of the lands, tenements, or hereditaments, in respect of which the easement or licence is claimed, or on, through, over or under which such easement or licence is claimed, shall exceed the sum of 100*l.* by the year. It thus follows that, except by consent of the parties, the courts have still no jurisdiction in an action in which the title to any toll, fair, market, or franchise comes in question (*R.* v. *Halifax C C.* (C. A.), (1891) 2 Q. B. 263; 60 L. J. Q. B. 550).

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Where county courts have exclusive jurisdiction over any particular matter, or where they have a distinct and unlimited jurisdiction in a kind of action not comprised in the 51 & 52 Vict. c. 43, s. 56, above mentioned, the jurisdiction is available without regard to the fact of title being in question (*R.* v. *Harden*, (1852) 2 E. & B. 188; 22 L. J. Q. B. 299; 95 R. R. 495; *Hertford Union* v. *Kimpton*, (1855) 11 Ex. 295; *Fordham* v. *Akers*, (1864) 33 L. J. Q. B. 67)—*e.g.*, in replevin.

When the Question Arises.]—Where county courts have not thus complete jurisdiction irrespective of any question of title, two questions have to be decided to ascertain whether the court has jurisdiction or not—first, is title in question? second, does the yearly rent or value exceed 100*l.*? The same questions have to be decided if the action be one for injury to the reversion (*Howorth* v. *Sutcliffe* (C. A.), (1895) 2 Q. B. 358; 64 L. J. Q. B. 729). At whatever stage of the suit these two questions can be answered in the affirmative, the jurisdiction of the court ceases. The duty of the judge is then to strike out the cause, unless the defendant expressly consents to the jurisdiction, or unless the defect in the jurisdiction be cured, if it can be so cured, by acquiescence and waiver. The remedy by prohibition is at all times open to the defendant.

Where the particulars so far disclose the nature of the action, a prohibition may be granted before the hearing (*Sewell* v. *Jones*, (1850) 1 L. M. & P. 525; 19 L. J. Q. B. 372; 90 R. R. 946) (see *Symons* v. *Rees*, (1875) 1 Ex. D. 416). At the trial the judge must of necessity inquire into and determine both points for the time, as on them depends the question whether or not he hears the case on the merits (see *per* Patteson, J., *Thompson* v. *Ingham*, (1850) 14 Q. B. 710; 19 L. J. Q. B. 189; 80 R. R. 376). His erroneous decision against the defendant may be reviewed by prohibition, or against the plaintiff, by striking out the cause, by order in the nature of a mandamus. The decision of a judge upon a question of fact going to jurisdiction will not be reviewed in the High Court, at any rate except upon very strong grounds (*Brown* v. *Cocking*, (1867) L. R. 3 Q. B. 672; 37 L. J. Q. B. 250; *Elston* v. *Rose*, (1868) L. R. 4 Q. B. 4; 38 L. J. Q. B. 6). And where the question of fact upon which the jurisdiction depends is the very question at issue in the cause, the reluctance to interfere will be still stronger (*Joseph* v. *Henry*, (1850) 19 L. J. Q. B. 369; *Milner* v. *Rhoden*, (1851) 15 Jur. 1037).

When Title is in Question.]—To raise a question of title which will oust the jurisdiction, there must be something more than a mere suggestion or assertion of right; the facts or the evidence must show that title is *bonâ fide* in dispute (*Howorth* v. *Sutcliffe*, (1895) 2 Q. B. 358; 64 L. J. Q. B. 729; *Lilley* v. *Harvey*, (1848) 5 D. & L. 648; 17 L. J. Q. B. 357; *Mountnoy* v. *Collier*, (1852) 1 E. & B. 630; 22 L. J. Q. B. 124; 93 R. R. 317; *Emery* v. *Barnett*, (1858) 4 C. B. N. S. 423; 27 L. J. C. P. 216; 114 R. R. 793; *Wickham* v. *Lee*, (1848) 12 Q. B. 521; 18 L. J. Q. B. 21; 76 R. R. 334). Still, if there is a real dispute, the jurisdiction ceases, even if the judge is satisfied that the evidence supporting the claim is insufficient or not entirely *bonâ fide* (*Marsh* v. *Dewes*, (1853) 17 Jur. 558; 95 R. R. 956); but if plaintiff proves possession for fourteen years, which defendant does not dispute, title is not in question (*Hawkins* v. *Rutter*, (1892) 1 Q. B. 668; 61 L. J. Q. B. 146). The claim or right set up must be one which, if proved, would be valid in point of law (*Hargreaves* v. *Diddams*, (1875) L. R. 10 Q. B. 582; 44 L. J. M. C. 178; *Reece* v. *Miller*, (1882) 8 Q. B. D. 626; 51 L. J. M. C. 64; *Lloyd* v. *Jones*, (1848) 6 C. B. 81; 17 L. J. C. P. 206; 77 R. R. 278).

In *Lilley* v. *Harvey*, *supra*, the claim was for rent, and the defendant said he was the owner of the premises, but he produced *no evidence whatever* to establish the fact; and the claim was a mere pretence to avoid the jurisdiction. See also *Marsh* v. *Dewes*.

The court has jurisdiction in an action to recover arrears of rent-charge, though the value of the land out of which the rent-charge issues exceeds

100*l.* per annum, as the title to land is not in dispute, but only the title to the rent-charge (*Bassano* v. *Bradley*, (1896) 1 Q. B. 645; 65 L. J. Q. B. 479).

In trespass for breaking the doors of rooms of a cottage, the point *bonâ fide* in dispute was whether the plaintiff had let the whole house to the defendant, or had reserved the rooms; title was held to be in question (*Chew* v. *Holroyd*, (1852) 8 Ex. 249; 22 L. J. Ex. 95; 91 R. R. 473). If a tenant, sued for use and occupation, relies on the fact that his landlord's title expired during his tenancy, evidence of it will cause title to be in question (*Mountnoy* v. *Collier*, (1852) 1 E. & B. 630; 22 L. J. Q. B. 124; 93 R. R. 317).

Leaseholds are hereditaments within the meaning of these provisions (*Chew* v. *Holroyd*, (1852) 8 Ex. 249; *Tomkins* v. *Jones* (C. A.), (1889) 22 Q. B. D. 599; 58 L. J. Q. B. 222).

Paving or other rates levied under the authority of an Act of Parliament are not hereditaments (*Baddeley* v. *Denton*, (1849) 4 Ex. 508; 19 L. J. Ex. 44; *Gwynne* v. *Knight*, (1847) 1 Ex. 802; 17 L. J. Ex. 168). So where paving rates were sued for, and the right to levy, and the liability to pay, were both disputed (*Baddeley* v. *Denton*, *supra*); and where a tenant paid rates towards building a church, and then, pursuant to the Act, sued his landlord for a moiety, and he objected that the Act did not apply (*Gwynne* v. *Knight*, *supra*), title was held not to be in question. If, however, the dispute as to liability turns on the question whether the defendant is owner of the land in respect of which the rate is claimed, title will be in question (*R.* v. *Harden*, (1852) 2 E. & B. 188; 22 L. J. Q. B. 299; 95 R. R. 495). A custom is not a hereditament, and the mere fact that a custom is set up and disputed, will not raise a question of title (*Lloyd* v. *Jones*, (1848) 6 C. B. 81; 17 L. J. C. P. 206; 77 R. R. 278; *Davis* v. *Walton*, (1852) 8 Ex. 153; 22 L. J. Ex. 25; 91 R. R. 405); as where the dispute was whether by custom the occupiers of a wharf had a right to overlap an adjoining wharf with their vessels when loading (*Davis* v. *Walton*, *supra*); and as where the defendant set up a custom for the inhabitants of B. to enter the plaintiff's land for the purpose of fishing there (*Lloyd* v. *Jones*, *supra*).

An office held for life is a hereditament; and where the parish clerk of a chapelry sought to recover a customary sum of 4*d.* from a householder, and his title to the office was disputed, title was held to be in question (*Stephenson* v. *Raine*, (1853) 2 E. & B. 744; 23 L. J. Q. B. 62; 95 R. R. 775).

Yearly Rent or Value.]—Where A. was tenant of premises, which included a wall, at a rent of 56*l.* per annum, and B. denied A.'s title to the wall, it was held in an action by A. against B. for trespass to the wall, that title to the wall only was in question, and that its annual value was under 20*l.* (*Stolworthy* v. *Powell*, (1886) 55 L. J. Q. B. 228; 54 L. T. 795). The cases hereafter referred to afford an indication of the manner in which the rent or value will be estimated, and show that the decision of the judge upon the facts as to the rent or value cannot be reviewed by prohibition, but that when based upon an erroneous conception of the law, it may be so (*Brown* v. *Cocking*, (1868) L. R. 3 Q. B. 672; 37 L. J. Q. B. 250; *Elston* v. *Rose*, (1868) L. R. 4 Q. B. 4; *Crowley* v. *Vitty*, (1852) 7 Ex. 319; 21 L. J. Ex. 135; 86 R. R. 664).

Toll, Fair, Market, or Franchise.]—It has been already stated that the county courts have not, except by consent of the parties, jurisdiction over *any* action in which the title to any toll, fair, market, or franchise comes in question. Toll, fair, &c.

In such cases, therefore, the question of yearly rent or value would be immaterial, and the jurisdiction would be ousted on showing that such title was in question. A railway company were entitled to charge toll on carriages

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passing on their line. A coal-owner requested them to carry some trucks of coal; the company refused, without pre-payment. The coal-owner sued the company for refusing to carry the coals. On the trial, the plaintiff contended that the company were not entitled to claim the toll in advance, and that coal-trucks were not carriages within the Act: held, that title to take toll was not in question, and that the judge had jurisdiction to determine whether the company were justified in making the particular charge, and whether a coal-truck fell under a denomination in respect of which toll was payable (*Hunt* v. *G. N. Rail. Co.*, (1851) 10 C. B. 900; 20 L. J. Q. B. 349; 84 R. R. 840). When the existence or right to the toll is disputed, it is otherwise. The Ramsgate Harbour Act imposed certain rates on vessels passing the harbour. A vessel passed the harbour on her outward and homeward voyage, and a claim for two payments was made and paid under protest: held, in an action to recover back the last payment, that the rates were tolls, and that title to a toll was in question (*Adey* v. *Trinity House*, (1853) 22 L. J. Q. B. 3; S. C. *nom. R.* v. *Everett*, 1 E. & B 273; 22 L. J. Q. B. 3; 93 R. R. 133).

In an action for infringement of patent, in which the validity of the patent was in question, it was held that title to a "franchise" was in question (*R.* v. *Halifax C. C.*, (1891) 2 Q. B. 263; 60 L. J. Q. B. 550). A registered trade mark is not a "franchise," but there is no jurisdiction to try an action for its infringement, for such an action is not a personal action within sect. 56 of the County Courts Act, 1887 (*Bow* v. *Hart* (C. A.), (1905) 1 K. B. 592; 74 L. J. K. B. 341).

Practice.

Practice.]—When actions under the jurisdiction under consideration are brought in county courts, whatever the amount of damages claimed may be, the plaintiff must, at the time of entry of the plaint, file a concise statement in writing (see Form 279) of his cause of action, and of the particulars thereof, together with as many copies as there are defendants, and one for the judge. A copy of the statement, sealed with the seal of the court, must be annexed to the summons, and the statement will be deemed part of the summons (Order VI. r. 4; Order II. r. 8).

Particulars of demand.

Injunction

An injunction may be obtained against the repetition or continuance of a wrongful act in the cases to which the remedy is applicable. The application may be made, (a) before the trial or hearing, when it must be made under Order XII. r. 6; (b) at or immediately after the trial or hearing, when the order (if any) must be included in the judgment; or (c) subsequently to judgment, when it is made under Order XII. r. 11, on notice supported by affidavit (Order XXII. r. 16).

Jury

Either party may require a jury; and the action will then be tried in the same manner as other actions tried by jury (Order XXII. r. 3).

Judgment.

When the parties at the trial give jurisdiction to the judge to decide questions of title incidentally arising, the judgment will not be evidence of title between the parties or their privies in any other action in the same or any other court (see *post*, sect. 61).

Appeal.]—An appeal is allowed in these cases, and the appeal lies in all cases as of right, irrespective of the amount claimed (see *post*, sect. 120). The consent to allow the judge to decide upon a question of title incidentally arising does not prejudice the right of appeal (see *post*, sect. 61); but the parties may expressly renounce the right of appeal (see *post*, sect. 123).

Costs.]—Prior to 1867 the judge had no power to give costs where a cause was struck out for want of jurisdiction (*Lawford* v. *Partridge*, (1857) 26 L. J. Ex. 147; 1 H. & N. 621; 108 R. R. 749); but now he can award costs in the same manner, to the same extent, and recoverable in the same manner, as if the court had jurisdiction, and the plaintiff had not appeared, or had appeared and failed to prove his demand (see *post*, sect. 114); he may award them even against a defendant (*Watson* v. *Pitts* (*No.* 2), (1899) 1 Q. B. 430; 68 L. J. Q. B. 249).

The judge may, in his discretion, order the costs to be taxed under

columns A, B, or C in the scales; if he makes no order they will be taxed under column B (see Order LIII. r. 11).

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Jurisdiction by consent in cases of title. 19 & 20 Vict. c. 108, s. 25.

61. In any action in which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise, shall incidentally come in question, the judge shall have power to decide the claim which it is the immediate object of the action to enforce, if both parties at the hearing shall consent in any writing signed by them or their solicitors to the judge having such power; but the judgment of the court shall not be evidence of title between the parties or their privies in any other action or matter in that court, or in any other court; and such consent shall not prejudice or affect any right of appeal of either of the parties to such first-mentioned action.

It would appear that, where the action has been remitted from the High Court, the county court judge has no jurisdiction to entertain it in the absence of the written consent of the parties or their solicitors (*Toon* v. *Stanbury Eardley*, (1906) 22 Times L. R. 536).

Cases where defendant may object to action being tried in the court. 19 & 20 Vict. c. 108, s. 39.

62. If in any action of contract the plaintiff shall claim a sum exceeding twenty pounds, or, if in any action of tort the plaintiff shall claim a sum exceeding *ten* pounds, and the defendant shall give notice that he objects to the action being tried in the court, and shall give security, to be approved of by the registrar, for the amount claimed and the costs of trial in the High Court, not exceeding in the whole the sum of one hundred and fifty pounds, and the judge shall certify that in his opinion some important question of law or fact is likely to arise, all proceedings in the court in any such action shall be stayed; but if in any such action the defendant do not object to the same being tried by the court, or shall fail to give the security aforesaid, the court shall dispose of the action in the usual way; and the entry of the plaint in such action shall be a sufficient commencement of the action to prevent the operation of any statute of limitations applicable to the claim; provided that nothing herein contained shall prevent the removal of any action from the court by writ of certiorari in the cases and subject to the conditions in this Act provided.

In these cases the county courts have jurisdiction, unless the defendant determines it by objection in the proper manner.

Objection by Defendant to Jurisdiction.]—Where a defendant intends to avail himself of the above power, he must give notice in writing (see Form 79) of such intention to the registrar and to the plaintiff five clear days (but ten clear days in actions brought under the Act of 1903) at least before the return-day of the summons, and name therein the parties whom he proposes to be his sureties, or state his willingness to deposit money in lieu of giving security, otherwise he will not be entitled to object to a trial in the county court (see Order X. r. 6; Order XXIIA. r. 12. For form of bond, see Form 82).

After giving the notice the defendant must apply *ex parte* (see Order XII. r. 11) to the judge on affidavit (see Form 80) for his certificate to the effect

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above mentioned, and if granted, notice must be sent to the plaintiff by the registrar by post or otherwise (see Form 81). The affidavit must specify the important questions of law or fact likely to arise; and as regards questions of law must also specify the facts which are relied on as likely to raise them. If after the grant of the certificate the defendant fails to give security, or to make the deposit, before the return-day, he will not be entitled to object to the action being tried in the county court (see Order X. r. 6; Order XXIIA. r. 12).

When notice of objection, certificate, and due security have been given, the proceedings in the county court are at an end, and the plaintiff must begin *de novo* by issuing a writ in the High Court, the pleadings in the action being the same as in ordinary actions (see *Flitters* v. *Allfrey*, (1874) L. R. 10 C. P. 29; 44 L. J. C. P. 10, n.). No provision limits the time in which the action is to be brought. Where money has been deposited, and no action brought, say for three months, it is conceived that the defendant ought to be entitled to a return of the money. To obtain this result he should apply *ex parte* or on notice under Order XII. r. 11.

Where a new trial was granted by a county court judge on the application of the defendant, it was held that he could not afterwards object to the new trial being had in the county court (see *Campbell* v. *Fairlie*, (1880) 49 L. J. Q. B. 445); and it would appear from the case just cited that the rule is the same whether the new trial be granted by the county court judge or by the High Court, and whether on the application of plaintiff or defendant. Nor can the defendant object, under these provisions, in cases where the county courts have exclusive original jurisdiction—*e.g.*, under the Employers Liability Act (*R.* v. *City of London Court* (1) (C. A.), (1885) 14 Q. B. D. 905; 54 L. J. Q. B. 330).

The above provisions as to objecting to the jurisdiction differ from prohibition. It is only by means of the notice and security given by the defendant and the certificate of the judge that the cause, if within the ordinary jurisdiction, becomes one over which it has no jurisdiction. Prohibition would only lie if, after such notice, certificate, and security, the court entertained the cause.

It seems clear that the county court judge making an order under sect. 62 has no power to give the plaintiff costs of the proceedings properly instituted by him in the county court; and as upon an order being made the county court proceedings are *ipso facto* at an end and a new action has to be brought in the High Court, it seems equally clear that the High Court has no power over the costs in the county court action. There seems to be no remedy but legislation for this unsatisfactory state of affairs.

Objection by Justices.]—If an action be brought in a county court against a justice of the peace (by virtue of the general jurisdiction as to personal actions) for anything done by him in the execution of his office, he may, within six days after service of the summons, himself, or by his solicitor or agent, give notice in writing to the plaintiff that he objects to being sued in the county court for such cause of action. All subsequent proceedings in the county court will then be null and void (see 11 & 12 Vict. c. 44, s. 10). After giving notice of objection, the justice is not entitled to remove the plaint by *certiorari* into the High Court (*Weston* v. *Sneyd*, (1857) 1 H. & N. 703; 26 L. J. Ex. 161; 108 R. R. 787). The above provisions appear to be general, and to apply to all actions against justices for anything done by them as justices. See *McVittie* v. *Marsden*, (1917) 86 L. J. K. B. 653.

Default Summons.]—Where a defendant has been served with a default summons he may also object to the jurisdiction.

No action on judgment. 19 & 20 Vict. c. 108, s. 27.

63. No action shall be brought in the court on any judgment of the High Court.

But committals may be obtained on High Court judgments. No action may be commenced in the High Court upon an order of the county court

for payment of costs (*Furber* v. *Taylor* (C. A.), (1900) 2 Q. B. 719; 69 L. J. Q. B. 898).

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A county court judgment is a bar to an action on the original consideration in the High Court or any other court (*Austin* v. *Mills*, (1854) 9 Ex. 288; 23 L. J. Ex. 40; 96 R. R. 717; *Berkeley* v. *Elderkin*, (1853) 1 E. & B. 805; 22 L. J. Q. B. 281; 93 R. R. 405). *Contra*, when the county court is exercising its bankruptcy jurisdiction (*Savill* v. *Dalton*, (1915) 3 K. B. 174; 84 L. J. K. B. 1583).

64. With respect to all actions assigned to the Queen's Bench Division of the High Court, if both parties shall agree by a memorandum signed by them or their respective solicitors that the judge of any court named in such memorandum shall have power to try such action, such judge shall have jurisdiction to try the same therein.

Jurisdiction by agreement. 19 & 20 Vict. c. 108, s. 23.

Extension of Jurisdiction by Agreement.]—This provision is confined to actions assigned to the King's Bench Division, and will not be available to give jurisdiction in cases of partnership and intestacy.

The proceedings are by plaint and summons, and are in all respects the same as in ordinary cases (Order V. r. 2; Form 13). Where consent is given costs are to be allowed, according to the higher scale (column C), unless the judge otherwise orders (Order LIII. r. 14).

Plaint and costs.

By sect. 114, *post*, whenever an action or matter is commenced which the court has no jurisdiction to try, the judge must order it to be struck out *unless the parties consent to the jurisdiction.* The consent is not required to be in writing, and the court before granting prohibition in such a case would doubtless inquire whether from the statements and conduct of the parties consent must be inferred (see *per* Watson, B., in *Lawford* v. *Partridge*, (1857) 26 L. J. Ex. 148).

Where an action has been commenced in the High Court, and the parties agree under this section to try it in the county court, the action must be recommenced in the county court (*Pearce* v. *Winkworth*, (1873) 28 L. T. 710).

65. Where in any action of contract brought in the High Court the claim indorsed on the writ does not exceed *one hundred* pounds, or where such claim, though it originally exceeded *one hundred* pounds, is reduced by payment, an admitted set-off, or otherwise to a sum not exceeding *one hundred* pounds, it shall be lawful for either party to the action, *at any time*, if the whole or part of the demand of the plaintiff be contested, to apply to a judge of the High Court at chambers, to order such action to be tried in any court in which the action might have been commenced, or in any court convenient thereto; and on the hearing of the application the judge shall, unless there is good cause to the contrary, order such action to be tried accordingly; and thereupon the plaintiff shall lodge the original writ and the order with the registrar of the court mentioned in the order, who shall appoint a day for the trial of the action, notice whereof shall be sent by post or otherwise by the registrar to both parties or their solicitors, and the action and all proceedings therein shall be tried and taken in such court as if the action had been originally commenced therein: and the costs of the parties in respect of proceedings subsequent to the

Cases where judge of High Court may order action of contract to be tried in a county court. 19 & 20 Vict. c. 108, s. 26. 30 & 31 Vict. c. 142, s. 7.

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order of the judge of the High Court shall be allowed according to the scale of costs for the time being in use in the county courts, and the costs of the order and all proceedings previously thereto shall be allowed according to the scale of costs for the time being in use in the Supreme Court.

Court in which the Action might have been commenced.]—*I.e.*, if the court had had jurisdiction (*Curtis* v. *Stovin* (C. A.), (1889) 22 Q. B. D. 513; 58 L. J. Q. B. 174).

The action may be sent for trial either to the court in which it might have been commenced as of right (see *Curtis* v. *Stovin*, *supra*), or with leave (*Burkill* v. *Thomas* (C. A.), (1892) 1 Q. B. 312; 61 L. J. Q. B. 322), or to *any* court which the judge at chambers may deem to be convenient thereto (*Burkill* v. *Thomas*, *supra*). See *post*, p. 45.

Where the registrar of the court to which any action is transferred, or his partner or clerk, has acted as solicitor for any party to such action, the county court judge may order that the action be transferred to some other court under sect. 85 of the Act (Order XXXIII. r. 19).

Summons and Order.]—The application will be by summons, and the order may be made by a master or district registrar (see R. S. C., Order LIV. r. 12; Order XXXV. r. 6. For order, see R. S. C., Form K, 44); and will be subject to review by the court, in the same mode as orders under sect. 66, *post*. Where there is an honest intention to apply for judgment under Order XIV., the application to remit should be adjourned until the other application has been disposed of (*Smith* v. *Hurley*, (1884) W. N. 99).

The order may be refused if a difficult question of law is expected to arise on the trial (*Ginner* v. *King*, (1886) 34 S. J. 294).

Amendment of Particulars.]—The county court judge has jurisdiction, in a remitted action of contract, to amend the particulars by adding a claim in tort (*Spring* v. *Fernandez*, (1912) 1 K. B. 294; 81 L. J. K. B. 201).

Payment and Set-off.]—The words "payment, admitted set-off, or otherwise," in the section are exactly the same as were contained in the 30 & 31 Vict. c. 142, s. 7, and do not include the words "payment into court," which were in the 19 & 20 Vict. c. 108, s. 26. The presence of the latter words was held to contemplate something done after action brought to reduce the sum in dispute, and to constitute a difference between the sections (*Gray* v. *Hopper* (C. A.), (1888) 21 Q. B. D. 246; 57 L. J. Q. B. 505). The decisions under sect. 7 may therefore be followed in interpreting the section. Hence the order cannot be made unless the payment relied on to reduce the claim be made before action (*Hodgson* v. *Bell* (C. A.), (1890) 24 Q. B. D. 525; 59 L. J. Q. B. 231). But if the plaintiff admit a set-off on the writ and so reduce the balance, the order can be made on the application of the defendant, although the set-off was not agreed to before action (*Percival* v. *Pedley*, (1887) 18 Q. B. D. 635; *Lovejoy* v. *Cole*, (1894) 2 Q. B. 861; 64 L. J. Q. B. 120. See, however, *Foster* v. *Usherwood* (C. A.), (1878) 3 Ex. D. 1; 47 L. J. Ex. 30). It was held under sect. 26 that if the plaintiff by his reply, or on an application for an order, admitted a set-off pleaded by the defendant reducing the balance in dispute within the limit, an order could be made (*Lewis* v. *Lewis*, (1887) 20 Q. B. D. 56; 57 L. J. Q. B. 38), but from the reasoning in *Gray* v. *Hopper* it must be inferred that such an order could not now be made.

Counterclaim.]—The words of sect. 65 are to be taken according to their ordinary grammatical construction; a judge at chambers has jurisdiction to order an action of contract in which the claim indorsed on the writ does not exceed 100*l.* to be tried in the county court, although a counterclaim for unliquidated damages, even to the extent of 1,000*l.*, be set up. The jurisdiction, however, ought not to be exercised if it be thought that

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a counterclaim of any such magnitude is likely to prove substantial (*Guilford* v. *Lambeth*, (1894) 2 Q. B. 832; (C. A.), (1895) 1 Q. B. 92; 64 L. J. Q. B. 95). The order cannot be made if the plaintiff has discontinued his action, although the defendant has counterclaimed (*R.* v. *City of London Court* (4), (1891) 2 Q. B. 71; 60 L. J. Q. B. 575).

Amount of Claim.]—The order cannot be made if 100*l.* *and interest* be claimed (*Insley* v. *Jones*, (1879) 4 Ex. D. 16; 48 L. J. Ex. 222); nor except by consent if more than 100*l.* is claimed by the writ and excess subsequently abandoned (aliter if excess is abandoned and writ reduced to 100*l.*) (*Dierken* v. *Philpot*, (1901) 2 K. B. 380; 70 L. J. K. B. 675); but the objection should be taken by appealing against the master's order, and is too late if taken in the county court on the trial (*Dierken* v. *Philpot*, *supra*); nor if the claim be for unliquidated damages (*Knight* v. *Abbott*, (1883) 10 Q. B. D. 11; 52 L. J. Q. B. 131; *Bassett* v. *Tong*, (1894) 2 Q. B. 332; 63 L. J. Q. B. 653). But it may be made where, although the writ was originally indorsed for more than 100*l.*, it has been amended by leave and the claim reduced to 24*l.* (*Sneade* v. *Wotherton Barytes Co.*, (1904) 1 K. B. 295; 73 L. J. K. B. 170). There is no power, on refusing an order, to impose a term that if only a certain sum be recovered, the plaintiff shall be entitled to county court costs, unless the judge at the trial otherwise orders (*Insley* v. *Jones*, *supra*).

In any Court convenient thereto.]—These words mean in any county court which the judge at chambers may deem to be convenient to the parties.

Order.]—The county court judge has no right to inquire into what circumstances were taken into account when the order was made. His duty is to obey the order and try the action. If a county court judge is of opinion that an order of the High Court is invalid for want of jurisdiction, it is his duty to give a judgment on the point, giving his reasons fully for arriving at the conclusion that the order was made without jurisdiction. He should then adjourn the hearing to enable either party to raise the question of jurisdiction in the High Court. This is the course which must now be followed (*Rex* v. *Mellor*, (1914) 2 K. B. 588; 83 L. J. K. B. 996; *Blades* v. *Lawrence*, (1874) L. R. 9 Q. B. 374; 47 L. J. Q. B. 133). A mere irregularity in the order or the mode of obtaining it would no doubt be waived by appearance in the county court (see *Tomkins* v. *Beard*, (1868) 18 L. T. 363; 16 W. R. 729).

Proceedings after Order.]—After the making of the order the plaintiff must lodge with the registrar of the county court the original writ together with pleadings, affidavits, etc., already filed, or copies thereof, and also the order, or a duplicate, and copies of any affidavits on which the order was made, and also a statement of the names and addresses of the several parties to the action, and their solicitors, if any, and if no statement of claim has been delivered in the High Court a concise statement of his particulars, such as would be required on entering a plaint (see Form 280), and as many copies as there are defendants, and an additional copy for the judge (Order LIV. r. 13. (The cost of these copies will now be allowed; see Items 44, 56)). The registrar must then appoint a day for the trial, and indorse on the order or certificate the date of the lodgment, and file it (Order XXXIII. rr. 1, 2). Notice must be given to the parties (see Form 281), by post or otherwise, by the registrar, ten clear days before the day of trial; and he must send to each defendant a sealed copy of the particulars, annexed to the notice (Order XXXIII. r. 1; Order II. r. 8). When any action or matter is remitted in which an infant is suing by next friend the plaintiff must lodge with the registrar the written authority for the use of the name of the next friend filed in the High Court or a copy thereof, and such authority shall be deemed an undertaking to pay costs. See Order V. r. 16.

Money paid into High Court.]—If money has been paid into the High Court before the action was remitted or transferred, the county court registrar must, on the request of any party to the action, apply to the

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paymaster-general, or, if the money has been paid into a district registry, to the district registrar, to transmit it to him; and when transmitted the money will be subject to the order of the county court as though it had originally been paid into that court (Order XXXIII. r. 3a, Form 283A; and see R. S. C., Order XXII. r. 13a).

Transfer of Money paid into High Court.]—Where any money has been lodged in the High Court in a cause or matter which has been remitted or transferred, the paymaster, on receipt of the requisition (see Supreme Court Funds Rules, 1905, Form 18) from the registrar of the court to which the action has been remitted or transferred, must send to him by post a direction for the payment of the amount named therein. The requisition will be sufficiently authenticated by the seal and signature of the registrar of the court, and will be sufficient evidence of the order remitting or transferring the cause or matter (see Supreme Court Funds Rules, 1905, r. 44).

Proceedings in County Court.]—After the transfer, the action must proceed in the county court, as if it had been originally commenced there (Order XXXIII. rr. 1, 2); and no order, except on appeal, can be made in it by the High Court (*Harris* v. *Judge* (C. A.), (1892) 2 Q. B. 565; 61 L. J. Q. B. 577; *Duke* v. *Davis* (C. A.), (1893) 2 Q. B. 260; 62 L. J. Q. B. 549; *Buckley & Beade* v. *National Electric Theatres*, (1913) 2 K. B. 277; 82 L. J. K. B. 739). The action remains in the High Court until the writ and order are lodged with the registrar (*D'Errico* v. *Samuel* (C. A.), (1896) 1 Q. B. 163; 65 L. J. Q. B. 197). Unless defence has already been delivered, the defendant must, if he relies on any of the special defences of which notice is required, give notice in the ordinary way (Order XXXIII. r. 3). The judge at the trial may amend or add parties (*R.* v. *Clerkenwell C. C.*, (1890) 7 T. L. R. 40). In an action for demurrage at a specified rate he may even amend the particulars by substituting a claim for unliquidated damages (*Spencer, Whatley & Co.* v. *Forster & Co.*, (1905) 1 K. B. 434; 74 L. J. K. B. 288).

Times for Interlocutory Proceedings where Writ indorsed for Sum exceeding £50 or for Damages where no Amount specified.]—Where the amount claimed on the writ exceeds 50*l.*, or where damages are claimed but the amount of the claim is not specified, the notice of trial required by Order XXXIII. r. 1, must be given twenty clear days at least before the day appointed for the trial, and the provisions of Order XXIIA. rr. 6—11, 13, 14, and 16—19, as the times within which proceedings are to be taken, apply. In the application of those rules the day appointed for the trial is to be deemed to be the return day (Order XXXIII. r. 3b).

Order and Service where Defendant added or substituted.]—Where a defendant is added or substituted in an action or matter remitted or transferred to a county court, except where a defendant is substituted under Order XIV. r. 4, an order must be drawn up; and such order, together with a copy of the writ or other proceeding, and of the pleadings, affidavits, and other documents filed in the High Court, and of the statement and particulars filed in the county court pursuant to Order XXXIII. r. 1, and a notice according to the form in the Appendix as to the day upon which he is to attend at the court must be served on the added or substituted defendant according to the rules applicable to the service of default summonses (Forms 94, 95), and the proceedings as against such party will be deemed to have begun only on the service of such notice (Order XXXIII. r. 3c).

High Court Costs.]—The right to the costs incurred in the High Court, of and prior to the order of transfer, is governed by the express words of sect. 65, controlled, as mentioned below, by sect. 116, as extended by sect. 3 of the Act of 1903. A judge of the High Court, after the trial, has no power to make any order as to them (*Harris* v. *Judge* (C. A.), (1892) 2 Q. B. 565; 61 L. J. Q. B. 577); nor can the county court judge, or the master, by

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any order, prevent the application of the rules contained in sect. 116 (*White* v. *Cohen* (C. A.), (1893) 1 Q. B. 580; 62 L. J. Q. B. 274; *Dun* v. *Appleton*, (1898) 1 Q. B. 564; 67 L. J. Q. B. 428; overruling *Armitage* v. *Fison*, (1890) 67 L. T. 415).

Costs of Application in High Court under Order XIV. in remitted Action.]—The effect of those rules is as follows: If, before the order to remit, the plaintiff recovers judgment under Order XIV. for 20*l.* or more, his costs of and prior to the order must be taxed on the High Court scale, if he recovers anything at all in the county court (see sect. 116, *post*, and 3 Edw. VII. c. 42, s. 3). If he recovers no judgment at all under Order XIV., or one for less than 20*l.*, but recovers in all as much as 20*l.*, but less than 100*l.*, his costs will be taxed on the county court scale (*Wilson* v. *Statham*, (1891) 2 Q. B. 261; 60 L. J. Q. B. 725; *Millington* v. *Harwood* (C. A.), (1892) 2 Q. B. 166; 61 L. J. Q. B. 582). If he recovers in all less than 20*l.*, he will be entitled to no costs whatever (*White* v. *Cohen*, *supra*; see sect. 116, *post*, and 3 Edw. VII. c. 42, s. 3).

Recovery, Meaning of.]—Plaintiff claimed 104*l.*, the defendant under an order paid 90*l.*, and by an order the action was remitted to and lodged in the county court; before the return day the defendant paid into court the balance of the claim; the plaintiff was held to have "recovered" 104*l.* and to be entitled to High Court costs prior to, and of, the order to remit, and costs in the county court on C scale (*Keeble* v. *Bennett*, (1894) 2 Q. B. 329; 63 L. J. Q. B. 694; approved of in *White* v. *Headlands Patent Electric Storage Battery Co., Ltd.* (C. A.), (1899) 1 Q. B. 507; 68 L. J. Q. B. 354; overruling *Bailey* v. *Watson*, (1898) 2 Q. B. 270; 67 L. J. Q. B. 802). Where an action was brought for 27*l.* and the defendant paid 8*l.* without any order, the action was subsequently remitted to the county court and particulars claiming 19*l.* delivered, and the plaintiff obtained judgment for 19*l.* Held that plaintiff had in substance "recovered" a sum not less than 20*l.* (*Pearce* v. *Bolton*, (1902) 2 K. B. 111; 71 L. J. K. B. 558).

Costs of Successful Defendant.]—The right to costs of a defendant who is successful in the county court depends upon the same principle. In an action for 71*l.*, 23*l.* was paid into court under an order under Order XIV., and the action sent to the county court as to the residue of 48*l.*; the defendant consented to judgment for the 23*l.*; in the county court there was judgment for the defendant in respect of the residue; the defendant was held entitled to costs on C scale from the date of his consent to judgment for the 23*l.*, the subject-matter exceeding 50*l.* (*Aston Tube Works* v. *Dumbell*, (1904) 1 K. B. 535; 73 L. J. K. B. 208).

County Court Costs in remitted Actions.]—In remitted actions costs generally follow the event and the rules as to scale apply (see *post*, sect. 113); in such an action, which could have been commenced in the county court, if the plaintiff in all recovers less than 20*l.* he gets no costs (*White* v. *Cohen* (C. A.), (1893) 1 Q. B. 580; 62 L. J. Q. B. 274; overruling *Armitage* v. *Fison* (1890) 67 L. T. 415); but if he recovers anything, either in the High Court by means of Order XIV. or in the county court by verdict, failing an order as to costs by the county court judge, the defendant gets no costs (*Wright* v. *Bull*, (1900) 2 Q. B. 124; 69 L. J. Q. B. 529). The provision in sect. 65 that the costs of proceedings subsequent to the order of remittal are to be allowed according to the scale in use in the county court does not take away the general discretionary power of the judge over costs under sect. 113 (*Everall* v. *Brown*, (1905) 2 K. B. 196; 74 L. J. K. B. 708; (C. A.), (1906) 2 K. B. 884; 75 L. J. K. B. 960; and see *M'Eachen* v. *Sallyco Mineral Water Co.*, (1903) 19 T. L. R. 208).

An action in the High Court to recover 46*l.* was remitted; the defendant paid 16*l.* into court without a denial of liability, which the plaintiff refused

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to accept; the judge found that 16*l.* only was due, and gave judgment for the defendant with costs; held, that the defendant was entitled to the costs of the High Court proceedings, which, having been incurred prior to the payment into court, were not governed by sect. 107, but were under sect. 116 in the judge's discretion (*Bennett* v. *Drake*, (1907) 97 L. T. 132). And where 3*l.* was recovered by the plaintiffs in proceedings under Order XIV. and the action was remitted to the county court, where judgment was entered for the defendant with costs on the higher scale, it was held that the county court judge had a discretion under sect. 113 to order the plaintiffs to pay the costs of the proceedings under Order XIV., notwithstanding that the plaintiffs had by those proceedings succeeded in obtaining satisfaction for a portion of their claim (*Mentors, Ltd.* v. *Evans* (C. A.), (1912) 3 K. B. 174; 81 L. J. K. B. 1111; 107 L. T. 82).

Where two defendants are represented by the same solicitor, and judgment with costs is given for one and against the other, the successful defendant is entitled to recover from the plaintiff half the costs of the defence (*Beaumont* v. *Senior*, (1903) 1 K. B. 282; 72 L. J. K. B. 141).

Although the county court judge cannot interfere with the operation of sect. 116 upon the costs, he is probably able, as the action is to be treated as if commenced in his court, by an order refusing costs generally, to deprive a successful party of costs to which he would otherwise be entitled.

Special Costs.]—The judge may in these actions, by special order, where a solicitor appears without counsel, allow the special items of costs mentioned in the scales, viz., items 31 and 70; and may where the court town (if more than twenty-five miles from Charing Cross) has no local bar within twenty miles of it, and counsel is instructed, allow the additional fee to counsel mentioned in item 86. Under item 93 the judge may also allow a fee to counsel for settling particulars, interrogatories, etc. (Order LIII. rr. 7, 8; and see Scales).

After the transfer, the action becomes a county court action for all purposes, and is subject to the same provisions as to new trial and appeal as other actions (see *Moody* v. *Steward*, (1870) L. R. 6 Ex. 35; 40 L. J. Ex. 25; *Bowles* v. *Drake* (C. A.), (1882) 8 Q. B. D. 325, 327, *per* Brett, L.J.; 51 L. J. Q. B. 66).

Transfer from Liverpool Court of Passage.] By sect. 4 of the Liverpool Court of Passage Act, 1896, a similar power is given to transfer to any court in which it might have been tried any action of contract brought in the Court of Passage where the claim indorsed on the writ is less than 10*l.*, or where the claim, though it originally exceeded 10*l.*, is reduced to a less sum than 10*l.* by payment, an admitted set-off, or otherwise. The jurisdiction is exerciseable by the presiding judge or registrar of the Court of Passage at chambers upon the application of either party to the action. The procedure is the same as in the case of the transfer of actions from the High Court, and the transfer involves the same consequences (59 & 60 Vict. c. 21, s. 4).

Actions of tort in High Court may be remitted to county court. 30 & 31 Vict. c. 142, s. 10.

66. It shall be lawful for any person against whom an action of tort is brought in the High Court to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff; and thereupon a judge of the High Court shall have power to make an order that, unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the masters of the Supreme Court, or satisfy a judge of the High Court that he has a cause of action fit to be prosecuted in the High Court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such

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security, or failing to satisfy a judge as aforesaid, that the action be remitted for trial before a court to be named in the order, and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such court, who shall appoint a day for the trial of the action, notice whereof shall be sent by post or otherwise by the registrar to both parties or their solicitors; and the action and all proceedings therein shall be tried and taken in such court as if the action had originally been commenced therein; and the costs of the parties in respect of the proceedings subsequent to the order of the judge of the High Court shall be allowed according to the scale of costs for the time being in use in the county courts, and the costs of the order and all proceedings previously thereto shall be allowed according to the scale of costs for the time being in use in the supreme court.

Actions of Tort.]—The 30 & 31 Vict. c. 142, s. 10, was, prior to the Judicature Act of 1873, held to apply to any action of tort (see *Craven* v. *Smith*, (1869) L. R. 4 Ex. 146), and the present section doubtless applies whether the action could have been originally commenced in a county court or not—*e.g.*, slander, libel, or seduction, or any other action in which the claim exceeds 100*l.* It was held in Ireland that no order *ought* to be made, unless the judge was satisfied that the plaintiff ought not to recover more than 50*l.* (*Richardson* v. *Skelly*, (1887) 37 L. T. 445), but it is believed that a different rule has obtained in England. An action of detinue may, it is believed, be remitted.

Where plaintiff has been permitted to sue in the High Court as a poor person, the action may still be remitted to the county court under sect. 66, but the order to remit cannot declare that the plaintiff shall be at liberty to sue in the county court as a poor person (*Perry* v. *London General Omnibus Co.*, (1916) 2 K. B. 335; 85 L. J. K. B. 1609).

In deciding whether the action is in tort or in contract, the substantial cause of action will be considered. If there are distinct claims in contract and in tort, it is doubtful whether any order can be made, unless the claim in contract be abandoned (*McDonnell* v. *Kavanagh*, (1887) 37 L. T. 444; *Ex parte Baum*, (1874) L. R. 9 Ch. 673; 44 L. J. Bk. 25). Where a counterclaim in tort is raised, the petitioner cannot get it remitted under these provisions as an action of tort (*Delobbel-Flipo* v. *Varty*, (1893) 1 Q. B. 663; 62 L. J. Q. B. 398).

Where a woman without means brought an action for a slander imputing want of chastity to her, the court held that it was fit to be tried in the High Court (*Critchley* v. *Brown*, (1885) 2 Times L. R. 238).

No order can be made on the ground that one plaintiff is abroad and the other insolvent (*Sykes* v. *Sykes*, (1869) L. R. 4 C. P. 645; 38 L. J. C. P. 281).

When Power to Remit arises.]—The jurisdiction to make the order arises on the filing of the affidavit of the defendant as to want of visible means—*i.e.*, such as are apparent or can be reasonably ascertained by the defendant; and the question then is whether the plaintiff has any means of paying costs should the verdict be against him. This is a matter of evidence. The judge then has a judicial discretion whether he will make an order (*Lea* v. *Parker* (C. A.), (1885) 13 Q. B. D. 835; 54 L. J. Q. B. 38; 33 W. R. 101). The order cannot be made without the affidavit (*R.* v. *Stonor* (2), (1883) 50 L. T. 97).

Order to Remit.]—The order may be made by a judge at chambers or by a master of the King's Bench Division, or by a district registrar (R. S. C., Order LIV. r. 12; Order XXXV. r. 6. For form of order, see R. S. C.,

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Form K, 45). It is subject to appeal, but a strong case must be made (*Owens* v. *Woosman*, (1867) L. R. 3 Q. B. 469; 37 L. J. Q. B. 159; *Palmer* v. *Roberts*, (1873) 29 L. T. 403; 22 W. R. 577, n.; *Jennings* v. *London Omnibus Co.* (1), (1874) 30 L. T. 266; *Coxwell* v. *London Omnibus Co.*, (1879) 27 W. R. 381). The affidavit must be produced on the appeal (*Holmes* v. *Mountstephen*, (1875) L. R. 10 C. P. 474).

At what Time made.]—No time is fixed by statute for making the application; but the ordinary practice is to apply before statement of defence, and where the cause of action is known, before statement of claim. Under the Irish Act it has been held that no order can be made if the defendant has appeared and demanded statement of claim (*Nagle* v. *Sullivan*, (1880) 6 L. R. Ir. 149).

To what Court remitted.]—The Act does not specify the court of any particular district as the one to which the cause may be remitted; the judge's discretion is unfettered, though subject to review by the court (see *Owens* v. *Woosman*, *supra*).

If the registrar of the court to which the action is transferred, or his partner or clerk, has acted as solicitor in such action, the county court judge may order it to be transferred under sect. 85 of the Act to some other court (Order XXXIII. r. 19).

Proceedings after Order.]—After the making of the order the same proceedings must be taken, and the same consequences will ensue, as have already been described in regard to actions of contract (*ante*, pp. 45–47; see sect. 65; Order XXXIII. rr. 1, 2; Order II. r. 8. Particulars must be in accordance with Form 282; notice of trial with Form 283). Where an action brought by a limited company is remitted under sect. 66 on failure of the company to provide security for defendant's costs or to satisfy a judge of the High Court that they have a cause of action fit to be prosecuted in that Court, the county court judge may, if it appears that the company will, if unsuccessful, be unable to pay the defendant's costs, order the company to give security for costs under sect. 278 of the Companies (Consolidation) Act, 1908 (*Plasycoed Collieries Co.* v. *Partridge*, (1911) 104 L. T. 807).

Until the plaintiff has lodged the writ and order, the cause remains in the High Court, and a master has jurisdiction to extend the time for giving security for costs (*Welply* v. *Buhl* (C. A.), (1878) 3 Q. B. D. 253; 47 L. J. Q. B. 151); or to make any interlocutory order (*D'Errico* v. *Samuel*, (1896) 1 Q. B. 163; 65 L. J. Q. B. 197). So an application to dismiss for want of prosecution should be made at chambers in the High Court; in default thereof the county court judge is bound to hear the case, although there may be delay in lodging the order (*R.* v. *Holroyd*, (1883) 32 W. R. 370; S. C. *nom. Driscol* v. *King*, 49 L. T. 599).

For proceedings where infant suing by next friend is concerned, see Order V., r. 16.

Transfer of Money paid into High Court.]—As to transfer of money paid into the High Court, see *ante*, p. 46.

Proceedings after Lodging Order.]—When the transfer has been completed, the county court will have the same jurisdiction as if the action had been commenced there, and the action will be subject to the county court rules (*Moody* v. *Steward*, (1870) L. R. 6 Ex. 35; 40 L. J. Ex. 25; *Bowles* v. *Drake*, (1882) 8 Q. B. D. 325; 51 L. J. Q. B. 66; Order XXXIII. rr. 2, 3).

Notice of Defences.]—Notice of special defences must be given in the prescribed manner, unless a defence has already been delivered in the High Court. If the action be one of libel or slander (over which the county court has no original jurisdiction), and the defendant relies as a defence upon the fact that the libel or slander complained of is true, he must state in his notice that it is true in substance (Order X. r. 16). If in libel or slander he does not rely on the truth of it, but relies, in mitigation of damages, on the circumstances under which the libel or slander was published, or the character of the plaintiff, he must in his notice give particulars of the matters as to which

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he intends to give evidence (Order X. r. 17). If he relies upon an apology, or payment into court and apology, under the Libel Act, 1843, ss. 1, 2, he must give notice in writing of his intention to rely on it (Forms 86, 87), signed by himself or his solicitor, to the registrar, five clear days at least before the day of trial (Order XXXIII. r. 4).

Where a common-law action of negligence is remitted the plaintiff may add in the county court an alternative claim under the Employers' Liability Act, 1880 (*Wood* v. *Weber*, (1908) 99 L. T. 195).

Payment into Court.]—Money may be paid into court by way of damages with an apology, in actions for libel contained in any public newspaper or other periodical publication, by virtue of the Libel Act, 1843, s. 2, and when so paid in, the ordinary rules of practice as to payment into courtwill apply so far as they are applicable (Order IX. r. 14). So money can be paid into court in any action sent to a county court under the section under consideration (see *post*, sect. 107). The transmission to the county court of money paid into the High Court or a district registry before the action was transferred or remitted is provided for by Order XXXIII. r. 3a.

Trial.]—Any variance between writ and statement of claim should be amended at the trial (*Johnson* v. *Palmer*, (1878) 4 C. P. D. 258; 27 W. R. 941). The judge may amend or add parties as in other cases (*R.* v. *Clerkenwell*, (1890) 7 T. L. R. 40. *Mulleneisen* v. *Coulson*, (1888) 20 Q. B. D. 667; 57 L. J. Q. B. 334; 36 W. R. 524, was decided on the particular words of the 30 & 31 Vict. c. 142, s. 10, and is no longer of any authority). He may in a proper case refuse to try, and stay proceedings (*R.* v. *Bayley*, (1881) 8 Q. B. D. 411; 51 L. J. Q. B. 244, *post*, p. 504).

Costs.]—The costs after the order of transfer must be taxed on the county court scale, and the costs of and prior to the order on the High Court scale, except where the plaintiff recovers a sum less than 20*l.* (see sects. 66, 116), in which case all the costs must be taxed on the county court scale; and except also where he recovers less than 10*l.*, in which case he will apparently be entitled to no costs whatever (see *Wilson* v. *Statham*, (1891) 2 Q. B. 261; 60 L. J. Q. B. 725; *White* v. *Cohen* (C. A.), *ante*, p. 47). The county court judge's power over the costs is the same as in actions of contract.

Special Costs.]—As to special costs allowable in these actions, see Order LIII. rr. 7, 8, and items 31, 70, 86, and 93, in the scales.

New Trial and Appeal.]—After the order of transfer, the action becomes a county court action for all purposes, and is subject to the same provisions as to new trial and appeal as other actions (*Moody* v. *Steward*, (1870) L. R. 6 Ex. 35; 40 L. J. Ex. 25; *Jennings* v. *London Omnibus Co.* (2), (1874) 30 L. T. 640; *Bowles* v. *Drake* (C. A.), (1882) 8 Q. B. D. 325; 51 L. J. Q. B. 66).

Jurisdiction in equity.

67. The court shall have and exercise all the powers and authority of the High Court in the actions or matters hereinafter mentioned; (that is to say,)

28 & 29 Vict. c. 99, ss. 1, 2. 30 & 31 Vict. c. 142, s. 9.

1. By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law, or next of kin, in which the personal or real or personal and real estate against or for an account or administration of which the demand may be made shall not exceed in amount or value the sum of five hundred pounds:
2. For the execution of trusts in which the trust estate or fund shall not exceed in amount or value the sum of five hundred pounds:

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3. For foreclosure or redemption or for enforcing any charge or lien, where the mortgage, charge, or lien shall not exceed in amount the sum of five hundred pounds:
4. For specific performance of or for the reforming, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property, where in the case of a sale or purchase the purchase-money, or in the case of a lease the value of the property, shall not exceed the sum of five hundred pounds:
5. Under the Trustees Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the action or matter relates shall not exceed in amount or value the sum of five hundred pounds:
6. Relating to the maintenance or advancement of infants in which the property of the infant shall not exceed in amount or value the sum of five hundred pounds:
7. For the dissolution or winding up of any partnership in which the whole property, stock, and credits of such partnership shall not exceed in amount or value the sum of five hundred pounds:
8. Actions for relief against fraud or mistake in which the damage sustained or the estate or fund in respect of which relief is sought shall not exceed in amount or value the sum of five hundred pounds.

In all such actions or matters the judge shall, in addition to the powers and authorities possessed by him, have all the powers and authorities, for the purposes of this Act, of a judge of the Chancery Division of the High Court; and the treasurer, registrar, and high bailiff respectively shall in all such actions or matters discharge any duties which an officer of the said division can discharge, either under the order of a judge of the said division, or under the practice thereof, and all officers of the courts shall, in discharging such duties, conform to any rules or orders made in that behalf under this Act.

Jurisdiction.]—The various kinds of equity actions and matters over which county courts have now jurisdiction are described in the following pages, and no action not coming within the classes there described can be safely commenced in a county court. Thus it is believed that the old equity action to enforce a charge on a married woman's separate estate cannot be commenced in a county court.

The provisions enabling parties to give jurisdiction by agreement under 51 & 52 Vict. c. 43, s. 64, do not extend to equity actions and matters; but an indirect power is given by sect. 114 to confer jurisdiction at the trial, as where there is no jurisdiction the judge must order any action or matter to be struck out, *unless* the parties consent to the jurisdiction.

By order of Judge of High Court.]—By sect. 68 a judge of the High Court has power to make an order, even without consent, that an equity

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action in progress and beyond the jurisdiction in point of amount shall remain in the county court.

Jurisdiction concurrent.]—The jurisdiction is concurrent with, and not exclusive of, that of the High Court.

Costs.]—The judges of the High Court have power, by deprivation of costs, to punish a plaintiff who invokes the more expensive machinery of the High Court, instead of that of the county court; but the practice has not been uniform (*Scotto* v. *Heritage*, (1866) L. R. 3 Eq. 212; 36 L. J. Ch. 123; *Brown* v. *Rye*, (1874) L. R. 17 Eq. 343; 43 L. J. Ch. 228; *Simons* v. *M'Adam*, (1868) L. R. 6 Eq. 324). In one case, Bacon, V.-C., allowed only county court costs in an action to foreclose a mortgage for 65*l.* (*Crozier* v. *Dowsett*, (1885) 31 Ch. D. 67; 55 L. J. Ch. 210); but Kekewich, J., allowed costs on the High Court scale in an action to try the right to a piece of land less than 20*l.* in value (*Williams* v. *Allen*, W. N., (1889) 48; 60 L. T. 103).

The county courts have all the power and authority of the High Court in the following actions and matters:—

(1) **Administration.**]—In all actions by creditors, legatees (whether specific, pecuniary or residuary), devisees (whether in trust or otherwise), heirs-at-law, or next of kin, in which the personal or real, or personal and real estate against or for an account or administration of which the demand may be made, does not exceed in amount or value the sum of 500*l.* The assignees and representatives of the various classes of persons above enumerated have the same power to institute proceedings under it as the various classes themselves (*Turner* v. *Rennoldson*, (1873) L. R. 16 Eq. 37; 42 L. J. Ch. 510. For forms of orders, see Forms 304, 323).

Where Value of Estate is above £500.]—Where the value of the estate is not shown on the face of the proceedings, and can only be ascertained by the county court judge hearing and determining the question in dispute between the parties, it is his duty to try that question. If it transpires that the value of the estate is above 500*l.* he must transfer the action to the Chancery Division of the High Court under sect. 68 (*Sunderland* v. *Glover*, (1915) 1 K. B. 393; 84 L. J. K. B. 266).

Effect of Judicature Act, 1875, on Administrations.]—It is not possible here to discuss the law of administration, but attention may be directed to sect. 10 of the Judicature Act, 1875, which enacts that when the assets of a deceased person are insufficient for the payment of his debts, the rules which obtain in bankruptcy shall apply, (1) as to the rights of secured and unsecured creditors, (2) as to debts and liabilities provable, (3) as to the valuation of annuities and contingent liabilities. And the section further provides, that all persons who in bankruptcy would be entitled to prove for and receive dividends out of the estate, may come in under an order for administration and make their claims.

Where the assets are more than sufficient for claims, the court may allow payment of the income of funds in court to parties interested. This power was conferred by 15 & 16 Vict. c. 86, s. 57, and although the Act is repealed, the High Court and hence the county court still has the power. Moreover, the repealing statute, 46 & 47 Vict. c. 49, by s. 7, expressly retains the power for inferior courts of civil jurisdiction.

Where commenced.]—The action must be commenced, where both plaintiff and defendant dwell or carry on business within one or more of the Metropolitan districts, either in the court of the district in which the plaintiff dwells or carries on business or in that in which the defendant dwells or carries on business (see sect. 84; *R.* v. *Bloomsbury C. C.*, (1890) 24 Q. B. D. 309). In the cases to which this provision does not apply the action must be commenced either in the court within the district of which the deceased had his last place of abode in England or Wales (20 Geo. II.

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c. 42, s. 3), or in the court of the district in which one of the executors or administrators has his place of abode (sec 51 & 52 Vict. c. 43, s. 75, sub-s. 3).

(2) **Execution of Trusts.**]—The courts have jurisdiction in all actions for the execution of trusts, in which the trust estate or fund does not exceed in amount or value 500*l.* (form of particulars, Form 8B).

This jurisdiction applies not only to express or implied trusts, but also to constructive trusts arising by operation of law; thus, where a mortgagee of leaseholds took a renewed lease to himself, it was held that the county court had jurisdiction to declare him a trustee for the mortgagor (*Clayton* v. *Renton*, (1867) L. R. 4 Eq. 158; 36 L. J. Ch. 428).

Where commenced.]—The action must be commenced, where both plaintiff and defendant dwell or carry on business within one or more of the Metropolitan districts, either in the district in which the plaintiff dwells or carries on business, or in that in which the defendant dwells or carries on business (see *post*, sect. 84; *R.* v. *Bloomsbury C. C.*, (1890) 24 Q. B. D. 309). In the rest of England and Wales it must be commenced in the district in which any of the defendants dwell or carry on business, or, by leave, in the other districts mentioned in the section (see *post*, sect. 74). But the defendant should be a substantial defendant, not merely a nominal defendant in the same interest with the plaintiff (*Baker* v. *Wait*, (1869) L. R. 9 Eq. 103; 39 L. J. Ch. 204).

Where in proceedings concerning a trust a compromise is proposed, and some of the persons interested are not parties, but other persons in the same interest are before the court and assent to the compromise, the judge may, if satisfied that the compromise is for the benefit of the absentees, and that to require service on them would cause unreasonable expense or delay, approve the compromise, which will then bind the absent persons, unless the order has been obtained by fraud or non-disclosure (Order III. r. 9).

The following special provisions apply to actions for administration and for the execution of trusts.

Actions for Administration and for the Execution of Trusts.]—The rules extend nearly the whole of the provisions of Order XVI. of the High Court rules in regard to these actions to county courts.

Parties.]—Any residuary legatee or next of kin entitled to a judgment or order for administration of personal estate may obtain it without serving the remaining residuary legatees or next of kin (Order III. r. 20). So a legatee interested in a legacy charged on real estate, and a person interested in the proceeds of real estate directed to be sold, may obtain a judgment or order for administration without serving any other legatee or person interested in such proceeds (Order III. r. 21). A residuary devisee or heir may obtain the like judgment or order without serving any co-residuary devisee or co-heir (Order III. r. 22).

Any of several *cestuis que trust* under any deed or instrument may obtain a judgment or order for the execution of the trusts under any deed or instrument without serving any other *cestui que trust* (Order III. r. 23). In an action to execute the trusts of a will it is unnecessary to make the heir-at-law a party (Order III. r. 32).

In actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest (Order III. r. 24).

Any executor, administrator, or trustee entitled to it, may have a judgment or order against any one legatee, next of kin, or *cestui que trust*, for the administration of the estate or the execution of the trusts (Order III. r. 25. See *Re Peppitt*, (1877) 4 Ch. D. 230; 46 L. J. Ch. 95).

The judge may require any person to be made a party, and may give the conduct of the action to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other

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parties having a common interest with him in the matters in question (Order III. r. 26).

When the right of an heir-at-law, or customary heir, or the next of kin, or of a class, depends on the construction of an instrument, the judge may, in the cases mentioned in the rule, appoint persons to represent them, and they will then be bound by the judgment (Order III. r. 18). Where an heir-at-law or customary heir, or next of kin or class, is interested, if in his judgment the circumstances render it expedient on account of the difficulty of ascertaining the persons, or on the ground of expense, he may appoint a person to represent the heir or all or any of the absent parties, and the judgment or order will bind the persons so represented (Order III. r. 19). Where there is no personal representative of a deceased person who was interested in the matter in question, the judge may proceed without such representative, or appoint some person to represent the estate in the manner mentioned in the rule, and any order made by the judge will bind the estate (Order III. r. 33).

A plaint for administration has been held to be sufficient without an allegation that the estate did not exceed in value or amount 500*l.* (*Cheesewright* v. *Thorn*, (1869) 38 L. J. Ch. 615). For form of particulars, see Form 8A, Appendix A., *post*, p. 873; form of order, Forms 304, 323, *post*, pp. 833, 844.

Claim for Partial Administration.]—It is not obligatory on the judge in an action for the execution of a trust, or for the administration of an estate, to make an order for a general execution or administration, if the questions at issue can be properly determined without it, but he may make any order that may be necessary for determining such questions (Order XXII. r. 14. See *Jones* v. *Blake* (C. A.), (1885) 29 Ch. D. 913; 54 L. J. Ch. 880, as to the proper order to be made in and use of administration actions). This and the next rule give the judge a discretion in all cases to make or refuse a general order or administration (*Pearson* v. *Pearson*, (1883) 56 L. T. 445).

The questions which may be submitted are as follows:—

(*a*) Any question affecting the rights or interests of any person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust*:

(*b*) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others:

(*c*) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts:

(*d*) The payment into court of any money in the hands of the executors or administrators or trustees:

(*e*) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees:

(*f*) The approval of any sale, purchase, compromise, or other transaction:

(*g*) The determination of any question arising in the administration of the estate or trust.

The plaintiff's particulars must show concisely the question or matter upon which the decision of the court is required, and must show that the plaintiff is willing to renounce his right to an order for general administration (Order VI. r. 5).

Notice of Defence.]—Whenever they are applicable, the rules as to special defences apply, and it is believed that under Order X. r. 19, there is an obligation to state concisely the facts on which the defendant relies by way of defence, not only in these, but in all equity actions; and that in the event of his not doing so, he might be prevented from relying on such facts by way of defence.

Appearance on Claims by Third Persons.]—No party, other than the executor or administrator, is, without leave of the court, entitled to appear either in court or chambers on the claim of any person not a party against

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the estate of the deceased, in respect of any debt or liability. The court may direct or give liberty to any other party to appear on such terms as it may think fit (Order III. r. 34).

Interest on Debts and Legacies.]—Creditors will be entitled to interest on such debts as carry interest at the agreed rate, or at 4*l.* per cent. from the date of the order, and to their costs of proof (Order XXIV. rr. 22, 24, 25). Legacies will carry interest at 4*l.* per cent. from the end of a year from the testator's death, unless otherwise ordered, or a different rate or time be appointed by the will, and in that case according to the will (Order XXIV. r. 26).

Order where no Accounts.]—Upon an application by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the judge may (in addition to his other powers) (a) order the application to stand over for a certain time, and that the executors, administrators, or trustees meanwhile render to the applicant a proper statement of their accounts, with an intimation that, if not done, they may be made to pay the costs of the proceedings; (b) when necessary, to prevent proceedings by other creditors or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under it without leave of the judge in person (Order XXII. r. 15).

A creditor is entitled to the costs of establishing his debt, which are to be fixed by the court and added to the debt (Order XXIV. r. 22).

Notice of Judgment.]—Wherever in an action for administration of the estate of a deceased person, or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or order has been pronounced or made, the judge may direct service of notice (Form 317) of the judgment or order on any persons interested in the estate, or under the trust, or in the hereditaments. After such notice the persons so served will be bound by the proceedings; but any of them may, at the next sitting of the court after service, or by leave of the judge at any other sitting, apply to the judge to discharge, vary or add to the judgment or order (Order III. r. 27).

The notice will be prepared by the registrar, who must annex to it a copy of the judgment or order, and issue it to the bailiff for service, delivering to him also a copy of the notice (Order III. r. 28). The notice, whether the person to be served is or is not an infant or person of unsound mind, not so found by inquisition, must be served in the same manner as a summons, and the bailiff must make on the copy of the notice the usual indorsement of the fact, mode, and place of service (Order III. r. 29).

Service of notice of judgment may be dispensed with, or substituted service or notice by advertisement or otherwise ordered, by the judge in cases where by reason of absence or for other sufficient cause he thinks fit to take that course (Order III. r. 30). The judge may order that the persons as to whom service is dispensed with shall be bound as if served (Order III. r. 31).

Costs.]—The court has complete discretion over the costs in these as in other actions (see sect. 113, *post*; *Plumb* v. *Craker*, (1885) 16 Q. B. D. 40; 55 L. J. Q. B. 116. See, as to the above provisions, Annual Practice, notes to Order XVI.).

(2) **Execution of Trusts.**]—See note on p. 54.

(3) **Foreclosure and Redemption.**]—The county courts have jurisdiction in all actions for foreclosure or redemption, or for enforcing any charge or lien whenever the mortgage, charge, or lien does not exceed 500*l.* in amount (sect. 67, sub-s. 3. For forms of particulars, see Form 8C, *post*, p. 874, and Form 311, *post*, p. 837; forms of orders and judgment, Forms 307—310, 312). The jurisdiction depends on the amount of the charge at the time of action (*Shields, Whitley, etc., Building Society* v. *Richards*, (1901) 84 L. T. 587).

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The court may direct a sale instead of a foreclosure (44 & 45 Vict. c. 41, s. 25; Annual Practice, notes to Order LI. r. 1, R. S. C.). The jurisdiction to enforce a charge is not affected by the fact that the mortgagor has become bankrupt (*Medhurst* v. *Golder*, (1867) 16 L. T. N. S. 50). An action by parties claiming through a mortgagor to set aside a sale made by a mortgagee, is an action for redemption (*Powell* v. *Roberts*, (1869) L. R. 9 Eq. 169; 39 L. J. Ch. 44). Charges under sect. 257 of the Public Health Act, 1875, may be enforced under these provisions (*Tottenham* v. *Rowell* (C. A.), (1880) 15 Ch. D. 378; 50 L. J. Ch. 99; *Hornsey* v. *Monarch Building Society* (C. A.), (1889) 24 Q. B. D. 1; 59 L. J. Q. B. 105). The period of limitation for bringing the action is twelve years: see *Wakefield and Barnsley Union Bank, Ld.* v. *Yates*, (1916) 1 Ch. 452. The High Court will not exercise jurisdiction in any case where the charge sought to be enforced is less than 10*l.* (sect. 67, sub-s. 3. For form of particulars, see Form 8c, Appendix A., *post*, p. 874, and Form 311, *post*, p. 837; forms of orders and judgment, Forms 307—310, 312).

Where commenced.]—The action must be commenced, where both plaintiff and defendant dwell or carry on business within one or more of the Metropolitan districts, either in the district in which the plaintiff dwells or carries on business, or in that in which the defendant dwells or carries on business (see *post*, sect. 84; *R.* v. *Bloomsbury C. C.*, (1890) 24 Q. B. D. 309). In the rest of England and Wales it must be commenced in the court within the district of which the lands, tenements, or hereditaments, or any part thereof, are situate (see *post*, sect. 75, sub-s. 1).

(4) **Specific Performance, etc.**]—The county courts have also jurisdiction in actions for enforcing the specific performance of or the reforming, delivering up or cancelling of any agreement for the sale, purchase or lease of any property, where, in the case of a sale or purchase, the purchase-money, or, in the case of a lease, the value of the property, does not exceed 500*l.* (sect. 67, sub-s. 4). As to the principles on which specific performance of a contract made by correspondence should be granted, see *Hussey* v. *Horne-Payne*, (1879) 4 A. C. 311; 48 L. J. Ch. 846; *Bellamy* v. *Debenham*, (1890) 45 Ch. D. 481; 60 L. J. Ch. 166; *Perry* v. *Suffield's, Limited*, (1916) 85 L. J. Ch. 460. The test of the value of the property, in the case of a sale or purchase, for the purpose of jurisdiction is the amount of the purchase-money; therefore an agreement to purchase an equity of redemption for 75*l.* is within the jurisdiction, although the property, if unencumbered, is worth more than 500*l.* (*R.* v. *Judge Whitehorne*, (1904) 1 K. B. 827; 73 L. J. K. B. 344). But in the case of a lease the value of the property is the test; there is therefore no jurisdiction to order the cancellation of a lease where the value of the freehold exceeds 500*l.*, although neither the value of the lessor's nor of the lessee's interest exceeds that amount (*Angel* v. *Jay*, (1911) 1 K. B. 666; 80 L. J. K. B. 458). An agreement to grant a licence to use a way over land is not within the section (*R.* v. *Westmoreland C. C.*, (1888) 36 W. R. 477). As to principles upon which a Court of Equity acts: see *Rutherford* v. *Acton-Adams*, (1915) 84 L. J. P. C. 238. Not when parties have agreed that time is to be the essence of the bargain, and the time has elapsed (*Steedman* v. *Drinkle*, (1916) 85 L. J. P. C. 79).

Damages.]—By the Act known as Lord Cairns' Act (21 & 22 Vict. c. 27), it was provided, that in all cases in which the court of Chancery had jurisdiction to entertain an action for the specific performance of any covenant, contract or agreement, it might award damages either in addition to or in substitution for specific performance, such damages to be assessed in such manner as the court might direct (sect. 2), either by jury or otherwise (sect. 3). County court judges acquired the powers of this Act under the general powers of Chancery judges given to them by the 28 & 29 Vict. c. 99, s. 1, and now continued by 51 & 52 Vict. c. 43, s. 67, as well as by sect. 89 of the Judicature Act, 1873 (see *post*, sect. 187).

Lord Cairns' Act is repealed by 46 & 47 Vict. c. 49; but sect. 7 would, if

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it were necessary, prevent the destruction of its operation as regards county courts. It is well settled, however, that notwithstanding the repeal, the High Court has all the powers given to it by the Act (*Chapman* v. *Auckland* (C. A.), (1889) 23 Q. B. D. 294; 58 L. J. Q. B. 504; and see Annual Practice, notes to Judicature Act, 1873, s. 25 (11), and to Statute Law Revision Act, 1883, s. 5); hence there is no doubt that county court judges possess the same powers.

Where commenced.]—These actions must be commenced in the same court as actions for the execution of trusts (*ante*, p. 54. See form of particulars, Form 8D, Appendix A., *post*, p. 874, and Form 313, *post*, p. 838).

(5) **Partnership.**]—The county courts have jurisdiction over actions for the dissolution or winding up of any partnership in which the whole property, stock, and credits of such partnership do not exceed in amount or value 500*l.* (sect. 67, sub-s. 7); see 53 & 54 Vict. c. 39, s. 35, as to when a partnership may be decreed. As to winding up of a partnership between a British subject and an alien enemy, see *Hugh Stevenson & Son, Ld.* v. *Aktiengesellshaft für Cartonnagen Industrie*, (1916) 1 K. B. 763; 85 L. J. K. B. 846.

Where commenced.]—These actions must, when both plaintiff and defendant dwell or carry on business in one or more of the Metropolitan districts, be commenced either in the plaintiff's district or the defendant's (see *post*, sect. 84; *R.* v. *Bloomsbury C. C.*, (1890) 24 Q. B. D. 309). In the rest of England and Wales they must be commenced in the court within the district of which the partnership business was or is carried on (see *post*, sect. 75, sub-s. 4. Forms of particulars, Form 8E, Appendix A., *post*, p. 874; forms of order and judgment, Forms 315, 316, *post*, p. 840).

(6) **Fraud or Mistake.**]—The county courts have jurisdiction over actions for relief against fraud or mistake in which the damage sustained or the estate or fund in respect of which the relief is sought does not exceed in amount or value the sum of 500*l.* (sect. 67, sub-s. 8). This provision confers, for the first time, power on the county courts to set aside or reform deeds or documents on the ground of fraud or mistake.

If the county court in an interlocutory application, and after hearing evidence, and without objection to the form of the proceedings, sets aside a deed as fraudulent, an action brought in the High Court raising the question decided below will be stayed as frivolous (*Stephenson* v. *Garnett*, (1898) 1 Q. B. 677 (C. A.); 67 L. J. Q. B. 447).

Mistake.]—The Court must be satisfied when asked to rectify a document on the ground of mistake, that the proposed rectification represents the intention of both parties to the contract (see *Fowler* v. *Sugden*, (1916) 85 L. J. K. B. 1090).

Where commenced.]—These actions must be commenced in the same court as actions for the execution of trusts (see *ante*, p. 54).

[The Partition Acts and Settled Land Acts are now dealt with in Part V.]

(7) **Maintenance or Advancement of Infants.**]—The provisions of the Guardianship of Infants Act will be found in Part V. The county courts have jurisdiction in all matters relating to the maintenance or advancement of infants, in which the property of the infant does not exceed in amount or value 500*l.* (sect. 67, sub-s. 6).

Where commenced.]—These proceedings, which are commenced by petition (Order XXXVIII. r. 1), must be commenced, apparently, in the court within the district of which any of the persons who stand in the position of defendants, and on whom the petition must be served, dwell or carry on business, or by leave, in the other districts mentioned in the section (see sect. 74, *post*). Where, however, all parties dwell or carry on business within one or more of the Metropolitan districts, the proceedings must

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apparently be commenced in accordance with the 51 & 52 Vict. c. 43, s. 48 (see *R.* v. *Bloomsbury C. C.*, (1890) 24 Q. B. D. 309).

(8) **Trustee Act, 1893.**]—For the important sections, see Part V. The Trustee Acts were the Acts of 1850 and 1852 (13 & 14 Vict. c. 60, 15 & 16 Vict. c. 55). The Trustees Relief Acts were the Acts of 1847 and 1849 (10 & 11 Vict. c. 96, 12 & 13 Vict. c. 74); and the 22 & 23 Vict. c. 35, intituled "An Act to further amend the Law of Property and to relieve trustees." By sect. 67 of the County Courts Act, 1888, jurisdiction was conferred on county courts under the Trustee and Trustees Relief Acts, in cases in which the trust estate or fund to which the action or matter relates did not exceed in amount or value 500*l.* (sect. 67, sub-s. 5). The Trustee Act, 1893, practically repeals the whole of these Acts (56 & 57 Vict. c. 53, s. 51; Part V.), and does not directly confer any jurisdiction on the county courts under the new Act. The only reference to a county court is to be found in a section which says that the provisions of the Act with respect to the High Court shall, in "their application to cases within the jurisdiction of a county court, include that court" (56 & 57 Vict. c. 53, s. 46); but it is confidently submitted that that section, assisted by sect. 38 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), which enacts that "where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted," gives the county courts jurisdiction in all those cases up to 500*l.* in which the provisions of the repealed Acts, which formerly applied, are substantially re-enacted. The principal provisions of the old Acts which are re-enacted are referred to below.

Sect. 30 of the "Act to further amend the Law of Property and to relieve trustees" (22 & 23 Vict. c. 35) is repealed by the Trustee Act, 1893 (56 & 57 Vict. c. 53, s. 51; Part V.); but no corresponding provisions appear, and the Interpretation Act gives no help. The repealed section enabled trustees and others to apply to the court for the opinion, advice, or direction of the judge on any question respecting the management of the trust property; and if, as appears to be the case, the right to make such applications has now gone, a valuable right has been lost in the process of "consolidation."

Where commenced.]—These proceedings which are commenced by petition (Order XXXVIII. r. 1) must be commenced in the court within the district of which any of the persons making the application resides (see *post*, sect. 75 (2)); but where there are respondents, and they and the petitioners all dwell or carry on business within one or more of the metropolitan districts, the proceedings may apparently also be commenced in any of the courts in which the respondents dwell or carry on business (see *post*, sect. 84; *R.* v. *Bloomsbury C. C.*, (1890) 24 Q. B. D. 309).

Appointment of New Trustees.] — The High Court may, whenever it is expedient to appoint a new trustee or trustees, and it is inexpedient, difficult, or impracticable to do so without the assistance of the court, order the appointment of a new trustee or trustees either in substitution for, or in addition to, any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the above provision the court may order the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt (56 & 57 Vict. c. 53, s. 25 (1)). This jurisdiction may be exercised on summons or petition (*In re Dawson's Trusts*, W. N., (1899) 134). The section gives no power to appoint an executor or administrator (56 & 57 Vict. c. 53, s. 25 (3)).

Verification of Consent to act.]—The consent of a person to act as a trustee or a new trustee is sufficiently evidenced by a written consent signed

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by him and verified by the signature of his solicitor (Order XIX. r. 13; Form 332).

The order, and any consequential order or conveyance, will operate no further than an appointment of new trustees under a power in any instrument would have operated (56 & 57 Vict. c. 53, s. 25 (2)).

Vesting Orders as to Land.]—In the following cases, subject to the provisions of the section, the High Court may make a vesting order vesting land in such person and such manner, and for such estate as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct (56 & 57 Vict. c. 53, s. 26).

The cases referred to are (1) where the High Court appoints or has appointed a new trustee; (2) where a trustee or mortgagee (56 & 57 Vict. c. 53, s. 28) is (a) an infant, or (b) is out of the jurisdiction of the High Court, or (c) cannot be found; (3) where it is uncertain which of several trustees was the survivor; (4) where as to the last trustee known it is uncertain whether he is living or dead; (5) where there is no heir or personal representative to a trustee who has died intestate, or where it is uncertain who is his heir or personal representative or devisee; (6) where a trustee has wilfully refused or neglected to convey land, or release a contingent right for twenty-eight days after the date of a due requirement (56 & 57 Vict. c. 53, s. 26).

A similar order may be made as to the contingent rights of unborn persons who will become trustees (56 & 57 Vict. c. 53, s. 27).

So a vesting order may be made where a mortgagee has died without entry and the mortgage is satisfied, if the heir or devisee of the mortgagee is out of the jurisdiction, or refuses to convey, or it is uncertain which of several was the survivor, or whether such survivor is living or dead, or if the survivor has died intestate with an heir (56 & 57 Vict. c. 53, s. 29).

Where the court makes a judgment for the sale or mortgage of land, persons entitled who are parties will be deemed to be trustees, and the High Court may make an order vesting the property in the purchaser, mortgagor, or any other person (56 & 57 Vict. c. 53, s. 30; and see sect. 31 for vesting order consequent on judgment for specific performance).

In any of these cases the court may, instead of making a vesting order, appoint any person to convey (56 & 57 Vict. c. 53, s. 33; see sect. 32 for effect of vesting order generally, and see sect. 34 as to copyhold).

A vesting order may be made in respect of stock and choses in action when the High Court has appointed a new trustee, or the trustee is an infant, or out of the jurisdiction of the High Court, or cannot be found, or refuses to transfer stock, or receive dividends, or to sue for a chose in action, or it be uncertain whether he, being jointly entitled with another, be living or dead (56 & 57 Vict. c. 53, s. 35).

In all cases where a vesting order can be made under sect. 35 the court may, if it is more convenient, appoint some proper person to make the transfer (56 & 57 Vict. c. 53, s. 35).

Who may Apply.]—Applications to the court, if they be for the appointment of new trustees or concerning any land, stock, or chose in action subject to a trust, may be made by any person beneficially interested, whether under disability or not, or by any person duly appointed a trustee; or, if they relate to similar property subject to a mortgage, by any person beneficially interested in the equity of redemption, whether under disability or not, or any person interested in the money secured (56 & 57 Vict. c. 53, s. 36).

Payment of Trust Funds into Court.]—Any person desiring to pay money, transfer stock, or deposit security in trust to attend the orders of

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any court, under sect. 67, sub-s. 5, or sect. 70 of the Act, or sect. 42 of the Trustee Act, 1893, must file with the registrar an affidavit intituled in the matter of the Act (Form 333) and of the particular trust, and setting forth :— 1. His own name, address and description : 2. The place where he is to be served with any petition or summons, or any notice of any proceeding or order of the court relating to the trust fund : 3. The amount of money, stock or security which he proposes to pay, transfer or deposit in trust to attend the orders of the court : 4. A short description of the trust or of the nature and contents of the instrument creating it : 5. The names, addresses and descriptions of the persons interested in or entitled to, or claiming to be interested in or entitled to, the fund, to the best of the knowledge and belief of the trustee : 6. The submission of the trustee to answer all such inquiries relating to the application of the money or stock paid in or transferred or security deposited as the court may think proper to make or direct (Order XXXVIII. r. 9). The affidavit may be in the prescribed form, with such variations as each particular case may require (Order XXXVIII. r. 10 ; Form 333).

Where it is desired to retain any sum of money for costs incurred in the payment of money into court, or in any matter connected with the trust prior to such payment, a bill of costs must be filed, and such sum only retained as may be allowed by the registrar on taxation (Order XXXVIII. r. 11).

Probate of the will or the original instrument or document, or such evidence as the registrar may require as to the instrument creating the trust, must be left with the registrar for such period as he may reasonably require.

Memorandum of Filing.]—Immediately on receipt of the affidavit, the registrar must indorse on it a memorandum of the day on which it was filed, and when the affidavit is so indorsed it will be taken for all purposes to have been duly filed on the date so indorsed.

The registrar must also compare the affidavit with the probate or other instrument deposited with him, or with such evidence as aforesaid, and must indorse on the affidavit a memorandum that he has made such comparison, and may add to such indorsement any memorandum as to any matters which may be omitted in the affidavit and which he may think material.

Certificate.]—The persons filing the affidavit, or any of them, may obtain from the registrar a sealed certificate intituled in the matter of the County Courts Act, and of the particular trust, certifying that the affidavit has been filed.

Money.]—In the case of money, the persons filing the affidavit, or any of them, may, upon the receipt of the certificate, pay the money into a post-office savings bank, established in the town in which the county court is held, and obtain from the officer of the bank a receipt for the same, and must forthwith leave the receipt with the registrar, and the registrar must immediately indorse on it a memorandum of the day on which the same was received by him, and when so indorsed it will be taken for all purposes to have been duly recorded on the date so indorsed.

Stock.]—In the case of stock, the persons filing the affidavit, or any of them, may, upon the receipt of the certificate, transfer the stock into the names of the treasurer and registrar of the county court mentioned in the certificate, or of the registrar and superintendent of the county court department of the Treasury if there is no treasurer (Order XXXVIII. r. 20), in trust to attend the orders of the court. They must forthwith leave the transfer ticket with the registrar, and the registrar must immediately indorse on it a memorandum of the day on which the same was received by him. When so indorsed it will be taken for all purposes to have been duly recorded on the day so indorsed (Order XXXVIII. r. 17).

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Security.]—In the case of security, the person filing the affidavit may forthwith deposit the security with the registrar in the names of the treasurer and registrar, or of the registrar and superintendent of the county court department of the Treasury if there is no treasurer, in trust to attend the orders of the court. The registrar must immediately indorse on the affidavit a memorandum of the day of deposit (Order XXXVIII. r. 18), and must, within twenty-four hours after, send notice by post to the treasurer of the court, stating the particulars of the deposit (Order XXXVIII. r. 19; Form 338).

Immediately after the recording of the receipt or of the transfer ticket, or the deposit of the security, the registrar must give an acknowledgment or certificate (Forms 336, 337) to the persons paying in the money, or transferring the stocks or depositing the security (see *post*, sect. 70; Order XXXVIII. r. 21); and must cause the necessary entries to be made in the book formerly called the "Suits and Proceedings in Equity Book," including the title of the particular trust, and the amount of money paid or stock transferred, or security deposited, and the names and addresses of the persons making the payment, transfer or deposit, and the names of every person stated in the affidavit to be or to claim to be interested in or entitled to the money or stock, and their addresses and descriptions, as given in the affidavit. The registrar must forthwith, by post, send to each of such last-mentioned persons, to the addresses given in the affidavit, a sealed notice of the payment, transfer or deposit (Order XXXVIII. r. 22; Form 339).

The registrars must comply with all regulations which may from time to time be made by the Commissioners of His Majesty's Treasury for the safe custody of any securities deposited with them under the above provisions (Order II. r. 16).

Application as to Funds, etc., in Court.]—Moneys, stocks, or securities may be in court, through being paid in, transferred or deposited either by trustees under the provisions above mentioned, or by parties under order of the court or otherwise in the course of any of the actions or matters dealt with in this chapter. When so in court, any person entitled to or claiming to be interested, or (if need be, but not otherwise) the trustee, who desires the direction of the court as to the investment, paying out, or distribution of the whole or any part of the fund or the income thereof, may apply to the court by petition (Form 340), stating the substance of the order which he desires to obtain, and praying for the order and direction of the judge with respect to the fund, and the rights of all persons thereto. The petitioner must file a copy of the petition for every respondent to be served and one for the judge, which latter is to be forwarded to him by the registrar with an office copy of the affidavit filed on the payment of the funds into court; subject to the special provisions immediately following, the provisions of Order XXXVIII. rr. 2 to 8, apply to the service of, and to the proceedings on, the petition (Order XXXVIII. r. 23). If the application relates to the capital of the fund, the trustee and all persons interested must be served with a copy of the petition, unless the court otherwise directs. If it relates to income only the trustee alone must be served unless the court otherwise directs (Order XXXVIII. r. 24).

Hearing.]—If the person filing the petition relies only on the facts stated in the affidavit filed by a trustee, it will be sufficient for him to state on oath at the hearing that he believes the facts to be true, unless the judge requires further evidence (Order XXXVIII. r. 26), and in such cases the trustee need not appear, and if he does so his costs will not be allowed out of the fund unless the judge certifies that it was right and necessary for him to appear (Order XXXVIII. r. 28).

Except as above-mentioned, proof will, if the application relates to the capital of the fund in court, be required at the hearing of all facts necessary

to be ascertained, not only to grant the specific relief prayed, but also to declare and decide the rights of all parties in or to the fund in court; and the judge must make such order as to the whole fund as would be made upon a final judgment or order in an action for administration (Order XXXVIII. r. 27; Form 342).

Payment to Person Entitled.]—The registrar must pay the money found due to any person by the final order on his applying for the same and proving his identity; and where the person was an infant at the date of the order, on further proof that he has attained the age of twenty-one years (Order XXXVIII. r. 29).

Petitions.]—Proceedings under the Trustees Relief Acts, the Trustee Acts (other than proceedings under sect. 42 of the Trustee Act, 1893), or relating to the maintenance or advancement of infants, or under the Settled Land Acts, 1882 to 1890, or the Guardianship of Infants Act, 1886, must be commenced by filing a petition intituled in the matter of the particular Act and of the trust or settlement, with as many copies of the petition as there are respondents to be served (Order XXXVIII. r. 1).

General Practice.]—The petition must be filed with the registrar (Order II. r. 3; Order XXXVIII. r. 1; Form 340), and there should be delivered to him also as many copies as there are parties to be served, and an additional copy for the judge (Order LIV. r. 13). A statement must be made at the foot of every petition and of every copy of the persons intended to be served; if no person is intended to be served, a statement to that effect must be made (Order XXXVIII. r. 2). The registrar must then seal the copies, and deliver them for service upon the parties to the bailiff. He must also deliver to him, for each party to be served, a notice under seal of the court, stating the day and hour upon which the petition is to be heard, and informing them that if they do not attend in person, or by solicitor, the judge will make such order as he may think just and expedient (Order XXXVIII. r. 3; Form 341).

Every petition for dealing with money or securities in court chargeable with any duty payable to the revenue, or with the dividends on any such securities, must contain a statement whether the duty has or has not been paid (Order XXXVIII. r. 31).

Service of the copy petition must be made at least ten days before the hearing, in accordance with the rules as to the service of ordinary summonses (Order XXXVIII. r. 4).

Evidence of facts necessary to be brought before the court must be given by affidavit, unless the judge otherwise orders (Order XXXVIII. r. 5).

The judge may refer any matter to the registrar to make inquiries and report to him (Order XXXVIII. r. 6).

When the judge makes an order on a petition or application the registrar must, as soon as possible, draw up, seal and file it (Order XXXVIII. r. 8). In every final judgment or order liberty must be given to all parties to apply (Order XXXVIII. r. 7; Form 342).

The court, at the instance of any person interested, must inquire into any prolixity, and as to any irrelevant matter in any petition or affidavit, and as to any needless or unnecessary expense incurred, and must make such order in reference thereto as the justice of the case may require (Order XXXVIII. r. 30).

Subject to the above provisions, the general practice, so far as it is applicable, will apply to all proceedings by or under a petition.

Costs.]—In proceedings under sects. 67 and 70 of the Act, or under the Settled Land Act, 1882, or in any other proceedings under the equitable jurisdiction of the court, the judge may order the costs to be taxed under column B where the subject-matter does not exceed 20*l.* (Order LIII. r. 12).

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Appeal.]—There is an appeal for error in point of law or equity in all equity actions and matters authorised by the Act of 1888, pursuant to the general conditions already explained. See *post* p. 1702, as to the effect of the decision of the Court of Appeal in *The Delano*, (1895) P. 40; 64 L. J. P. 8, on special Acts which contain no express provisions as to appeal.

Transfer to Chancery Division of action exceeding jurisdiction. 28 & 29 Vict. c. 99, s. 9.

68. If during the progress of any action or matter under the last preceding section it shall be made to appear to the judge that the subject-matter exceeds the limit in point of amount to which the jurisdiction of the court is therein limited, it shall not affect the validity of any order already made, but it shall be the duty of the judge to direct the action or matter to be transferred to the Chancery Division of the High Court; and the whole of the procedure in the said action or matter when so transferred shall be regulated by the Rules of the Supreme Court: provided always, that it shall be lawful for any party to apply to a judge of the said Division at chambers for an order authorising and directing the action or matter to be carried on and prosecuted in the county court, notwithstanding such excess in the amount of the limit to which equitable jurisdiction is given by the said section; and the judge, if he shall deem it right to summon the other parties, or any of them, to appear before him for that purpose, after hearing such parties, or on default of the appearance of all or any of them, shall have full power to make such order.

Transfer to High Court.]—When the excess of jurisdiction appears from the evidence at the trial, the judge ought not to strike out the action or matter; but he ought to do so if the want of jurisdiction appears on the plaint or petition itself (*Birks* v. *Silverwood*, (1871) L. R. 14 Eq. 101; *Thomson* v. *Flinn*, (1881) L. R. 17 Eq. 415; 41 L. J. Ch. 638; 43 L. J. Ch. 256; but see sect. 114, *post*). The proper course in the former case is for the judge, if requested so to do, to make an order of transfer forthwith; but if not so requested, the order must not be made for fifteen days at least (Order XXXIII. r. 5; Form 331). See *Sunderland* v. *Glover*, *ante*, p. 53.

When the excess of jurisdiction appears on the taking of accounts, or making inquiries before the registrar, he may proceed with and complete the particular account or inquiry; but at the next sitting of the court he must present a certificate of the state of the proceedings, and if the judge is of opinion that the excess of jurisdiction exists, he must make the order of transfer in accordance with the provisions mentioned in the last paragraph (Order XXXIII. r. 6; Form 331).

When the order is made, the registrar must make and file a copy of the order, and must transmit it, by post or otherwise, to the proper officer of the Chancery Division, and must also give notice, by post or otherwise, to all parties and persons entitled to be served with a copy of the order (Order XXXIII. r. 5).

The registrar must also transmit to the same officer the record of proceedings, and all documents, as required in other cases pursuant to Order XXXIII. r. 7. If the transfer be made by the judge unrequested, as above, the costs of copies and of transmission must be paid by the plaintiff in the first instance, and the registrar may require a deposit for them, but this payment will be without prejudice to any question as to the party by whom the costs are ultimately to be borne (Order XXXIII. r. 7).

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When the judge has ordered the transfer, the action or matter will proceed in the High Court in the ordinary way, unless an order be obtained (see below) to continue the proceedings in the county court (sect. 68). After transfer the jurisdiction of the county court judge is at an end; he cannot make an order as to costs (*Hares* v. *Lea*, (1867) L. R. 10 Eq. 683). Fry, J., in giving judgment for the plaintiff in an action transferred under these provisions, made the plaintiff bear the costs of the trial in the county court (*Ward* v. *Wyld*, (1877) 5 Ch. D. 779).

These powers give the judge of the High Court entire discretion to extend the jurisdiction in the action or matter in question, irrespective of the statutory limitations.

Transfer to county courts of equitable actions or matters. 30 & 31 Vict. c. 142, s. 8.

69. Where any action or matter is pending in the Chancery Division of the High Court which might have been commenced in a court under this Act, it shall be lawful for any of the parties thereto to apply at chambers to the judge of the said division to whom the said action or matter is attached to have the same transferred to the court or one of the courts in which the same might have been commenced, and such judge shall have power upon such application, or without such application, if he shall think fit, to make an order for such transfer, and thereupon such action or matter shall be carried on in the court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal as they would have had if the action or matter had been commenced in such court.

Equity Actions and Matters.]—Though the subject-matter of the action may be within the county court jurisdiction, it has not been the practice to make orders of transfer without some special reason (*Picard* v. *Hine*, (1868) 18 L. T. 705). Where the judge has made the order, the court will not, except on strong grounds, interfere with his discretion. Where the defendant is an officer of the county court to which otherwise it would be proper to transfer the action, it may be transferred under 51 & 52 Vict. c. 43, s. 43, to an adjoining district (*Linford* v. *Gudgeon*, (1870) L. R. 6 Ch. 359; 40 L. J. Ch. 514).

Proceedings after Order.]—The plaintiff must lodge with the registrar the order, or a duplicate, and the writ, together with the pleadings, affidavits, etc., already filed, or copies thereof, and copies of affidavits on which the order was made, and also a statement of the names and addresses of the several parties to the action and their solicitors, if any, and, if no statement of claim has been delivered in the High Court, a concise statement of the particulars such as would be required on entering the plaint, and the registrar must then enter the action for trial, and give notice to the parties of the day appointed for trial, by post or otherwise, ten clear days at least before the day of trial, and must annex a copy of the particulars sealed with the seal of the court (Order XXXIII. r. 1; Order II. r. 8). The registrar must indorse on the order of transfer the date on which it was lodged (Order XXXIII. r. 2).

Until the transfer is completed, the action or proceeding will remain in the High Court (*David* v. *Howe*, (1884) 27 Ch. D. 533; 53 L. J. Ch. 1053; and see *R.* v. *Holroyd*, (1883) 32 W. R. 370).

The action or matter, after transfer, will be carried on in the same manner as an action or matter commenced in the county court, but no notice of defence under Order X. will be necessary, if a defence has already been delivered (Order XXXIII. rr. 2, 3).

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After transfer, the registrar must apply to the judge for directions, and the latter may then give directions for carrying on the action or matter, or may appoint a time to hear and determine any matters in such action or matter, and direct the registrar to summon all parties to appear on the day so appointed. The judge may also order the registrar to give notice to the parties, or any of them, that the order of transfer has been made (Order XXXIII. r. 8).

Costs.]—The provisions of Order XXXIII. r. 16, as to costs in interpleaders from the High Court apply also to these cases.

Special Costs.]—As to special costs allowable in these actions, see Order LIII. rr. 7, 8, and items 31, 70, 86 and 93, in the scales.

Appeal.]—The parties will have the same right of appeal and the practice on an appeal will be the same as in other cases.

Trustees may pay trust money or transfer stock and securities into county court. 30 & 31 Vict. c. 142, ss. 24, 25.

70. Any moneys, annuities, stocks, or securities vested in any persons as trustees, executors, administrators, or otherwise, upon trusts within the meaning of the Trustees Relief Acts, where the same do not exceed in amount or value the sum of five hundred pounds, upon the filing by such trustees or other persons, or the major part of them, with the registrar of the court within the district of which such persons or any of them shall reside, of an affidavit shortly describing, according to the best of their knowledge, the instrument creating the trust, may, in the case of money, be paid into a post-office savings bank established in the town in which the court is held, in the name of the registrar of such court, in trust to attend the orders of the court, and upon such persons filing with the registrar the receipt or other document given to them by the officer of the said bank, the registrar shall record the same, and give to them an acknowledgment in such form as may be prescribed, which acknowledgment shall be a sufficient discharge to such persons for the money so paid, and, in the case of stocks or securities, may be transferred or deposited into or in the names of the treasurer and registrars of such court, in trust to attend the orders of the court, and the certificate of the proper officer of the transfer or deposit of such stocks or securities shall be a sufficient discharge to such persons for the stocks or securities so transferred or deposited ; and for the above purposes all the powers and authorities of the High Court shall be possessed and exercised by the courts, and any order made by virtue of such powers and authorities shall fully protect and indemnify all persons acting under or in pursuance of such order.

Payment of Trust Funds into Court.]—For procedure, see note to s. 67, *ante ;* and see Order XXXVIII. r. 9.

Moneys paid into court in proceedings may be invested in

71. Any money paid into court in the actions or matters mentioned in the last four preceding sections, shall, unless otherwise ordered by the judge, be invested by the registrar in his name as registrar, within forty-eight hours of its payment into court, in a

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a post-office savings bank.

30 & 31 Vict. c. 142, s. 26.

post-office savings bank established in the town in which the court is held, without restriction as to amount, and without the declaration required of a depositor in a savings bank; and no part of any money invested in a post-office savings bank under this Act shall be paid out to any registrar except upon an authority addressed to the Postmaster-General by the Treasury.

Any person deriving any benefit under any moneys paid into a post-office savings bank under the provisions of this Act may nevertheless open an account in a post-office savings bank, or in any other savings bank, in his own name, without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

This section now extends to all money paid into a county court in any proceeding, and ordered by the judge to be invested for the benefit of any infant or person of unsound mind. See County Courts (Investments) Act, 1900 (63 & 64 Vict. c. 47, s. 1), *post*, p. 223; and see War Loan (Trustees) Act, 1915 (5 & 6 Geo. 5, c. 56, s. 2), *post*, p. 1019.

Money paid into Court.]—This cannot be drawn out without the authority of the Treasury (see sect. 71; Order XXXVII. r. 1). The ordinary rules as to payment into and out of court do not apply (Order IX. r. 23). Persons deriving benefit under such moneys may deposit moneys in other post-office savings banks (sect. 71).

The registrar must enter in the cash book and ledger for equitable proceedings all sums so paid to the account of the action or matter in which it is paid, and where the interest of any fund paid into a post-office savings bank has been directed to be paid to any person, the registrar must pay the same half-yearly out of any general moneys in his hands (Order XXXVII. r. 2).

The registrar, when directed by the court to draw out the fund or part of the fund in any action or matter, must apply by letter (Form 343) to the commissioners of the Treasury (Order XXXVII. r. 3).

Interest.]—Where money has, before January 1st, 1868, been invested in stocks in the names of the treasurer and registrar alone, the registrar must receive the dividends of all such funds and re-invest the same in the same names, except where the court shall otherwise direct, and apportion the amount so re-invested in his books (Order XXXVII. r. 4).

Legacy and Succession Duty.]—Before executing any order directing the payment or transfer of any fund, or part of any fund, in respect of which any duty is payable to the revenue under the Acts relating to legacy, succession or estate duty, the registrar must, before making the payment, require a certificate from the proper officer of, or the production of the receipt for, the payment of the duty chargeable in respect of such fund, or any part thereof respectively (Order II. r. 14).

Married Women.]—Where a married woman is interested in any principal money, stocks, shares or securities, exceeding in value 200*l.*, or 10*l.* in annual payments, and is not entitled to the same as her separate property, she must be examined by the judge apart from her husband to ascertain whether the same shall be paid to him or made the subject-matter of a settlement; and if the judge thinks that a settlement should be made, and in all cases where the married woman is under age, the judge must by his judgment make such settlement accordingly. The judge may, if he thinks fit, order such settlement to be prepared by counsel (Order XXXVII. r. 5).

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Fund Due to Deceased Intestate.]—Where in any action, matter, or proceeding the estate of a deceased intestate is entitled to a fund or to a share of a fund in court not exceeding 100*l.*, and the judge is satisfied that administration has not been taken out, and that his assets (including the fund or share to which the estate is entitled) do not exceed 100*l.*, the judge may direct the fund or share to be paid, transferred, or delivered to the person who, being a widower, widow, child, father, mother, brother, or sister of the deceased, would be entitled to take out administration to his estate (Order XXXVII. r. 6).

Person qualified to practise before courts.
15 & 16 Vict. c. 54, s. 10.
45 & 46 Vict. c. 57, s. 2.

72. It shall be lawful for any party to an action or matter or for a solicitor being a solicitor acting generally in the action or matter for such party, but not a solicitor retained as an advocate by such first-mentioned solicitor, or for a barrister retained by or on behalf of any party on either side, but without any right of exclusive audience, or by leave of the judge for any other person allowed by the judge to appear instead of any party, to address the court, but subject to such regulations as the judge may from time to time prescribe for the orderly transaction of the business of the court, the right of a solicitor to address the court shall not be excluded by reason only that he is in the permanent and exclusive employment of any other solicitor. No person other than a solicitor of the Supreme Court shall be entitled to have or recover any fee or reward for appearing or acting on behalf of any other party in any proceeding in the court: provided that nothing in this Act contained shall affect the right of any barrister at law to appear or act in any court, or of any solicitor of the Supreme Court to recover costs in respect of his employment of a barrister at law to appear or act as aforesaid.

Employment of Solicitor.]—Any act which may be done by any party to an action or proceeding according to the rules of practice may be done by him either in person or by his solicitor or agent, if it may be legally done by an agent (Order LIV. r. 1).

When a plaintiff's solicitor on entering the plaint complies with the requirements of Order VI. r. 9, or when the defendant's solicitor signs a notice of defence, set-off, or counterclaim, or when on behalf of any party, a solicitor gives notice in writing by post or otherwise, to the registrar and the other party, or his solicitor, that he is acting for any party, he will be deemed to be his solicitor until notice of change has been given (Order LIV. r. 4). In these cases the solicitor need not give notice under Order LIV. r. 4, that he is acting for the party. A solicitor's authority to start proceedings cannot be raised as a relevant issue in the action at the trial (*Richmond* v. *Branson & Son*, (1914) 83 L. J. Ch. 749). A solicitor who brings an action for an infant, on the instructions of a next friend who is also an infant, is liable to pay the costs (*Fernée* v. *Gorlitz*, (1915) 1 Ch. 177; 84 L. J. Ch. 404).

No person other than a solicitor can recover any fee or reward from any party, whether for services in or out of court in any action or proceeding (*Verlander* v. *Eddols*, (1882) 51 L. J. Q. B. 55).

Change of Solicitor.]—Subject to the provisions of sect. 72 prohibiting the retainer of a solicitor as an advocate by the solicitor of any party, a party who acts by solicitor may change him, without an order for the

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purpose. When such change is made, he must give forty-eight hours' notice in writing to the registrar and to the other parties or their solicitors. The notice must contain the name or firm and place of business of the new solicitor, and will be filed by the registrar. Until the notice has been given and filed and a copy served, the former solicitor will be deemed to be the solicitor of the party (Order LIV. r. 6; Form 352).

Authority of Solicitor.]—A solicitor retained merely to bring an action has no implied authority, after judgment, to engage in interpleader proceedings (*James* v. *Ricknell*, (1887) 20 Q. B. D. 164; 57 L. J. Q. B. 113), nor to enter into an agreement to give the defendant time for payment (*Lovegrove* v. *White*, (1871) L. R. 6 C. P. 440; 40 L. J. C. P. 253), nor to assent to the defendant executing a deed of assignment to a trustee in favour of his creditors (*In re "A Debtor"* (No. 1 of 1914), (1914) 2 K. B. 758; 83 L. J. K. B. 1176).

Cases in which counsel or solicitors appear have no precedence over others, although sometimes taken out of their order. Disputed claims which do not exceed 2*l*., may, at the request of the parties, and by leave of the judge, be heard by the registrar (see sect. 92).

Liability for Client.]—A solicitor is not liable to pay for things (such as photographs) ordered, on behalf of his client, for use on the trial of an action (*Wakefield* v. *Duckworth*, (1915) 1 K. B. 218; 84 L. J. K. B. 335).

The judge has no power, such as exists in the High Court, to order a solicitor to pay costs personally (*Davies* v. *Coles and Mowlem*, 132 L. T. Journal, 577.

Persons entitled to appear.]—Parties to a suit may either conduct their cases themselves, or they may employ a solicitor (Order LIV. r. 24), or, through a solicitor, a barrister to conduct their cases for them (Order LIV. r. 25). The solicitor, who is thus allowed to conduct a cause in court, must be the solicitor generally retained in the action, and not a solicitor practising as advocate for another. It is for the judge to determine whether this is or is not the case. If there is any evidence on which he can form an opinion, the High Court will not interfere. The fact of a solicitor being in the permanent and exclusive employment of another solicitor will not disqualify him from acting as advocate; but he will still require to be the solicitor acting generally in the action for the suitor (see *Bookham* v. *Potter*, (1868) L. R. 3 C. P. 490; 37 L. J. C. P. 276; *Shreeve* v. *Charlesworth*, (1868) 18 L. T. 325; *R.* v. *Snagge*, (1894) 2 Q. B. 440; 63 L. J. Q. B. 689).

It is not necessary for a party to give notice to any other, or to the court, of his intention to employ a barrister or solicitor, nor is the allowance of costs to the barrister or solicitor affected by want of notice (Order LIV. r. 8).

Where a party appears in person, he has a right to address the judge or jury as his own advocate, and then, being sworn, to give evidence as a witness, but such a course is inconvenient (*Cobbett* v. *Hudson*, (1852) 1 E. & B. 11; 22 L. J. Q. B. 11; 93 R. R. 1).

No solicitor may appear for any person, until he has signed the book kept by the registrar for that purpose. No fee is payable for this. He may be required by the registrar to produce his certificate once a year, and the registrar is to note the fact of production on the roll or book.

If the judge thinks fit, he may allow a person not a solicitor or barrister to address the court on behalf of, and instead of, a party to the proceeding, but such person will not be entitled to any fee or reward for so doing.

Inland Revenue Proceedings.]—The conduct of inland revenue proceedings is provided for by sect. 38 of the Finance Act, 1896, which provides that any person who has been admitted as a solicitor, and is employed or authorised by the Commissioners or the Solicitor of Inland Revenue, may appear in, conduct, defend, and address the court in any legal proceeding in a county court where the proceeding relates to inland revenue or to any

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matter under the care or management of the Commissioners of Inland Revenue.

Solicitor's Costs.]—The scales of costs allowable to solicitors are framed under 51 & 52 Vict. c. 43, s. 164. It will be seen that the lower scale of costs contains no provision for any allowance to solicitor in cases where the amount recovered does not exceed 2*l.*; and except in the special cases to which sect. 119 of the County Courts Act, 1888, and Order LIII. rr. 8, 17, apply, no such allowance can be made in such actions.

Two Counsel.]—On taxation of costs of an action brought under the extended jurisdiction there was no power to allow the fees of more than one counsel, except in proceedings under the Rivers Pollution Acts (see Order LIII. r. 45 (2); *Bates* v. *Gordon Hotels, Ld.*, (1913) 1 K. B. 631; 82 L. J. K. B. 441; but see now where costs are taxed under column C. (Order LIII. r. 8 (3) (*b*)).

PART IV.

Procedure and Trial.

Actions by plaint. 9 & 10 Vict. c. 95, s. 59.

73. On the application of any person desirous to bring an action under this Act, the registrar of the court shall enter in a book to be kept for this purpose in his office a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered; and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the court, according to such form, and be served on the defendant so many days before the day on which the court shall be holden at which the action is to be tried, as shall be prescribed, and delivery of such summons to the defendant, or in such other manner as shall be so prescribed, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

Entry of Plaint.]—On application, the registrar enters the plaint in a book kept in his office, stating the names and last known places of abode of the parties, and the substance of the action, every plaint being numbered according to the order in which it is entered. If the plaintiff does not reside in England or Wales, he must give security for costs (Form 16) to the satisfaction of the registrar; where the plaint is entered by a solicitor, an undertaking by him to be responsible for costs is sufficient. If the plaintiff fails in his action or discontinues, and does not pay the costs ordered to be paid by him, payment may be enforced against him, or the solicitor who has given the undertaking, as on a judgment debt (Order V. r. 10; Form 17). The High Court has held that when one only of two plaintiffs is abroad, an order for security cannot be made (*D'Hormusgee* v. *Grey*, (1882) 10 Q. B. D. 13; 52 L. J. Q. B. 192). A plaintiff ordinarily resident out of England and Wales may be ordered to give security, although temporarily resident in England or Wales (Order V. r. 11).

Præcipe.]—No plaint can be entered without filing a *præcipe*. Such *præcipe* must contain (1) the full names, occupation or description, and

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residence or place of business of the plaintiff and, in the case of an infant required to sue by a next friend, the particulars required by Order V. r. 16; (2) the surname of the defendant, his general occupation or description, and, subject to Order V. r. 13, his residence or place of business, and (where known) his full names, the name of the street in which his residence or place of business is situate, and the number of the house; (3) a statement whether the defendant is male or female, and, if known, whether of full age or not, and if a female whether married, single or a widow, provided also that these last-named facts are known; (4) a short statement of the cause of action, or remedy or relief sought, and of the debt or damages claimed (Order V. r. 4a; Form 6). Where a company registered under the Companies Consolidation Act, 1908, is a defendant, the *præcipe* must give an address for service described as "being the registered office of the company" (Order V. r. 5). If the plaintiff sues or any of the defendants is sued in a representative capacity, he must add both in the *præcipe* and particulars (5) a statement of the capacity in which the plaintiff sues, or the defendant is sued (Order V. r. 6). Where an assignee of a debt or other legal chose in action sues, the fact that he is such assignee, and the name, address, and description of the assignor, must be stated in the *præcipe* and summons (Order V. r. 7). If a solicitor enters the plaint, he must add (6) his name and address. No misnomer or inaccurate description of any person or place in a plaint will vitiate it so long as the person or place is described so as to be commonly known.

Illiterate Plaintiff.]—Where the intended plaintiff is illiterate and unable to furnish the required information in writing, the *præcipe* shall be filled up by the registrar's clerk (Order V. r. 4).

Summons, how issued.]—Upon the entry of the plaint, a summons stating the nature of the action, and bearing the number of the plaint in the margin, is issued under the seal of the court. It must be in one of the prescribed forms, and dated as of the day on which the plaint was entered, and that date is the commencement of the action. If issued by leave of the judge or registrar, the copy of the affidavit mentioned in Order V. r. 13, with a copy thereon of the order granting leave, must be annexed to the summons and served with it.

The registrar must issue the summons within the district to the high bailiff forthwith after the plaint is entered. He must, also, where particulars are required, annex to the summons a copy of the plaintiff's particulars, sealed with the seal of the court, and they will be deemed to be part of the summons, and make and deliver to the bailiff a true copy of the summons; and it is the duty of the bailiff to attend at the registrar's office for the purpose of receiving summonses once at least every day, and to ascertain, by examination and comparison of them, the correctness of the copies. The summons will direct the defendant to appear at the next court for which plaints are then being entered, or, at the request of the plaintiff, at any subsequent court (Order VII. r. 5). The day appointed for the appearance of the defendant, or any other day fixed for the trial, is called the return-day (see *post*, s. 186; Order LV.).

Errors in Summons.]—The section provides that no misnomer or inaccurate description of any person or place in the summons will vitiate it, so long as the person or place is described so as to be commonly known. In case of an error by the officers of the court causing the summons to be a nullity, it would appear that the judge has power to order a new summons to issue, bearing, if necessary, the date of the first; as where a defendant, sued as executor of A., was wrongly described by the officer in the summons as executor of B., the court, believing the first summons to be a nullity, refused to disturb a new summons, which the judge had ordered to issue, bearing the date of the first, to save the Statute of Limitations (*Foster* v. *Temple*, (1848) 5 D. & L. 655; 17 L. J. Q. B. 230).

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Where action may be commenced.

74. Except where by this Act it is otherwise provided, every action or matter may be commenced in the court within the district of which the defendant or one of the defendants shall dwell or carry on his business at the time of commencing the action or matter, or it may be commenced, by leave of the judge or registrar, in the court within the district of which the defendant or one of the defendants dwelt or carried on business, at any time within six calendar months next before the time of commencement, or, with the like leave in the court in the district of which the cause of action or claim wholly or in part arose.

In what District.]—The district in which actions and matters must be commenced is, generally speaking, to be ascertained from sect. 74 of the Act. As regards some particular forms of equity and other actions and matters, special provisions, differing from those contained in the above section, are made by other sections of the Act, and reference to them has already been made.

So, in many special Acts, particular provision is made as to the district in which proceedings under them must be commenced. Where there are no such provisions the general rule laid down by the section above-mentioned will, it is believed, apply.

Metropolitan Districts.]—England and Wales are divided into districts, and a county court is established in each. The city of London forms a district of itself, and the City of London Court is a county court like the others, except that it retains certain privileges (see *post*, sect. 185). The metropolitan districts are Bloomsbury, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, Whitechapel, and the city of London, and if the plaintiff and defendant dwell or carry on business in any of these districts, though not necessarily in the same, the action or matter may be commenced and all proceedings taken, either in the court of the district in which the plaintiff or in that in which the defendant dwells or carries on business (see sect. 84; Order LV., interpreting "metropolitan court," does not add Bow to the courts mentioned in that section).

This provision enables the plaintiff to sue in the district in which he dwells or carries on business, without leave and without its being necessary for any part of the cause of action to arise within the district. The jurisdiction exists even if the plaintiff has become resident within a district for the purpose of giving jurisdiction, if residence was actually and *bonâ fide* enjoyed before the issuing of the summons (*Massey* v. *Burton* (1857) 2 H. & N. 597; 27 L. J. Ex. 101; 115 R. R. 714).

The above provision excepts the Metropolitan districts from the operation of sect. 75 of the Act of 1888, which specifies the district in which certain equity actions and matters must be commenced. Those proceedings must, therefore, in the metropolitan districts, be commenced in accordance with the provision now under consideration (*R.* v. *Bloomsbury C. C.*, (1890) 24 Q. B. D. 309).

Sect. 39 of the London (City) Small Debts Extension Act, 1852 (15 Vict. c. lxxvii.), is not repealed by sect. 74 of the 51 & 52 Vict. c. 43, hence the City of London Court has jurisdiction if the defendant has "employment" within the city (*Kutner* v. *Phillips*, (1891) 2 Q. B. 267; 60 L. J. Q. B. 505), and without leave of judge or registrar, where the cause of action wholly or in part arose therein (*Felton* v. *Bower*, (1900) 1 Q. B. 598; 69 L. J. Q. B. 351).

Dwelling or carrying on Business.]—If a defendant has two permanent residences, he dwells and may be sued in the district of the one in which he is living at the time of action (*Butler* v. *Ablewhite*, (1858) 6 C. B. N. S. 740;

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28 L. J. C. P. 292; 120 R. R. 345; *Pigrim* v. *Knatchbull*, (1865) 18 C. B. N. S. 798; 34 L. J. C. P. 257; 144 R. R. 680); and possibly in the other (*Bailey* v. *Bryant*, (1858) 1 E. & E. 340; 28 L. J. Q. B. 86). A temporary residence in a district by a person who has a permanent residence elsewhere does not constitute a dwelling within the district of the temporary residence (*Macdougal* v. *Paterson*, (1851) 2 L. M. & P. 681; 21 L. J. C. P. 27; 87 R. R. 769; *Marsh* v. *Conquest*, (1864) 17 C. B. N. S. 432; 33 L. J. C. P. 319; 142 R. R. 433; *Kerr* v. *Haynes*, (1860) 29 L. J. Q. B. 70); nor will a compulsory temporary residence in gaol make the gaol his place of residence (*Dunston* v. *Paterson*, (1857) 5 C. B. N. S. 267; 28 L. J. C. P. 97; 116 R. R. 670).

Where the defendant had no permanent place of residence, it was held that he must be taken to dwell at the place where he was temporarily residing (*Alexander* v. *Jones*, (1866) 4 H. & C. 204; L. R. 1 Ex. 133; 35 L. J. Ex. 78).

A corporation or company dwells at the place where its business is substantially conducted and not necessarily at its registered office (*Taylor* v. *Crowland Gas Co.*, (1855) 11 Ex. 1; 24 L. J. Ex. 233; 105 R. R. 360; *Adams* v. *G. W. Rail. Co.*, (1861) 6 H. & N. 404; 30 L. J. Ex. 124; 23 R. R. 596; *Keynsham Lime Co.* v. *Baker*, (1864) 2 H. & C. 729; 33 L. J. Ex. 41; 133 R. R. 765); but it seems that a foreign corporation having an office in England would be considered as dwelling there (*Haggin* v. *Comptoir d'Escompte*, (1889) 23 Q. B. D. 519; 58 L. J. Q. B. 508; but see *Okura & Co.* v. *Forsbacka*, *post*, p. 74).

"Carrying on his business" means more than a mere employment; therefore a clerk in a public office does not carry on his business at the office where he performs his duties (*Buckley* v. *Hann*, (1851) 5 Ex. 43; 19 L. J. Ex. 151; 82 R. R. 553; *Rolfe* v. *Learmonth*, (1849) 14 Q. B. 196; 19 L. J. Q. B. 10; *Glennie* v. *Delmar*, (1850) 1 L. M. & P. 402; S. C., *nomine Sangster* v. *Cave*, 5 Ex. 386; 19 L. J. Ex. 314; 82 R. R. 719); nor does a solicitor's clerk at his master's office (*Graham* v. *Lewis* (C. A.), (1889) 22 Q. B. D. 1; 58 L. J. Q. B. 117); nor does a foreman or shopman at his master's shop (see *per* Rolfe, B., in *Glennie* v. *Delmar*, *supra*). A company director does not carry on his business at the place where the company's business is carried on (*Cain* v. *Butler*, (1916) 1 K. B. 759; 85 L. J. K. B. 804). A railway company carries on business in the district in which its principal office or station is situate, and not at other terminal or intermediate stations (*Brown* v. *L. & N. W. Rail. Co.*, (1863) 4 B. & S. 326; 32 L. J. Q. B. 318; 129 R. R. 766; *Shiels* v. *G. N. Rail. Co.*, (1861) 30 L. J. Q. B. 331; 126 R. R. 856; nor at receiving offices conducted by agents (*Minor* v. *L. & N. W. Rail. Co.*, (1856) 1 C. B. N. S. 325; 26 L. J. C. P. 39; 107 R. R. 681). A Scotch railway company whose line extends into England does not carry on business at its office there, if the principal office in which its business is managed is in Scotland (*Palmer* v. *Caledonian Rail. Co.* (C. A.), (1892) 1 Q. B. 823; 61 L. J. Q. B. 552). A pier company was held to carry on its business not at the place where the pier was situated, but at its central office in London, where the substantial business of the company was carried on (*Aberystwith Pier Co.* v. *Cooper*, (1866) 35 L. J. Q. B. 44). A company incorporated for the manufacture and sale of goods carries on its business at the place of manufacture and sale, not at its registered offices (*Keynsham Lime Co.* v. *Baker*, (1864) 2 H. & C. 729; 33 L. J. Ex. 41; 133 R. R. 765; *Oldham Co.* v. *Heald*, (1864) 3 H. & C. 132; 33 L. J. Ex. 236; 140 R. R. 350). A company carrying on business in London, which employs in a country town a general commission agent, who transacts the company's business in such town in an office for which the company pays him rent, does not carry on business in that town (*Corbett* v. *General Navigation Co.*, (1859) 4 H. & N. 482; 28 L. J. Ex. 214; 118 R. R. 564; *Shiels* v. *G. N. Rail. Co.*, (1861) 30 L. J. Q. B. 331; 126 R. R. 856), and it seems that it would be the same, even if the company's name were outside the office and printed on the agent's note-paper (*Baillie* v. *Goodwin*, (1886) 33 Ch. D. 604; 55 L. J. Ch. 849,

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decided under R. S. C., Order IX. r. 6). A firm whose principal place of business was in Glasgow, but who had a branch at Middlesbrough, was held to carry on business at Middlesbrough (*Weatherley* v. *Calder*, (1890) 61 L. T. 508). A temporary carrying on of business in a district by a person whose permanent place of business is elsewhere, does not make it his place of business for the purpose of being sued; as where a contractor erects workshops for men near work upon which he is engaged (see *per* Hill, J., *Shiels* v. *G. N. Rail. Co.*, *ante*, p. 73 ; *Gorslett* v. *Harris*, (1857) 29 L. T. O. S. 75). A surgeon who resides in one district, and daily attends patients in another, carries on business within the latter district (*Mitchell* v. *Hender*, (1854) 23 L. J. Q. B. 273).

As to a foreign corporation carrying on its business by agents in this country, see *Okura & Co.* v. *Forsbacka Jernverks Aktiebolag*, (1914) 1 K. B. 715; 83 L. J. K. B. 561.

Material Part of Cause of Action.]—The summons may issue in the district in which the "cause of action or claim wholly or in part" arose.

The point to be determined is what are the facts which can fairly be said to be material to the cause of action, as distinguished from those which are immaterial or foreign to it.

The order for goods is a material part of the cause of action for their price; therefore where an order for goods was given in Oxford to a traveller for a Manchester house, and the goods were by the defendant's request sent from Manchester by railway, it was held that the whole cause of action did not arise within the Manchester district (*Borthwick* v. *Walton*, (1855) 15 C. B. 501; 24 L. J. C. P. 83; 100 R. R. 463; see also *Jackson* v. *Beaumont*, (1855) 11 Ex. 300; 24 L. J. Ex. 301; 105 R. R. 536; *Gold* v. *Turner*, (1875) L. R. 10 C. P. 149; *Green* v. *Beach*, (1873) L. R. 8 Ex. 208; 42 L. J. Ex. 151). No distinction has been made between cases which are taken out of the operation of the Statute of Frauds by delivery and acceptance, and those where the contract is in writing, or where there is a memorandum signed by the party to be charged. So an oral order was held to be a material part (*Borthwick* v. *Walton*, *supra*); as was a mere oral offer to purchase, afterwards duly accepted (*Green* v. *Beach*, *supra*).

Non-payment at a place where a purchaser ought to pay is a material part (*Northey* v. *Gidney* (C. A.), (1894) 1 Q. B. 99).

Where the defendant by a letter written and posted in the district of one county court ordered the plaintiff to do certain work in that of another court, and the letter having been received and the work done within the district of the latter and a plaint issued from the latter court to recover the price, it was held that the whole cause of action arose within its district, and that the court had, therefore, jurisdiction (*Newcomb* v. *De Roos*, (1858) 2 E. & E. 271; 29 L. J. Q. B. 4; 119 R. R. 717. Acc. *Rennie* v. *Ratcliffe*, (1876) 35 L. T. 833; 25 W. R. 319; and see *R.* v. *Rogers*, (1877) 3 Q. B. D. 28; 47 L. J. M. C. 11; *Bennett* v. *Cosgriff*, (1877) 38 L. T. 177; *Household Fire Co.* v. *Grant* (C. A.), (1879) 4 Ex. D. 216; 48 L. J. Ex. 577; and see *contra*, *Taylor* v. *Jones*, (1875) 1 C. P. D. 87; 45 L. J. C. P. 110; *R.* v. *Holmes*, (1883) 12 Q. B. D. 23; 53 L. J. M. C. 37). A similar rule has been held to apply to accounts stated, and to contracts entered into by telegraph (*Cowan* v. *O'Connor*, (1889) 20 Q. B. D. 640; 57 L. J. Q. B. 401).

A plaintiff orally agreed with the defendant in A. district to purchase a horse to be delivered in B. district. The defendant afterwards brought the horse to the plaintiff in the B. district, when the plaintiff required a warranty which was given and the horse delivered. In an action for breach of the warranty, brought in the B. district, it was held that what had taken place in the A. district did not constitute a material or any part of the cause of action (*Aris* v. *Orchard*, (1861) 6 H. & N. 160; 30 L. J. Ex. 21; 123 R. R. 428). The case appears at first sight irreconcilable with others just cited; but it appears to have been held that the parties had not finally agreed upon any terms of sale upon the first occasion, or that what took place when the warranty was demanded and given, was equivalent to a rescission of the

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original contract and the making of a new one, with the addition of a warranty. In that view the whole cause of action obviously arose at B. Should the decision amount to more than this, some substantial ground appears for doubting the cases above-mentioned, in which it has been held that the oral order for goods is a material part of the cause of action, where delivery and acceptance of goods is relied on, to take a case out of the operation of the Statute of Frauds (see a case, *Cooper* v. *Caswell*, *cor.* Stephen, J., of Sleaford county court, in which he held in a similar case that an oral contract to purchase goods in a district did not give the court jurisdiction (16 S. J. 636)).

In an action for the price of goods sold and delivered, a material part of the cause of action arises at the place where the delivery to the vendee or to his agent takes place (*Kemp* v. *Clark*, (1848) 12 Q. B. 647; 17 L. J. Q. B. 305. See *Re Wilts Iron Co.*, (1868) L. R. 3 Ch. 443; 37 L. J. Ch. 554). Where delivery is made to a vendee by a carrier paid by the vendor, a material part arises at the place of actual delivery (*Arndt* v. *Porter*, (1861) 30 L. J. Ex. 19). Where a vendor in pursuance of a contract of sale sends goods to the vendee, delivery to the carrier is *primâ facie* delivery to the vendee, and a material part of the cause of action arises at the place of such delivery, except in cases where the contract is for the sale of goods for 10*l.* and upwards, and fails to satisfy the Sale of Goods Act, 1893, s. 4 (1) (*Smith* v. *Hudson*, (1865) 6 B. & S. 431; 34 L. J. Q. B. 145; 141 R. R. 459; *Norman* v. *Phillips*, (1845) 14 M. & W. 277; 14 L. J. Ex. 306; *Borthwick* v. *Walton*, (1855) 15 C. B. 501; 24 L. J. C. P. 83; 100 R. R. 463. But see *Aris* v. *Orchard*, and observations thereupon, *supra*). Cases such as *Ex parte Rosevear Clay Co.*, (1879) 11 Ch. D. 560; 48 L. J. Bk. 100, may be usefully consulted.

It may be stated generally, that either the making of a contract or the breach of it, is a material part of the cause of action upon the contract (*Banque de Crédit Commercial* v. *De Gas*, (1871) L. R. 6 C. P. 142; *Cooke* v. *Gill*, (1873) L. R. 8 C. P. 107; 42 L. J. C. P. 98; compare *Wirth* v. *Austin*, (1875) L. R. 10 C. P. 689). As to the meaning put upon the words "cause of action" in sect. 18 of the Common Law Procedure Act, 1852, see *Sichel* v. *Borch*, (1864) 2 H. & C. 954; *Allhusen* v. *Malgarejo*, (1868) L. R. 3 Q. B. 340; 37 L. J. Q. B. 169; *Jackson* v. *Spittall*, (1870) L. R. 5 C. P. 542; 39 L. J. C. P. 321; *Durham* v. *Spence*, (1870) L. R. 6 Ex. 46; 40 L. J. Ex. 3; *Cherry* v. *Thompson*, (1872) L. R. 7 Q. B. 573; 41 L. J. Q. B. 243; *Vaughan* v. *Weldon*, (1874) L. R. 10 C. P. 47; 44 L. J. C. P. 64.

Debt Composed of Several Items.]—Under the section which gave jurisdiction, where the cause of action did not arise wholly or in some material part within the jurisdiction of the court within which the defendant dwelt or carried on his business, it was held that where the items of a bill were so connected as to form one cause of action (as in *Grimbley* v. *Aykroyd*, (1847) 1 Ex. 479; 17 L. J. Ex. 157), if any one item arose within the jurisdiction of a county court, within which the defendant dwelt or carried on his business at the time of action brought, the cause of action "in some material point" arose within the jurisdiction (*Wood* v. *Perry*, (1850) 3 Ex. 442; 18 L. J. Ex. 161; *Bonsey* v. *Wordsworth*, (1856) 18 C. B. 325; 25 L. J. C. P. 205; 107 R. R. 318; *Copeman* v. *Hart*, (1863) 14 C. B. N. S. 731; 33 L. J. C. P. 107). Where a defendant entered into a written contract to take a number of bricks, and after some had been delivered, he declined to accept the rest; and it appeared that the contract was signed at the defendant's residence; it was held that the cause of action in a material point arose within the jurisdiction where the defendant dwelt (*Norman* v. *Marchant*, (1854) 7 Ex. 723; 21 L. J. Ex. 256).

In an action by an indorsee against the drawer of a bill of exchange, the notice of dishonour is a material part (*Huth* v. *Long*, (1850) 1 L. M. & P. 333; 19 L. J. Q. B. 325; see *Roff* v. *Miller*, (1850) 19 L. J. C. P. 278; 14 Jur. 746).

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In an action by a solicitor against a mortgagor for the costs of preparing a mortgage, the agreement to give the mortgage is a material part (*Jackson* v. *Grimley*, (1864) 16 C. B. N. S. 380; 33 L. J. C. P. 238; 139 R. R. 534). In an action against an administrator the grant of letters of administration is a material part (*Fuller* v. *Mackay*, (1853) 2 E. & B. 573; 22 L. J. Q. B. 415). In an action by the assignee of a debt, the assignment is a material part (*Read* v. *Brown* (C. A.), (1889) 22 Q. B. D. 128; 58 L. J. Q. B. 120).

Account stated.]—If an account be stated in one district in respect of a debt, the whole cause of action of which arose in another, an action on the account stated may be maintained in the former district (see *Evans* v. *Nicholson*, (1879) 32 L. T. 778; 45 L. J. C. P. 111, n.; *Taylor* v. *Nicholls*, (1875) 1 C. P. D. 242; 45 L. J. C. P. 455). An account stated was defined by Lord Abinger as "an admission of a balance due from one party to another" (*Irving* v. *Veitch*, (1837) 3 M. & W. 90, 107; 7 L. J. (N. S.) Ex. 25; 49 R. R. 511; and see 2 Wms. Saund. 122, note (*c*)); but it seems that something more than a mere admission is necessary, it must be assented to by the other party, as by bringing an action upon it (*Grundy* v. *Townsend*, (1888) 36 W. R. 531). If the evidence of the admission cannot be relied on there is of course no account stated and no jurisdiction (see *Wallace* v. *Allen*, (1875) L. R. 10 C. P. 607; 44 L. J. C. P. 351; and see *per* Brett, J., in *Taylor* v. *Nicholls*, (1875) 1 C. P. D. 242, 245; 45 L. J. C. P. 455).

When a letter sending an account is sent from one district to another by post, and a reply is sent by post promising payment, it appears that an account is stated in the district in which the letter promising payment is received, as well as in that in which it is posted, and that the letter operates as a continuing statement of account from the time of posting to the time of its receipt (*Evans* v. *Nicholson*, *supra*). This result is singular, for it is substantially that one act—that of posting—establishes two causes of action in different places. In one view it seems to be consistent with *Dunlop* v. *Higgins*, (1848) 1 H. L. Cas. 381; 73 R. R. 98; and see *Household Fire Insurance Co.* v. *Grant* (C. A.), (1879) 4 Ex. D. 216; 48 L. J. Ex. 577, and in the other with *Newcomb* v. *De Roos*, (1858) 2 E. & E. 271; 29 L. J. Q. B. 4. Giving a letter to a town postman outside a post-office, even if the postman goes inside, is not a posting (*Re London and Northern Bank, Ex parte Jones*, (1900) 1 Ch. 220; 69 L. J. Ch. 24).

Leave to commence Proceedings.]—The leave is in certain cases a condition precedent to the jurisdiction. Thus, if no leave has been obtained, the defendant may oust the jurisdiction of the court by appearing and objecting to the jurisdiction (*Brown* v. *L. & N. W. Rail. Co.*, (1863) 4 B. & S. 326; 32 L. J. Q. B. 318; 129 R. R. 766). Moreover if the defendant does not appear at all, it is believed that the court has in such a case no jurisdiction. If, however, he does appear and in ignorance of the defect raises no objection until the court has decided against him as to part of the claim, it is said that he has waived the objection and that the court has jurisdiction (*Moore* v. *Gamgee*, (1890) 25 Q. B. D. 244; 59 L. J. Q. B. 505).

An order for leave, which should only be granted when the judge or registrar has duly considered the affidavit and exercised his discretion in each case in accordance with the circumstances (*Rey.* v. *Turner*, (1897) 1 Q. B. 445; 66 L. J. Q. B. 417), should be signed by the judge or registrar in his own handwriting (Order V. r. 13 (8); Forms 8 (1), 8 (2), 9, 10. See as to the practice, *post*, p. 401).

Actions by or against Officers of the Court.]—See *ante*, pp. 25—28.

Equity and other Actions.]—See special provisions as to actions for the recovery of small tenements, p. 162; as to actions of ejectment, p. 33; as to actions of replevin, p. 157; as to equity actions, p. 51; as to actions under the Bills of Exchange Act, 1855, p. 309.

Debtors Act, 1869.]—See p. 235.

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Justices.]—If an action be brought in a county court against a justice for anything done under or in pursuance of the Act for the Prevention of Cruelty to Animals, it must be brought in the district in which, and within two calendar months from the time when, the act complained of was committed (12 & 13 Vict. c. 92, ss. 27, 28. See, for other provisions as to justices, 11 & 12 Vict. c. 44).

City of London Court.]—Sect. 39 of the London (City) Small Debts Extension Act, 1852 (15 Vict. c. lxxvii.), is not repealed by this section; hence the City of London Court has jurisdiction if the defendant has "employment" within the city (*Kutner* v. *Phillips*, (1891) 2 Q. B. 267; 60 L. J. Q. B. 505), and without leave of the judge or registrar, where the cause of action wholly or in part arose therein (*Felton* v. *Bower*, (1900) 1 Q. B. 598; 69 L. J. Q. B. 351).

In what courts proceedings in equity shall be taken. 28 & 29 Vict. c. 99, ss. 10, 11. 13 & 14 Vict. c. 60. 15 & 16 Vict. c. 55.

75. The provisions of the next preceding section shall not apply to any of the following proceedings; but

(1.) Proceedings which relate to the recovery or sale of any mortgage, charge, or lien on lands, tenements, or hereditaments, *or to partition*, shall be taken in that court within the districts of which the lands, tenements, or hereditaments, or any part thereof, are situate:

(2.) Proceedings under the Trustee Acts, 1850 and 1852, shall be taken in the court within the district of which the persons making the application, or any of them, reside or resides:

(3.) Proceedings for the administration of the assets of a deceased person shall be taken in the court within the district of which the deceased person had his last place of abode in England, or in which the executors or administrators, or any one of them, shall have their or his place of abode;

(4.) Proceedings in any partnership case shall be taken in the court within the district of which the partnership business was or is carried on:

Provided that if during the progress of any such proceedings it shall be made to appear to the court that the same could be more conveniently heard in some other court, it shall be competent for the court to transfer the same to such other court, and thereupon the proceeding shall be taken in such other court.

Sect. 84 excepts the metropolitan districts from the operation of this section. The equity proceedings here mentioned must, therefore, in the metropolitan districts, be commenced in accordance with the provisions of sect. 84 (*R.* v. *Bloomsbury C. C.*, (1890) 24 Q. B. D. 309).

Service of process out of district. 9 & 10 Vict. c. 95, s. 61.

76. Any summons or other process which under this Act shall be required to be served or executed out of the district of the court from which the same shall have issued, may be served or executed by the bailiff of any court in any part of England, and such service or execution shall be as valid as if the same had been

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made by the bailiff of the court out of which such summons or other process shall have issued within the jurisdiction of the court for which he acts.

By Order II. r. 21, the high bailiff is to serve or cause to be served process sent to him for service from other courts as soon as practicable.

In the case of an ordinary summons, the high bailiff of the foreign court must, eight clear days at least before the return-day, transmit the copy thereof to the registrar of the home court duly indorsed and signed by the bailiff (who must name the court of which he is a bailiff), and also the summons itself when not served (Order II. r. 27).

In the case of a judgment summons, this must be done three clear days at least before the return-day (Order II. r. 28).

In case of neglect to comply with either of the two preceding rules, the high bailiff of the foreign court may be ordered by the judge of the home court to pay to the plaintiff such sum as the judge may think reasonable, as compensation for any loss of time and expense which may have been caused to the plaintiff by such neglect (Order II. r. 29).

The City of London Court is included in this rule. See s. 185.

vice of mmons or ecution of warrant within 500 yards of trict.

19 & 20 Vict. c. 108, s. 17.

77. Any summons or other process may be served or a warrant executed within five hundred yards of the boundary of the district of the court from which the same issued by the bailiff of such court, or if the judge of such court so orders, by such bailiff within the district of any other court.

This general power of service within five hundred yards of the boundary of the court district is not controlled by the provision of Order VII. r. 29, for service, in the case of metropolitan districts, by a bailiff of the court within the district of which the defendant dwells or carries on business.

Proof of service of process by a bailiff.

38 & 39 Vict. c. 50, s. 3.

78. Where any summons or other process of the court is served by a bailiff of any court, the service may be proved by indorsement on a copy of the summons or process under the hand of such bailiff, showing the fact and mode of the service of such summons or process; and any such bailiff wilfully and corruptly endorsing any false statement on the copy of a summons or other process shall be guilty of a misdemeanor, and on conviction thereof shall be removed from his office or employment, and shall incur the same penalties as are or may be incurred by persons convicted of wilful and corrupt perjury.

The copy referred to is the one delivered to the bailiff pursuant to Order II. r. 8, and indorsed by him with particulars of service, etc.

Proof of Service.]—Where any summons has been served by a bailiff of any court, service may be proved by the indorsement on the copy under the hand of the bailiff, showing the fact and mode of service. Where service is on one of two partners sued, or on a person carrying on business in a name or style as if it were a firm name, see Order VII., rules 15, 16, 16A and 16A (2), and Forms 29A and 37 (2). To prove service by post on a company registered under the Companies Act, 1862, the indorsement ought, it is believed, to show that the summons was properly directed to the registered office, and was put as a prepaid letter into the post office in such time as to admit of its delivery within the period necessary for due service (see 25 & 26 Vict. c. 89, ss. 62, 63, and Annual Practice, notes to Order IX. r. 8, R. S. C.). Whether or not the proof of service is sufficient is a matter

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entirely in the discretion of the court; if it is satisfied with the proof, there is jurisdiction to hear the plaint (*Robinson* v. *Lenaghan*, (1848) 2 Ex. 333; 17 L. J. Ex. 174).

Where an affidavit of service is required, it must state when, where, how, and by whom service was effected (Order XIX. r. 12).

Where a solicitor represents he is authorised to accept service for a defendant it is sufficient to deliver the summons to him, provided he endorses on the copy retained by the bailiff, or the person serving the summons, a memorandum that he accepts service on behalf of the defendant (Order VII., r. 12).

Proceedings on hearing the plaint. 9 & 10 Vict. c. 95, s. 74.

79. On the return-day the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer the plaint; and on answer being made in court the judge shall proceed in a summary way to try the action and give judgment, without further pleading or formal joinder of issue.

At the trial the judge may try the whole matter of the action and give judgment thereon, or grant any relief, redress, or remedy, or may make any order or give any direction which he may consider necessary to enable final judgment to be given upon a day to which the trial may be adjourned, and also may make such order as to costs as he may think fit (see Order XXII. r. 13).

A hearing fee of 2*s.* in the pound must be paid before the trial.

The judge may in any case where the interests of the public require it, or to secure that justice may be done, hear a case *in camerâ* (*Norman* v. *Matthews*, (1916) 85 L. J. K. B. 857).

No evidence to be given that is not in summons. 9 & 10 Vict. c. 95, s. 75.

80. Subject to the power of amendment conferred by this Act, no evidence of any demand or claim shall be given by the plaintiff on the trial or hearing, except such as shall be stated in the summons or other proceeding under this Act directed to be issued or taken.

For power of amendment, see sect. 87.

Demands not to be divided for the purpose of bringing two or more actions. 9 & 10 Vict. c. 95, s. 63. 13 & 14 Vict. c. 61, s. 1.

81. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions in any of the courts; but any plaintiff having cause of action for more than *one hundred* (*a*) pounds, for which a plaint might be entered if not for more than *one hundred* (*a*) pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding *one hundred* (*a*) pounds; and the judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

NOTE.—(*a*) Increased from 50*l.* by County Courts Act, 1903.

Cause of Action not to be Divided.]—"Cause of action" in this section means "one cause of action," and is not limited to an action on one separate contract: therefore in the case of tradesmen's bills, in which one item is connected with another, "and the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one entire demand," the demand, if it now exceeds 100*l.* (3 Edw. VII. c. 42, s. 3), ceases to be within the jurisdiction

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Distinct claims of different character.

of the county court. So, where the sub-contractor of a railway company gave his workmen tickets or orders for goods, which were supplied by the plaintiff, and the latter brought 228 actions in the county court against the defendant in respect thereof, for sums amounting in the aggregate to 303*l.* 19*s.*, the Court of Exchequer granted a prohibition, although one claim only amounted to 5*l.*, and many to less than 20*s.* (*Grimbley* v. *Aykroyd*, (1847) 1 Ex. 479; 17 L. J. Ex. 157). Where, however, the cause of action consists of items of a different character, as a claim for goods sold and money lent, it is otherwise (*Brunskill* v. *Powell*, (1850) 1 L. M. & P. 550; 19 L. J. Ex. 362; 87 R. R. 887). So rent in arrear and a claim for double value for holding over, under the 4 Geo. II. c. 28, or indeed any two demands which would have required to be stated in distinct counts, may be sued for by separate plaints (*Wickham* v. *Lee*, (1848) 12 Q. B. 521; 18 L. J. Q. B. 21; 76 R. R. 334; *Neale* v. *Ellis*, (1843) 1 D. & L. 163; 12 L. J. Q. B. 329). A plaintiff entered two plaints in the county court, one for 19*l.* 19*s.* for goods sold and delivered, work and labour, and money paid; the other for 19*l.* for money lent. The plaintiff recovered judgment in the first cause for 17*l.*; in the second for 19*l.* Upon a motion for a prohibition, it was held that the items in the two plaints were not so connected as to form one cause of action (*Kimpton* v. *Willey*, (1850) 9 C. B. 719; 19 L. J. C. P. 269; 82 R. R. 515).

The fact of debts being incurred concurrently, and entered in one account by the plaintiff in his books, and rendered to the defendant in one statement of account, does not constitute a bar to, or a waiver of, his right to treat separate causes of action as distinct demands (*Kimpton* v. *Willey*, *Brunskill* v. *Powell*, *supra*). It seems that damage to goods and damage to the person, though occasioned by one wrongful act, give rise to distinct causes of action (*Brunsden* v. *Humphrey* (C. A.), (1884) 14 Q. B. D. 141; 53 L. J. Q. B. 476).

Where a plaintiff splits his demand and sues for part, and the defendant omits to take the objection, the plaintiff may afterwards sue for the residue, and the defendant cannot, either at the trial or by prohibition, defeat the claim under 51 & 52 Vict. c. 43, s. 81 (see *Vines* v. *Arnold*, (1851) 8 C. B. 632; 19 L. J. C. P. 98; 79 R. R. 653; *Adkin* v. *Friend*, (1878) 38 L. T. 393; *Jones* v. *Jones* (*No.* 2), (1874) 22 W. R. 577).

For provisions enabling the defendant to consolidate in one action several separate actions, see Order VIII., *post*, p. 426.

Abandonment by Plaintiff of Excess.]—The plaintiff may, in order to bring his claim within the jurisdiction of the county court, abandon the excess of his claim over 100*l.*, but the judgment in the action will bar any further proceedings for the recovery of the abandoned excess (see s. 81; 3 Edw. VII. c. 42, s. 3). The abandonment of the excess should always be entered at the end of the particulars, annexed to the summons (Order VI. r. 1). The effect of the rules now in force seems to be that the excess may be abandoned at any time; by Order XIV. r. 12, the plaintiff can amend his claim at any time before the return-day, and now by Order XIV. r. 13, can, at any time before his case is called on, or in his opening, abandon any part of his claim. This alters the practice on this point, laid down in *Avards* v. *Rhodes*, (1853) 8 Ex. 312; 22 L. J. Ex. 106; 91 R. R. 504, and *Re Hill*, (1855) 10 Ex. 726; 24 L. J. Ex. 137. It has long been held that if the amount claimed on the particulars did not exceed 50*l.* [now 100*l.*], the plaintiff might abandon any excess which appeared on the trial (*Isaac* v. *Wyld*, (1852) 7 Ex. 163; 21 L. J. Ex. 46; *acc.* under the rule, *Bodger* v. *Nicholls*, (1873) 28 L. T. 441). A plaintiff may by amended particulars abandon any excess over 100*l.*, even after a summons for prohibition has been taken out (*Haddon* v. *Morton*, (1893) 37 S. J. 634).

Where upon taking an account it appears that the plaintiff is entitled to a larger amount than 100*l.* and he has not abandoned the excess in his particulars, he may by leave of the court abandon the excess and judgment may

be thereupon entered for 100*l.*; if he does not abandon the excess the action will be struck out (Order XIV. r. 16).

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Entering a plaint for a sum within the jurisdiction—part of a larger claim, the whole arising out of one cause of action—is not of itself an abandonment of the excess (*Vines* v. *Arnold*, (1851) 8 C. B. 632; 19 L. J. C. P. 98; 79 R. R. 653)

The abandonment should be entered in the judgment; since, by the section. "entry of the judgment" must "be made accordingly."

82. Subject to the power of amendment conferred by this Act, no defendant shall be allowed to set off or set up by way of counterclaim any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence, and to claim and have the benefit of infancy, coverture, or any statute of limitations, or of his discharge under any statute relating to bankrupts, or any act for relief of insolvent debtors, without the consent of the plaintiff, unless the prescribed notice thereof shall have been given to the registrar; and in every case in which the practice of the court shall require such notice to be given, the registrar of the court shall as soon as conveniently may be after receiving such notice, communicate the same to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business, but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the registrar.

Notice of special defences to be given to registrar, who shall communicate same to plaintiff. 9 & 10 Vict. c. 95, s. 76.

Notice of Special Defence.]—A defendant cannot at the trial set off or set up by way of counterclaim any debt or demand recoverable by him from the plaintiff, or set up as a defence infancy, coverture, statute of limitations or discharge under the bankrupt or insolvent Acts, without the plaintiff's consent, unless he has given notice in writing of his intention to set up such special defence to the registrar of the court.

The section also provides that "in every case in which the practice of the court shall require such notice to be given," the registrar must communicate it to the plaintiff. Under the power inferentially so given, as well as the power to frame rules, the Rule Committee have enlarged the number of cases in which notice of defence is requisite by the addition of certain defences in actions of libel and slander, statutory defences, equitable defences, defence of tender, or fraud or misrepresentation (Order X. r. 10).

The notice (Forms 84, 85) must be filed in duplicate with the registrar five clear days (but ten clear days in actions brought under the Act of 1903) at least before the return-day, and must contain the name and address of the defendant, and a concise statement of the grounds of defence or of set-off or counterclaim (Order X. r. 10; Order XXIIA. r. 13 (1)), and he must deliver to the registrar, in addition, as many copies of the notice as there are plaintiffs, and an additional copy (if required) for the use of the judge (Order LIV. r. 13); and the registrar must, within twenty-four hours from the time of receiving the same, send one of the copies to each of the plaintiffs, either by post or by delivery at his usual place of abode or business (Order X. r. 10). At the trial it is not necessary for the defendant to prove that the notice was communicated by the registrar to the plaintiff. It is not provided, either by the rules or the statute, for the event of the registrar omitting to send notice to the plaintiff; but it is conceived that it would be such a default of the court as would entitle the plaintiff to an adjournment for the purpose of bringing evidence to rebut the defence, without payment of the costs of the day. In case of non-compliance by the defendant with

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the rules applying to notice of grounds of defence, the judge may, on such terms as he thinks fit, adjourn the trial to enable the defendant to give such notice (Order X. r. 10).

Amendment of Notice.]—The defendant, whether by original action, counterclaim, or otherwise, may, without any order, file and deliver an amended notice of defence pursuant to Order XIV. r. 12.

Waiver of Irregularity by Notice.]—By giving notice of defence, the defendant waives an irregularity in the process—*e.g.*, the insufficiency of particulars, or an error in the summons (*In re Jones*, (1850) 1 L. M. & P. 65; 19 L. J. Q. B. 257; 87 R. R. 518; *Winsor* v. *Dunford*, (1848) 12 Q. B. 603; 18 L. J. Q. B. 14; *Wedlake* v. *Sargent*, (1851) 15 Jur. 1134; *Knowles* v. *Holden*, (1855) 24 L. J. Ex. 223, *per* Parke, B.; 101 R. R. 909; and see Order LIV. r. 25); and *quære* whether, since the provisions for giving jurisdiction by the parties, an absolute defect in the jurisdiction would not be cured by such notice. The defences above referred to are contained in the following paragraphs, matters peculiar to each head of defence being mentioned in the paragraph particularly relating to it. The provisions as to counterclaims are collected in a separate chapter.

Set-off.]—Where a defendant intends to rely on a set-off of any debt or liquidated money demand, he must in his notice state the particulars of it. The provisions of Order VI. as to particulars will apply to them (Order X. r. 11; Form 84). If a defendant gives an imperfect notice, and is thereby precluded from proving his set-off at the trial, he may still enforce it by subsequent original action (*Stanton* v. *Styles*, (1850) 5 Ex. 578; 19 L. J. Ex. 336; and see *Hindley* v. *Haslam*, (1878) 3 Q. B. D. 481).

If a plaintiff sues one of several defendants jointly liable, pursuant to 51 & 52 Vict. c. 43, s. 97, the defendant may avail himself of a set-off as if all had been joined (Order X. r. 7). If a person be improperly joined as plaintiff and defendant raises a set-off or counterclaim, he may establish it as against the other plaintiffs (Order X. r. 8).

A set-off differs in several respects from a counterclaim. Each is in the nature of a cross-action, but a set-off, besides being applicable only to debts or liquidated demands, has an effect upon the original claim different from that of a counterclaim. An established set-off reduces the plaintiff's claim in the action *pro tanto*, or entirely defeats it. An established counterclaim is equivalent to a verdict in a cross-action, and there are two verdicts, each separate and distinct. Moreover, a set-off can go no further than to defeat a claim—the defendant cannot recover anything beyond; but a defendant may establish and obtain judgment on a counterclaim exceeding in amount the plaintiff's original claim. (As to set-off, see the judgments in *Newell* v. *National Provincial Bank of England*, (1876) 1 C. P. D. 496; 45 L. J. C. P. 285; *In re Whitehouse*, (1878) 9 Ch. D. 595; 47 L. J. Ch. 801; *Stooke* v. *Taylor*, (1880) 5 Q. B. D. 569; 49 L. J. Q. B. 857; *Neale* v. *Clarke*, (1879) 4 Ex. D. 286).

For the special provisions of the Employers and Workmen Act, 1875, enabling county court judges to adjust and set off cross-claims in cases of disputes between an employer and a workman, see Part V., "Employers and Workmen Act, 1875."

Infancy.]—Where a defendant intends to rely on the defence of infancy, he must in his statement set forth, so far as he is able, the place and date of his birth (Order X. r. 12; Form 85).

Coverture.]—Where a female defendant intends to rely on the defence of coverture, she must set forth, so far as she is able, the place and date of marriage, the christian name and surname of her husband, and his address and description (Order X. r. 13; Form 85).

Statute of Limitations.] — Where a defendant intends to rely on the defence of any statute of limitations, his statement may be according to the Form 85 (*ib.* rr. 14, 18; Form 85; *Eaton* v. *Tapley*, (1899) 1 Q. B. 953; 68 L. J. Q. B. 638). The Public Authorities Protection Act, 1893, s. 1, is a

statute of limitations, and should be so pleaded (*Gregory* v. *Torquay Corporation*, (1912) 1 K. B. 442; 80 L. J. K. B. 981). Section 82 Notes.

Discharge under Bankruptcy Acts.]—Where a defendant intends to rely on the defence of a release under any statute relating to bankrupts, he must set forth the date of his discharge, and the court by which it was granted (Order X. r. 15; Form 85).

Libel or Slander.]—Where in any remitted action for libel or slander the defendant relies as a defence upon the fact that the libel or slander is true, he must set forth that the libel or slander complained of is true in substance (Order X., r. 16; Form 85). If he relies upon an apology, or payment into court and apology under the provisions of sects. 1 and 2 of the Libel Act, 1843, he must give notice in writing (Forms 86, 87), signed by himself or his solicitor, five clear days at least before the day fixed for the trial (Order XXXIII. r. 4).

If he does not rely as a defence upon the fact that the libel or slander is true, but relies in mitigation of damages on the circumstances under which the libel or slander was published, or the character of the plaintiff, he must give particulars of the matters relating thereto as to which he intends to give evidence (Order X. r. 17. These cases can only arise when the parties agree to give the court jurisdiction, or when an action is remitted for trial by the High Court). This rule would not prevent cross-examination to credit without such notice.

Statutory Defence.]—When in any action the defendant relies upon a statutory defence (except the Statute of Limitations) or any defence of which he is required by any statute to give notice, he must set forth the year, chapter, and section of the statute, or the short title thereof, and the particular matter on which he relies, or otherwise sufficiently indicate the nature of the defence on which he relies (Order X. r. 18 (2); Form 85. As to Statute of Limitations, see *Eaton* v. *Tapley*, *ante*, p. 82). But this rule does not entitle a plaintiff to maintain an action contrary to the provisions of the Gaming Acts, 1845 or 1892, by reason of the Acts not having been pleaded as a defence (Order X. r. 18 (2)).

The defence afforded to county court bailiffs by sect. 54 of the County Courts Act, 1888, is such a defence (*Denny* v. *Bennett*, (1896) 44 W. R. 333).

The rule clearly covers those cases in which the general issue by statute can be pleaded. In an action against a local board it was held that the board could not, at the trial, object to the sufficiency of a notice of action given under the Public Health Act, 1875, no notice of such defence having been given under the rule (*Kay* v. *Atherton Local Board*, (1878) 42 J. P. 792; overruled in *Graham* v. *Mayor of Newcastle*, (1893) 1 Q. B. 643; 62 L. J. Q. B. 315, but on another point). So in an action against a police officer, where notice of action had not been given in time, but no notice of defence had been given, it was held that the judge was wrong in non-suiting the plaintiff (*Allwright* v. *Perks*, (1893) 9 T. L. R. 235). So want or insufficiency of a notice of injury under the Employers' Liability Act (*Conroy* v. *Peacock*, (1897) 2 Q. B. 6; 66 L. J. Q. B. 425); no memorandum in writing sufficient to satisfy the Statute of Frauds, or now sect. 4 of the Sale of Goods Act (*Brutton* v. *Branson*, (1898) 2 Q. B. 219; 67 L. J. Q. B. 827); no signed bill of solicitor's costs (*Lewis* v. *Burrell*, (1898) 77 L. T. 626); a defence under the Gaming Act, 1892 (*Willis* v. *Lovick*, (1901) 2 K. B. 195; 70 L. J. K. B. 656; and see *Renton* v. *King*, (1905) 93 L. T. 10), are all statutory defences, though the plaintiff can no longer avail himself of the omission to plead the last-named Act as a defence (Order X. r. 18 (2)). A defence of breach of warranty, though dealt with in the Sale of Goods Act, 1893, s. 53, is not a statutory defence, as it does not owe its existence to a statute (*Bright* v. *Rogers*, (1917) 86 L. J. K. B. 804. The notice of objections to the plaintiff's title under the Copyright Act, 1842, s. 16 (5 & 6 Vict. c. 45, s. 16), would, it is believed, be within the rule

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(*Harris* v. *Sheldon*, (1889) W. N. 92, 128, was decided before the new rule). The rule applies to actions of contract.

Equitable Defence.]—Where a defendant claims to be entitled as matter of defence to any equitable estate or right, or to relief upon any equitable ground against the claim of the plaintiff, or any part thereof, he must show concisely the circumstances which give rise to such defence, and set forth separately each of the grounds of equitable defence (Order X. r. 19): that is to say, where a defendant has to rely on facts which would formerly have entitled him to relief in equity against the plaintiff's claim, he must concisely state them (see *Heap* v. *Marris*, (1876) 2 Q. B. D. 630; 46 L. J. Q. B. 761).

A defence of this kind must not be confounded with counterclaim. Where the facts relied on go to *defeat* the claim of the plaintiff, whether by way of denial of the claim or by way of admission—that, *e.g.*, something was due, the right to recover which has been avoided—then such facts constitute a proper matter of defence. But if they go to show a claim of a different nature, not merely denying or avoiding the plaintiff's claim, such facts constitute a ground for a counterclaim, and not a defence on equitable grounds.

The defendant may rely on any equitable defence; and, so far as it goes to defeat the plaintiff's claim, the judge has power to entertain any defence whatsoever (see *Davis* v. *Flagstaff Co.* (C. A.), (1877) 3 C. P. D. 228; 47 L. J. C. P. 503), whether he would or would not have jurisdiction if the matter came before him by way of original claim or counterclaim. A defendant might set up as a defence to an action upon a deed, that its terms had been, by mutual mistake of the parties, wrongly expressed. The court might then for the purposes of the action treat the deed as reformed, though it could not go further and actually reform it on a mere defence (see *Breslauer* v. *Barwick*, (1876) 36 L. T. 52; 24 W. R. 901; *Mostyn* v. *West Mostyn Coal Co.*, (1875) 1 C. P. D. 145; 45 L. J. C. P. 401).

As to notice of defence when a summons for a judgment by default is issued, see *post*, sect. 86; and as to defences in proceedings under the Bills of Exchange Act and other cases, see the special chapters devoted to the particular subjects.

If the defendant has, at any time before the commencement of the action, tendered to the plaintiff the amount claimed, or what he considers to be due to the plaintiff, he may set it up as a defence; and if he succeeds in establishing it, and no further sum is awarded to the plaintiff, the defendant will generally obtain all the costs of the action. The defence is not available unless, with notice of defence, the defendant pays into court (the payment may be made without costs) the amount alleged to have been tendered (Order X. r. 20; Form 85). Notice of the defence and payment into court will be given by the registrar to the plaintiff in accordance with Order X. . 10. The plaintiff may accept the money in satisfaction. He is not ntitled to take it out of court or to any costs without an order of the court, which may make such order as to the costs of either party as may be just, and may order any costs awarded to the defendant to be deducted from the amount in court (Order IX. r. 18).

The defence of tender cannot be raised to a claim for unliquidated damages (*Dearle* v. *Barrett*, (1834) 2 A. & E. 82; S. C., *nom. Searle* v. *Barrett*, 4 N. & M. 200), except in some cases of wrong, as when by statute a tender of amends is permissible, and may be relied on at the trial. Money may however be paid into court, with or without a denial of liability, see *post*, Order IX., r. 12.

A tender need not be made by the debtor in person, it may be made by a third person on his behalf (Bacon's Abridgement, *Tender A.*); nor to the creditor personally; it may be made to an authorised agent (*per* Parke, B., *Kirton* v. *Braithwaite*, (1836) 1 M. & W. 310, 313). A tender of part of an entire demand is bad (*Dixon* v. *Clark*, (1849) 5 C. B. 365; 16 L. J. C. P. 237; 75 R. R. 747). A tender of a larger amount than is due is

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good (*Wade's Case*, (1601) 5 Rep. 115 a; *Dean* v. *James*, (1832) 4 B. & Ad. 546; 2 L. J. K. B. 94), unless objected to for want of change (*Bevans* v. *Rees*, (1839) 5 M. & W. 306, 308, *per* Lord Abinger, C.B.; 8 L. J. (N. S.) Ex. 263; 52 R. R. 727; *Betterbee* v. *Davis*, (1811) 3 Camp. 70; 13 R. R. 755). So a tender of 2*l.* by a debtor who owed 1*l.* 13*s.* (*Cadman* v. *Lubbock*, (1824) 5 D. & R. 289; 3 L. J. (O. S.) K. B. 41) and a tender of 20*l.* 19*s.* 6*d.* in notes and silver by a debtor who owed 20*l* (*Dean* v. *James*, *supra*) have been held good. Bank of England notes are a legal tender for all sums above 5*l.* (3 & 4 Will. 4, c. 98, s. 6), so are currency notes for 1*l.* and 10*s.* issued by the Treasury under the statute 4 & 5 Geo. 5, c. 14. There must be an actual production of the money, or its production must be expressly or impliedly dispensed with (*Thomas* v. *Evans*, (1808) 10 East, 101; 10 R. R. 229; *Finch* v. *Brook*, (1834) 1 Scott, 70, 76, *per* Tindal, C.J.; 1 Bing. N. C. 253; 4 L. J. (N. S.) C. P. 1; 41 R. R. 595); and the tender must be made unconditionally (*Laing* v. *Meader*, (1824) 1 C. & P. 257; *Ford* v. *Noll*, (1842) 12 L. J. C. P. 2). Merely demanding a stamped receipt for the amount offered would not, it is thought, make a tender bad (*Richardson* v. *Jackson*, (1841) 8 M. & W. 298; 10 L. J. Ex. 303; 54 & 55 Vict. c. 39, s. 103). A cheque objected to merely as to amount was held to be a good tender (*Jones* v. *Arthur*, (1840) 8 Dowl. 442).

Fraud or Misrepresentation.]—Must now be specially pleaded (Order X. r. 21A).

83. An affidavit to be used in a court may be sworn before any judge or registrar, or clerk to the registrar nominated by a judge for that purpose, without the payment of any fee, or before any commissioner to administer oaths in the Supreme Court not being a registrar, or before a justice of the peace.

Before whom affidavits may be sworn. 19 & 20 Vict. c. 108, s. 58.

Affidavits must be expressed in the first person, and drawn up in paragraphs and numbered (Order XIX. r. 1. For heading, see Form 3). All affidavits other than those for which forms are given must state the deponent's occupation, quality, and place of residence, and also what facts or circumstances deposed to are within his own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, and what those sources are (Order XIX. r. 2). The costs of an affidavit which unnecessarily sets forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, are to be paid by the party filing it (Order XIX. r. 2). Every affidavit must be intituled in the action or matter in which it is sworn; but if there are more plaintiffs or defendants than one the full name of the first only must be given, with a statement that there are others (Order XIX. r. 3). It must be stated in a note at the foot on whose behalf it is filed, and that note must appear in all copies (Order XIX. r. 4). The costs of affidavits not in conformity with the preceding rules will be disallowed on taxation, unless the court otherwise directs (Order XIX. r. 5). In an affidavit made by two or more deponents, the names of the several deponents are to be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it will be sufficient to state that it was sworn by both (or all) of the "above-named" deponents (Order XIX. r. 6).

Sources of knowledge to be stated.

Costs when disallowed.

All affidavits must be delivered to the registrar, and must be filed by him before use, and it is his duty to distinguish them by the number of the plaint in respect of which they are filed, and from each other, by a distinctive letter of the alphabet (Order XIX. r. 7; Order II. r. 3). He is entitled to require also the delivery of copies to him pursuant to Order LIV. r. 13.

Filing.

The rule as to filing does not hinder a judge from making an order in an urgent case upon the undertaking of the applicant to file an affidavit already sworn, provided that the order be not issued until the affidavit has been filed (Order XIX. r. 7).

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An affidavit will not be filed which has been sworn before a commissioner who was at the time of the swearing of the same the solicitor acting for the party on whose behalf such affidavit is to be used, or the agent, correspondent, partner, or clerk of such solicitor, or who is the party himself (Order XIX. r. 8).

Erasure, blotting, interlineation, etc.

No affidavit which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, or in the body or jurat of which there is any interlineation, alteration, or erasure, unless the person before whom it is sworn has initialled the interlineation or alteration, and in case of an erasure, shall have re-written and signed in the margin the words or figures appearing to be written on the erasure, or which is so imperfect upon the face by reason of blanks or otherwise that it cannot easily be read or understood, is to be filed or used, unless the court otherwise orders (Order XIX. r. 9).

Illiterate or Blind Deponent.]—Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer must certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit can be used in evidence in the absence of this certificate, unless the court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent (Order XIX. r. 10).

The court may receive an affidavit sworn for the purpose of being used in any action or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in its form, and may direct a memorandum of its reception to be made upon it (Order XIX. r. 11).

Where a registrar rejects an affidavit, he must give notice (Form 133), by post or otherwise, to the party offering it for filing, of the rejection and the reasons, but no such notice is necessary if the party offering the same is present when the registrar rejects the affidavit (Order XIX. r. 14).

The above rules apply to all cases in which any evidence may be given, or matter proved by affidavit; but, even in cases in which evidence is required or permitted to be taken by affidavit, such evidence may be taken orally on oath, if the judge or registrar shall, at or before the trial, so direct (Order XVIII. r. 1).

Costs of Special Affidavits.]—On taxation of costs instructions for special affidavits will not be allowed, unless in the opinion of the registrar the facts on which they were grounded had not become known to the solicitor or his clerks in the course of the business (item 23).

Affidavits of service, when required, must state when, where, how, and by whom service was effected (Order XIX. r. 12).

Districts of courts in metropolis to be treated as one district. 19 & 20 Vict. c. 108, s. 18. 30 & 31 Vict. c. 142, s. 3.

84. Where a plaintiff shall dwell or carry on business in the district of the Bloomsbury county court of Middlesex, or in the district of the Brompton county court of Middlesex, or in the district of the Clerkenwell county court of Middlesex, or in the district of the Lambeth county court of Surrey, or in the district of the Marylebone county court of Middlesex, or in the district of the Shoreditch county court of Middlesex, or in the district of the Southwark county court of Surrey, or in the district of the Westminster county court of Middlesex, or in the district of the Whitechapel county court of Middlesex, or in the district of the City of London Court, and the defendant shall dwell or carry on business in the district of any of the said courts, the action or

matter may be commenced, and all proceedings thereon taken and had either in the court of the district in which the plaintiff shall dwell or carry on business, or in the court of the district in which the defendant shall dwell or carry on business. Section 84.

Metropolitan Districts.]—England and Wales are divided into districts, and a county court is established in each. The city of London forms a district of itself, and the City of London Court is a county court like the others, except that it retains certain privileges. The metropolitan districts are Bloomsbury, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, Whitechapel, and the city of London, and if the plaintiff and defendant dwell or carry on business in any of these districts, though not necessarily in the same, the action or matter may be commenced and all proceedings taken, either in the court of the district in which the plaintiff or in that in which the defendant dwells or carries on business.

Order LV. interpreting "metropolitan court" does not add Bow to the courts mentioned in this section.

This provision enables the plaintiff to sue in the district in which he dwells or carries on business, without leave and without its being necessary for any part of the cause of action to arise within the district. The jurisdiction exists even if the plaintiff has become resident within a district for the purpose of giving jurisdiction, if residence was actually and *bonâ fide* enjoyed before the issuing of the summons.

The above provision excepts the metropolitan districts from the operation of sect. 75 of the Act of 1888, which specifies the district in which certain equity actions and matters discussed in Part VIII. must be commenced. Those proceedings must, therefore, in the metropolitan districts, be commenced in accordance with the provision now under consideration.

Sect. 39 of the London (City) Small Debts Extension Act, 1852, is not repealed by sect. 74 of the 51 & 52 Vict. c. 43, hence the City of London Court has jurisdiction if the defendant has "employment" within the city, and without leave of judge or registrar, where the cause of action wholly or in part arose therein.

Dwelling or carrying on Business.]—For the meaning of these words, see note to sect. 74, *ante*, p. 72.

85. If a judge shall be satisfied by either party to an action or matter pending in his court that such action or matter can be more conveniently or fairly tried or heard in some other court, he shall order that the same be transferred to such other court, or, if the judge shall be interested in any action or matter pending in his court, he shall order that the same be transferred to some convenient court of which he is not the judge at his discretion; and in either case the registrar of the court in which the action or matter was commenced shall forthwith transmit by post to the registrar of the court to which it is to be sent, a certified copy of all the proceedings therein, and the judge of such last-mentioned court shall appoint a day for the trial or hearing, notice whereof shall be sent, by post or otherwise, by the registrar to all parties interested, and thenceforth all proceedings therein shall be taken in such court as if the action or matter had been commenced therein. Power to judge to change place of trial. 19 & 20 Vict. c. 108, s. 22.

Transfer to another Court.]—If the judge is satisfied, by either party to an action or matter, that it can be more conveniently or fairly tried in some

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other court, he must send it for hearing to such other court; or, if the judge be himself interested in the action or matter, he must send it for hearing to ome other convenient court of which he is not the judge (sect. 85; Form 120). The registrar must forthwith transmit by post a certified copy of all the proceedings to the registrar of the other court, and the judge of it is to appoint a day for hearing, notice (Form 121) whereof is to be given, by post or otherwise, to the parties.

Where actions are commenced in different courts by parties in the same interest, upon application by any of the parties, they must be transferred to the court in which the first plaint was entered, and will then proceed in all respects as if they had been commenced in that court (Order VIII. r. 8).

If an action be brought by an officer of a county court in the court of which he is an officer, except as *official* receiver, the judge, at the request of the defendant, must order that the action be sent for trial to the court of some convenient district of which he is not the judge (see sect. 42; Form 120). Where any of the parties to an action are officers of the court, the judge, if he thinks fit, may direct the trial to take place at some convenient court of which he is not the judge (Order XXII. r. 23; Form 121). The proceedings, after the making of the order, are the same as in the cases above mentioned (51 & 52 Vict. c. 43, s. 42).

Practice.]—Where application is intended to be made for the transfer of any action or proceeding under sect. 85, or Order VIII. r. 8, or Order XXXIII. r. 19, three clear days' notice in writing of such intended application ought to be given by the applicant to the registrar of the court in which such action or proceeding is pending, and to all parties who may be affected; but the judge may at any time, with or without consent, order a transfer, although this rule has not been complied with. The judge may make such order as he thinks fit as to the costs incurred before or occasioned by the transfer, and a certified copy of the proceedings must be transmitted to the registrar of the court to which the transfer has been made in accordance with 51 & 52 Vict. c. 43, s. 85. The costs of the copy and of transmission are in the first instance paid for by the applicant, or by the plaintiff if the order is made by the judge without application; without prejudice in either case to any question as to the party by whom the costs are ultimately to be borne (Order VIII. r. 9).

Default summons and notice of defence.
38 & 39 Vict. c. 50, s. 1.

86.—(1) Subject to any rules and orders under this Act, in any action in a court for a debt or liquidated money demand, the plaintiff may, at his option, cause to be issued a summons in the ordinary form, or (upon filing an affidavit to the effect set forth in the prescribed form) a default summons in the prescribed form or to the prescribed effect, and if such last-mentioned summons be issued it shall be personally served on the defendant, and if the defendant shall not, within eight days after service of the summons, inclusive of the day of service, give notice, by post or otherwise, in writing, signed by himself or his solicitor, to the registrar of the court from which the summons issued, of his intention to defend, the plaintiff may, after *eight days* (*a*) and within two months from the day of service, upon proof of service, or of an order for leave to proceed as if personal service had been effected, have judgment entered up against the defendant for the amount of his claim and costs, such costs to be taxed by the registrar.

(*a*) "Eight days." Notice to defend must be given within the eight days. Notice given after the expiry of this time is too late, and plaintiff

may notwithstanding sign judgment (*The King* v. *Judge Parry*, (1916) 2 K. B. 107; 85 L. J. K. B. 1428). Section 86

(2) The order upon such judgment shall be for payment forthwith or at such time or times, and by such instalments, if any, as the plaintiff, or his solicitor, shall in writing have consented to take at the time of the entry of the plaint or of the judgment (*a*).

(*a*) *I.e.*, in time. See *The King* v. *Judge Parry*, *supra*.

(3) Where the defendant shall have given notice of defence the registrar shall, immediately upon the receipt of such notice, send a letter to the plaintiff or his solicitor by post, stating therein that the defendant has given such notice and shall send by post to both plaintiff and defendant notice of the day upon which he shall have fixed that the trial shall take place at least six clear days before the day so fixed.

(4) Where the defendant shall neglect to give such notice the judge or registrar shall, upon an affidavit disclosing a defence upon the merits and satisfactorily explaining his neglect, let in the defendant to defend, upon such terms as he may think just.

(5) Where personal service cannot be effected, and the judge or registrar is satisfied by affidavit that reasonable efforts have been made to effect such service, and either that the summons has come to the knowledge of the defendant or that he wilfully evades service of the same, it shall be lawful for the judge or registrar to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as he may think just.

See *The King* v. *Judge Parry*, *supra*.

(6) Provided always, that no other summons than a summons in the ordinary form shall, without leave of the judge or registrar, be issued where the amount claimed shall not exceed five pounds, unless the action is for the price, value, or hire of goods which, or some part of which, were sold and delivered or let on hire to the defendant to be used or dealt with in the way of his trade, profession, or calling, and such leave shall be given in the manner prescribed.

Where there is no defence, or where the defendant is willing to admit the claim, or able to agree with the plaintiff on the sum to be paid and the manner in which it is to be paid, judgment can be obtained by means of a default summons without trying the cause in the usual manner.

Judgment by Default.]—A default summons may be issued for any debt or liquidated demand not exceeding 100*l.* (see 3 Edw. VII. c. 42, s. 3), and is obtained on filing an affidavit (Order V. r. 14; Forms 9, 10, 11, 12) verifying the debt, which must contain the particulars as to name, etc., of the proposed defendant required by Order V. r. 4 (a), (b), (c), for which, see *post*, p. 398. It can be issued against partners in the name of a firm (Order VII. r. 31), and against corporations (Order VII. r. 32).

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Every summons on plaint required by statute or rule to be served personally is called a "default summons" (see Order LV. For this form of default summons, see Forms 5, 23).

An assignee of a debt or other legal chose in action is not entitled to issue a default summons under sect. 86 (Order V. r. 8; *Reg.* v. *Pontypool C. C. Judge*, (1894) 63 L. J. Q. B. 702).

A default summons cannot be issued for service out of England or Wales (Order VII. r. 44a).

The summons is issued without leave where the claim is for the price or value or hire of goods which, or some part of which, were sold and delivered or let on hire to the defendant, to be used or dealt with in the way of his trade, profession, or calling, and in other cases where the claim exceeds 5*l.*: in cases not within these classes leave must be obtained from the judge or registrar.

When the claim in the other cases referred to does not exceed 5*l.*, and leave is required pursuant to sect. 86, it cannot be given unless the occupation or description of the proposed defendant are set out in the affidavit, and will not be given at all where it appears that the defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour (Order V. r. 15; *Gordon* v. *Evans* (C. A.), (1894) 1 Q. B. 248; 63 L. J. Q. B. 329).

Leave must be obtained in every case where the defendant does not dwell or carry on business within the district in which the plaintiff proposes to enter the plaint (see sect. 74, *ante*, pp. 72—73). The affidavit, and a copy for each defendant, must be lodged; and the judge or registrar must exercise his discretion as to the grant of leave as in ordinary cases (*Reg.* v. *Turner*, (1897) 1 Q. B. 445; 66 L. J. Q. B. 417; Order V. r. 13). The copy affidavit, bearing upon it a copy of the order granting leave (Forms 8 (1), 9, 10), must be annexed to and served with the summons (Order VII. r. 3).

At the time of entering the plaint, the plaintiff may file a notice, signed by himself or his solicitor or agent, of the time or times, and of the instalments, if any, at or by which he consents to accept payment (Form 24). He must file as many copies of this notice as there are defendants, with an additional copy for the use of the judge. A copy of the notice will be annexed to the summons, and served with it. If the plaintiff neglects to file the above notice on entering the plaint, he may, nevertheless, give a similar notice on entering up judgment (Order V. r. 19; Order LIV. r. 13).

On entry of the plaint the plaintiff must file a *præcipe*, as provided by Order V. rr. 4a, 5, 6, 7, and if he or his solicitor wishes to serve the summons himself he must so state in his *præcipe* (Order V. r. 9). Where a defendant is a married woman or a widow the *præcipe* must state that fact, and must state whether judgment is to be entered against her in respect of a contract before coverture or during coverture, or (in the case of a widow) in respect of a contract since the determination of the coverture, according to the form in the Appendix.

Particulars of Demand.]—On entering the plaint, in all cases (Order VI. r. 1), whether the claim is above 40*s.* or not, the plaintiff must file particulars of his demand with the registrar, together with as many copies as there are defendants, and a copy for the judge (Order LIV. r. 13). A copy will be annexed to the summons, sealed with the seal of the court (Order II. r. 8). Where a claim is made against a married woman or widow, the particulars must state whether the claim is in respect of a contract before coverture or during coverture, or (in the case of a widow) since the determination of the coverture (Order VI. r. 1).

Service.]—Default summonses must be served personally within twelve months from their date; but if any defendant has not been served, the plaintiff may, before the expiration of twelve months, apply to the registrar, and if the registrar is satisfied that reasonable efforts have been made to

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serve such defendant, or that there is some other good reason why service has been delayed, he may issue a successive summons for a further period of twelve months, and so on from time to time, and such successive summonses will be a continuance of the action on and from the day on which the plaint was entered (Order VII. r. 30). Where non-service in a foreign court is caused by the plaintiff having mis-stated or insufficiently stated the particulars as to name, etc., of the defendant required by Order V. r. 4, or by the removal of the defendant from his address given on the summons, before entry of the plaint, the high bailiff (subject to Order VII., r. 5A, para. II., applied by Order VII., r. 30A, para. II.), shall return the summons to the registrar of the court from which it issued, and in his notice of non-service sent to the plaintiff shall state that it has been so returned (Order II., r. 31 (2)). In any of the circumstances given in the last paragraph the default summons may be amended at any time during its currency as to such incorrect particulars on plaintiff correcting and re-swearing the affidavit required before entry of plaint, or swearing a further affidavit, and on payment, where the summons is to be served by a bailiff, of such fee as may be prescribed (Order VII., r. 30A).

Paragraphs 1, 2 and 3 of Order VII., r. 5A, apply to the amendment of default summonses generally. See Order VII., r. 30A (2). When corporations are sued, a default summons will be deemed sufficiently served if served in accordance with Order VII. r. 26 (Order VII. r. 32). A default summons may be served in any district in which the defendant is found by a bailiff, and, if so requested at the entry of the plaint under Order V. r. 9, (1) by the plaintiff or some clerk or servant in his permanent and exclusive employ : (2) by the plaintiff's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve the summons, who might be so employed to serve a writ in an action in the High Court (Order VII. r. 33). If, however, in any case in which no request has been made at the entry of the plaint, any difficulty is experienced by the bailiff in effecting service, the summons may by leave of the registrar be served by the plaintiff or some clerk or servant in his permanent and exclusive employ, or by the plaintiff's solicitor or the agent of such solicitor, or some person in the employ of either of them (Order VII. r. 33). These provisions as to the person who may effect service apply also to the service of ordinary summonses under the extended jurisdiction conferred by the Act of 1903 (Order XXIIA. r. 3 (3)).

Where a bailiff cannot effect personal service of a default summons, he may, on payment of a sum for his expenses, be required to take the necessary steps to enable the plaintiff to apply under sect. 86, sub-s. 5, for liberty to proceed as if personal service had been effected, and to carry out any order made in the application. In claims exceeding 40*s.* but not exceeding 10*l.*, the sum allowed for these expenses is half-a-crown ; in claims exceeding 10*l.*, it is half the sum which may be allowed to a solicitor under item 17 of the Scales of Costs. These expenses may be allowed as costs against the defendant, but will not be allowed in addition to item 17 (Order VII. r. 33c).

When served otherwise than by a bailiff, the plaintiff must within three clear days, or such time as may be allowed by the registrar of the court issuing the summons, deliver or transmit to him a copy of the summons indorsed with the date and place of service and an affidavit of service according to the form in the Appendix (Order VII. r. 34 ; Form 37).

Substituted Service.]—If personal service cannot be effected, the judge or registrar may, if satisfied by affidavit (Form 43) that reasonable efforts have been made to effect service, and either that the summons has come to the knowledge of the defendant, or that he wilfully evades service, order that the plaintiff may proceed as if personal service had been effected, subject to such conditions as to the judge or registrar may seem fit (see sect. 86 ; Order XII. r. 11 ; Forms 44, 45, 46).

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Foreign Courts.]—The high bailiff of a foreign court must send notice of service within two days, and return the summons duly indorsed to the registrar of the home court. If it cannot be served within a month, notice must be sent to the plaintiff by the high bailiff, who must send a similar notice at the end of each month during which it is in force but not served (Order II. r. 31; Forms 35, 36. See Form 28 for the letter to be sent to a foreign district with the summons). If the plaintiff sues by solicitor these notices must be sent to him (Order II. r. 41).

Where the summons is not returned to the registrar within twelve months from the date of its issue it will be struck out, unless the time for service has been extended (Order VII. r. 35).

Notice of Defence, etc.]—The defendant may, after service of the summons, whether he has any real defence or not, give notice of his intention to defend (see Form 23). The notice of defence must be signed by the defendant or his solicitor, and must be sent, by post or otherwise, to the registrar of the court from which the summons issued, within eight days after service (see Forms 38, 39).

The registrar must, immediately on receipt of the notice, send a letter to the plaintiff or his solicitor, by post, stating that the defendant has given notice, and must also give notice to both plaintiff and defendant of the day fixed for the trial, at least ten clear days before such day (see Forms 38, 39).

Judgment for want of Notice.]—The above notice will prevent the plaintiff from obtaining judgment against the defendant before the return-day; but the defendant will not then be permitted to raise any of the special defences mentioned in Order X. rr. 10—21A, *post*, pp. 446—450, unless, in addition to the above notice, he gives the notice mentioned in Order X. r. 10, in the manner thereby prescribed.

If the defendant does not, within eight days after service, give notice to defend to the registrar of the court from which the summons issued, the plaintiff may, after eight days and within two months from the day of service, on proof of service, or of an order for leave to proceed as if personal service had been effected, have judgment entered up against the defendant for the amount of his claim and costs: the costs to be taxed by the registrar (see Forms 38, 39).

Where a default summons has been entered by post pursuant to Order V. r. 12, and the defendant does not give notice of his intention to defend, judgment may be entered up by post. The plaintiff, or his solicitor (if the latter has no office within the district), must send to the registrar (a) the plaint note, (b) a *præcipe* (Form 37A) stating the amount of debt and costs and the instalments (if any) which will be taken, (c) a money order for the fees payable on entering up judgment, and (d) a stamped envelope addressed to the plaintiff or his solicitor (Order VII. r. 34a). Where a defendant is a married woman or widow, the *præcipe* must state that fact, and must also state whether judgment is to be entered against her in respect of a contract before coverture or during coverture, or (in the case of a widow) since the determination of the coverture (Order VII. r. 34a; Forms 37A, 37B).

Proof of Service, etc.]—If service has been made by bailiff it may be proved in the ordinary way by the indorsement on the summons (see Form 34). If service has been made otherwise than by bailiff, service must be proved by affidavit (Form 37), or by production of the original order to proceed as if personal service had been effected (Form 46), unless the defendant has given notice of defence or admission of the debt. Where conditions are imposed by the order giving liberty to proceed, the plaintiff must also deliver or transmit to the registrar an affidavit showing that they have been complied with (Order VII. r. 34).

Where the default summons is issued against partners, service on any one of the partners is sufficient (Order VII. r. 31). If issued against a person carrying on business in a name or style other than his own it shall be

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served personally on such person, and the endorsement or affidavit of service shall state that he was served as the person carrying on business in that name or style (Order VII., r. 31A). An endorsement or affidavit of service under these last two rules shall be in accordance with Forms 34A or 37 (2). See Order VII., r. 31B.

The order upon the judgment will be for payment forthwith, or at such times, and by such instalments, if any, as the plaintiff or his solicitor has by writing consented to take at the time of the entry of the plaint or of the judgment (Forms 38, 39). No order need be drawn up or served unless the judgment is for payment by instalments, or unless the plaintiff has abandoned part of his claim under Order XIV. r. 13 (Order XXIII. r. 8).

Leave to Defend.]—Should the defendant neglect to give notice of defence, he may, on filing an affidavit disclosing a defence upon the merits and satisfactorily explaining his neglect, be let in to defend by leave of the judge or registrar, upon such terms as may be just. No order need be drawn up (Order XXIII. r. 5). Judgment may not be entered after two months from the date of service, if the defendant has neither given notice nor obtained an order to defend, and the action will be struck out as against him, notwithstanding the provisions of Order LIV. r. 12, which gives power to enlarge the time fixed by statute for doing any act (Order VII. r. 36).

Death after Service.]—Where a default summons has been served in time to prevent the operation of a statute of limitations, and either party dies after service and after lapse of the period within which it is provided by the statute that an action may be brought, proceedings may be taken by or against the surviving party, or by or against the personal representative of the deceased party, within one year from the date of service of the summons (Order VII. r. 37).

Exchange for Ordinary Summons.]—A default summons may, at the request of the plaintiff, be exchanged, without fee, for an ordinary summons upon the former being filed in court within twelve months from its issue (Order VII. r. 38).

Payment after Notice of Defence.]—If, after notice of defence as to part or the whole of the claim, and before notice of trial has been sent to the plaintiff, the defendant pays into court the amount, or a portion of the amount, claimed, together with court fees proportionate to the amount paid in, and a proportionate amount of the solicitor's costs entered on the summons, he will not be liable for any further costs, if the plaintiff accepts the money paid in as a satisfaction. But if payment into court is made after notice of trial, the court may order the defendant to pay such further fees and costs as the plaintiff may, prior to receiving notice of the payment into court, have incurred in preparing for trial, and may incur in attending court to obtain the order, including, if the judge so orders, any of the items which he might have allowed at the trial; no hearing fee will, however, be charged (Order IX. r. 15; and see Order IX. r. 13 (3)).

Trial after Notice.]—The trial after notice of defence takes place in the ordinary way. If neither plaintiff nor defendant appears, the action will be struck out; if the defendant appears and the plaintiff does not, the action will be struck out, and costs may be given against the plaintiff; where the plaintiff appears and the defendant does not, judgment may be entered for the plaintiff without further proof; and the amount may be ordered to be paid by instalments or otherwise (Order XXII. r. 7). It appears from the judgments of the Court of Appeal in *Hooper* v. *Hill*, (1894) 1 Q. B. 659; 63 L. J. Q. B. 598, that these actions are subject to the provisions of sect. 90 of the Act of 1888, and that in default of appearance by the defendant the judge alone has power under Order XXII. r. 7 to enter judgment without proof, if notice of defence has been given. Where the registrar deals with the case, it appears that proof ought to be given in accordance with sect. 90. See, however, the definition of "court" in sect. 18 of the

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Act of 1888, and in Order LV. Where both parties appear, the action will be tried, and personal service need not be proved (*Davis* v. *Pearce*, (1870) L. R. 5 C. P. 435).

Bills of Exchange Act, 1855.]—In actions under the Bills of Exchange Act, 1855, the defendant may not defend the action without first obtaining leave.

Amendment of proceedings. 19 & 20 Vict. c. 108, s. 57.

87. The judge may at all times amend all defects and errors in any proceeding in the court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend, or not; and all such amendments may be made with or without costs, and upon such terms as the judge may think just; and all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties shall be so made, if duly applied for.

Amendment.]—This power of the judge to grant an amendment for some sufficient reason is not taken away by Order XIV. r. 12, which authorises the plaintiff to file amended particulars, and gives power to the judge to disallow the amendment.

The judge cannot at the hearing, without the consent of the defendant, amend the particulars so as to substitute a cause of action within the jurisdiction for one which is not, as by amending particulars from slander to false imprisonment, even if the evidence supports the latter cause of action (*Hopper* v. *Warburton*, (1863) 32 L. J. Q. B. 104). But the judge may, in a remitted action for demurrage at a specified rate, amend the particulars by substituting a claim for unliquidated damages (*Spencer, Whatley & Co.* v. *Forster & Co.*, (1905) 1 K. B. 434; 74 L. J. K. B. 288). The abandonment of the excess to a claim exceeding 100*l.* has been dealt with, *ante*, p. 80.

Recovery of more than Amount claimed.]—Where upon taking an account or by verdict or otherwise it appears that the plaintiff is entitled to recover a larger amount than that in the particulars, but not exceeding 100*l.*, he may, by leave of the court and on payment of the difference (if any) in the fees payable on the respective amounts, amend his particulars so as to claim the larger amount, for which judgment may then be entered (Order XIV. r. 15).

Proceedings if plaintiff does not appear or prove his case. 9 & 10 Vict. c. 95, s. 79.

88. If upon the return-day, or at any continuation or adjournment of the court, or of the action or matter, the plaintiff shall not appear, the action or matter shall be struck out; and if he shall appear but shall not make proof of his claim to the satisfaction of the court, it shall be lawful for the judge to nonsuit the plaintiff, or to give judgment for the defendant, and in either case where the defendant shall appear and shall not admit the claim, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the judge in his discretion shall think just, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered: provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorised on his behalf, shall appear, and admit the cause

of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the judge, if he shall think fit, may proceed to give judgment as if the plaintiff had appeared. Section 88.

Where neither Party appears.]—If neither party appears at the hearing, the cause is usually struck out by order of the judge.

Where Plaintiff does not appear.]—If the plaintiff does not appear, and the defendant appears, and does not admit the claim, the action or matter will be struck out, and the court may award costs to the defendant as if the action had been tried, including costs of counsel, etc., but no hearing fee will be charged (see sect. 89; Order XXII. r. 6; Form 149). The costs may be recovered by the ordinary means for recovering any sum ordered to be paid by the court. If the defendant appears and admits the claim, and pays the court fees payable in the first instance by the plaintiff, the judge may give judgment for the plaintiff. These provisions apply to actions by and against executors and administrators (Order XXX. r. 2). If the plaintiff does not appear, and the cause is struck out, and the judge refuses to restore it, the case is at an end, and the court above cannot interfere (*Jennings* v. *London Omnibus Co.* (2), (1874) 30 L. T. 640; 22 W. R. 757).

If the defendant has given notice of a counterclaim, he may prove it and get judgment; but the judgment may be set aside on terms pursuant to 51 & 52 Vict. c. 43, s. 91 (Order XXII. r. 8).

Where a case was adjourned for the attendance of a witness, and after the adjournment the defendant appeared but the plaintiff did not, and the judge directed judgment to be entered for the defendant, it was held that the judge had no jurisdiction to hear the case in the absence of the plaintiff, and that he should have ordered the case to be struck out (*Jordan* v. *Jones*, (1884) 44 J. P. 800).

As to non-appearance of parties on the return-day of a default summons, see Order XXII. r. 7, *post*, p. 509.

Costs of defendant where plaintiff does not appear. 13 & 14 Vict. c. 61, s. 10.

89. In every case where the plaintiff shall not appear, either in person or by some person duly authorised on his behalf, upon the return-day, or at any continuation or adjournment of the court or of the action or matter, and the defendant shall appear either in person or by some person duly authorised on his behalf, it shall be lawful for the court to award to the defendant by way of costs of attendance and satisfaction for his trouble such sum as the court shall think just; and the sum so awarded shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the court can be recovered.

Proceedings before registrar where defendant does not appear. 30 & 31 Vict. c. 142, s. 16.

90. If in any action founded on contract a defendant shall not appear at the hearing, either in person or by some person duly authorised on his behalf, and no sufficient excuse for the defendant's absence shall be shown, the registrar may, by leave of the judge or in case of the judge's death or unavoidable absence, upon due proof of the service of the summons and of the debt being due and owing, enter up judgment for the plaintiff, and shall have the same power to make an order for payment by instalments, or to enter up judgment of nonsuit, or to strike out or adjourn the action, as a judge would have; and such judgment shall be as valid as if both parties had attended the court; but the judgment,

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and any execution thereon, may be set aside by the judge of the court, and a new trial granted upon such terms, if any, as the judge may think just.

When acting under this section, the registrar has the same powers of amendment as the judge. It appears from the judgments of the Court of Appeal in *Hooper* v. *Hill*, (1894) 1 Q. B. 659; 63 L. J. Q. B. 598, that actions on default summonses are subject to the provisions of sect. 90 of the Act of 1888, and that in default of appearance by the defendant the judge alone has power under Order XXII. r. 7 to enter judgment without proof, if notice of defence has been given. Where the registrar deals with the case, it appears that proof ought to be given in accordance with sect. 90. See, however, the definition of "court" in sect. 18 of the Act of 1888, and in Order LV.

Restoring Case struck out.]—Where any action or matter has been struck out under sects. 88 and 90 or under Order XXII. r. 7, the court may restore the same to the list for hearing either the same or any subsequent day, and may set aside any award of costs made under sect. 89 or Order XXII. rr. 6, 7, upon such terms as to costs of the day, adjournment of the hearing, notice to the opposite party, and otherwise as may be just.

Trial in absence of defendant. 9 & 10 Vict. c. 95, s. 80.

91. If on the return-day, or at any continuation or adjournment of the court or of the action or matter, the defendant shall not appear either in person or by some person duly authorised on his behalf, or sufficiently excuse his absence, or shall neglect to answer when called in court, the judge, upon due proof of service, may proceed to the trial or hearing on the part of the plaintiff only and the judgment or order thereupon shall be as valid as if both parties had attended: provided always, that the judge in any such case, at the same or any subsequent court, may set aside any judgment or order so given or made in the absence of the defendant, and the execution thereupon, and may grant a new trial or hearing, upon such terms, if any, as to payment of costs, giving security or such other terms as he may think just, on sufficient cause shown to him for that purpose.

Where the Defendant does not appear.]—This provision applies to actions by and against executors and administrators (Order XXX. r. 2). No proof of the service of the judgment is necessary before issuing execution (Order XXIII. r. 7).

For proof of service of summons, see sect. 78.

Where defendant appears and admits the claim. 30 & 31 Vict. c. 142, s. 17.

92. Where a defendant appearing at the hearing, either in person or by some person duly authorised on his behalf, admits the claim, the registrar may, by leave of the judge, or in case of the judge's death or unavoidable absence, settle the terms and conditions upon which it is to be paid, and enter up judgment accordingly as a judgment of the court. Subject to rules and orders under this Act a registrar may, on the application of the parties and by leave of the judge, hear and determine any disputed claim where the sum claimed or amount involved does not exceed two pounds.

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The judge may, after deciding or reserving any question of liability, refer to the registrar any mere matter of account which is in dispute between the parties, and after deciding the question of liability may give judgment on the registrar's report.

Admission by Defendant.]—Where a defendant appears personally or by an agent at the hearing, and admits the claim, the registrar may, by leave of the judge, or in case of the judge's death or unavoidable absence, settle the terms and conditions upon which it is to be paid, and enter up judgment accordingly. The registrar has the same powers of amendment as the judge (Order XIV. r. 14).

Judgments how far final. 9 & 10 Vict. c. 95, s. 89.

93. Every judgment and order of the court, except as in this Act provided, shall be final and conclusive between the parties; but the court shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given entitling either the plaintiff or defendant to judgment. The judge shall also in every case whatever have the power if he shall think just to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

Finality of Judgments.]—When the judgment has been formally given the judge has no power to rescind or alter it, even on the same day with the parties still before him. If he does so he subjects himself to a prohibition (*per* Coleridge, J., *Jones* v. *Jones* (2), (1848) 5 D. & L. 628, 632; 17 L. J. Q. B. 170; 79 R. R. 884; *Irving* v. *Askew* (2), (1870) L. R. 5 Q. B. 208; 39 L. J. Q. B. 118; *The Recepta* (2) (C. A.), (1893) 42 W. R. 73 (a case of alteration of order as to costs); *Robinson* v. *Fawcett and Frith*, (1901) 2 K. B. 325; 70 L. J. K. B. 639; and see *Re St. Nazaire Co.* (C. A.), (1879) 12 Ch. D. 88, where it was held that there is now no power in the High Court to rehear after judgment). At the present day this rule is not likely to be very strictly enforced, and if the judgment has not been entered on the minutes, and the parties or their solicitors are present, a change in the judgment actually pronounced would probably be justified on the ground that it had not been definitely given (see *Barton* v. *Tilchmarsh*, (1880) 49 L. J. Ex. 573). A county court judge who, at the trial of an action with a jury, has ruled that there is evidence for the jury and has entered judgment for the plaintiff in accordance with the verdict, has no power to grant a new trial on the ground that there was no evidence for the jury (*Clarke* v. *West Ham Corporation*, (1914) 2 K. B. 448; 83 L. J. K. B. 1306).

All orders and judgments, subject to the right of appeal or to apply for a new trial (*post*, sect. 120), are final and conclusive between the parties and cannot be sued upon; but see *Savill* v. *Dalton*, *ante*, p. 32. The judgment is a bar to an action on the original consideration in any other court (*Austin* v. *Mills*, (1854) 9 Ex. 288; 23 L. J. Ex. 40; 96 R. R. 717; *Berkeley* v. *Elderkin*, (1853) 1 E. & B. 805; 22 L. J. Q. B. 281; 93 R. R. 405). A judgment against A. by default does not debar the plaintiff, if he should afterwards discover that B. is liable and not A., from suing B., unless A. and B. were partners, or in some other way jointly liable (*Isaacs & Sons* v. *Salbstein*, (1916) 2 K. B. 139; 85 L. J. K. B. 1433). As to suing on original consideration where a negotiable instrument is invalid owing to alteration having been made therein, see *Payana Reena Saminathan* v. *Pana Lana Palaniappa*, (1914) A. C. 618; 83 L. J. P. C. 131. Where a servant sued unsuccessfully for wrongful dismissal, and after waiting a quarter summoned her master before justices for a quarter's wages, it was held that the county court judgment was conclusive against the claim (*Routledge* v. *Hislop*, (1860)

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2 E. & E. 549; 29 L. J. M. C. 90; 119 R. R. 841). Where A. sued B. for rent, and the judge found in favour of B., on the ground of a yearly tenancy, it was held, in a subsequent action, brought in a superior court by B. against A., that A. was estopped by the judgment from contending that the tenancy was a weekly one (*Flitters* v. *Allfrey*, (1874) L. R. 10 C. P. 29; 44 L. J. C. P. 10, n.). Where the judge, after hearing evidence, set aside as fraudulent a deed compromising the judgment, a subsequent action in the High Court raising the question so decided was stayed as frivolous (*Stephenson* v. *Garnett*, (1898) 1 Q. B. 677 (C. A.); 67 L. J. Q. B. 447).

If damage to goods and damage to the person be occasioned by one wrongful act, the causes of action are distinct; and if an action be brought in respect of one only, the judgment will not be a bar to the maintenance of an action for the other (*Brunsden* v. *Humphrey* (C. A.), (1884) 14 Q. B. D. 141; 53 L. J. Q. B. 476). Even where a plaintiff splits his demand contrary to 51 & 52 Vict. c. 43, s. 81, it seems that the judgment obtained in the action will not bar another action for the residue of his demand (*Vines* v. *Arnold*, (1849) 8 C. B. 632; 19 L. J. C. P. 98; 79 R. R. 653; *Adkin* v. *Friend*, (1878) 38 L. T. 393; *Jones* v. *Jones* (1), (1874) 22 W. R. 577).

Where a defendant has a set-off or counterclaim which he does not give notice of, or which he is prevented from proving through non-compliance with the rules of practice, the judgment in the action will not prevent him from enforcing it either as a set-off or counterclaim in another action between the same parties, or by original action (*Stanton* v. *Styles*, (1850) 5 Ex. 578; 19 L. J. Ex. 336; *Hindley* v. *Haslam*, (1878) 3 Q. B. D. 481). If the set-off or counterclaim were properly raised, and evidence were given by cross-examination or otherwise in support of it, the judgment would no doubt be final.

When a counterclaim is raised which exceeds the statutory limit of the jurisdiction, and the plaintiff gives notice of objection pursuant to 47 & 48 Vict. c. 61, s. 18, judgment as to the *cause* of counterclaim will estop both parties, but the counter-claimant will, if successful, be able to sue in the High Court for that part of his counterclaim which he is prevented from recovering in the county court by reason of the excess of jurisdiction (*Webster* v. *Armstrong*, (1885) 55 L. J. Q. B. 236).

As to judgments and orders generally—the drawing up of the same, mode of service, time for compliance with, etc., see Order XXIII.

Power to Order New Trial.—Where a judge subsequently to trying an action comes to the conclusion that he has misdirected himself on a question of fact, he may on application grant a new trial (*Sanatorium, Ltd.* v. *Marshall*, (1916) 2 K. B. 57; 85 L. J. K. B. 941).

Bankruptcy not to cause action to abate, if trustee elect to continue it.

19 & 20 Vict. c. 108, s. 62.

94. The bankruptcy of the plaintiff in any action in the court which the trustee might maintain for the benefit of the creditors, shall not cause the action to abate if the trustee shall elect to continue such action, and to give security for the costs thereof within such reasonable time as the judge shall order, but the hearing of the action may be adjourned until such election is made; and in case the trustee does not elect to continue the action and to give such security within the time limited by the order, the defendant may avail himself of the bankruptcy as a defence to the action.

Bankruptcy.]—The bankruptcy of the plaintiff in any action in the county court which the trustee might maintain for the benefit of the creditors does not cause the action to abate if the trustee elects to continue the action, and gives security for costs, within such reasonable time as the judge may order, but the hearing may be adjourned until such election is made. In

default of such election and security, the bankruptcy may be relied on as a defence (see Order XVII. r. 9); or an order to stay may be obtained if the bankrupt proceeds with it (*Warder* v. *Saunders*, (1882) 10 Q. B. D. 114). If the trustee refuses to continue the action the stay is absolute against all subsequent assignees of the cause of action (*Selig* v. *Lion*, (1891) 1 Q. B. 513; 60 L. J. Q. B. 403). When the trustee elects to continue the action, he should, it is believed, apply to be joined as plaintiff under the rules hereafter mentioned; where he has been so added (in a case commenced in the High Court, but ordered to be tried in the county court under sect. 65) before the original writ or order has been lodged with the registrar of the county court, the judge of the county court has no jurisdiction to order security for costs under sect. 94 (*Hemming* v. *Davies*, (1898) 1 Q. B. 660; 67 L. J. Q. B. 458).

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The right to maintain actions for breaches of contract resulting in direct injury to the bankrupt's person or feelings does not pass to his trustee, *e.g.*, for a breach of promise of marriage (*Beckham* v. *Drake*, (1849) 2 H. L. Cas. 579; 81 R. R. 301); nor for personal wrongs, *e.g.*, libel, assault, personal injuries, etc. (*Ib.*; *Howard* v. *Crowther*, (1841) 8 M. & W. 601; 10 L. J. Ex. 335; 58 R. R. 823). In such cases there is no abatement, but security for costs may be ordered (*Brocklebank* v. *King's Lynn*, (1878) 3 C. P. D. 365; 47 L. J. C. P. 321).

Where bankruptcy takes place after judgment, the provisions of Order XXV. r. 14 presumably apply (see *East End Building Society* v. *Slack*, (1891) 60 L. J. Q. B. 359).

If a defendant becomes bankrupt, and the trustee continues the defence and fails, he may be ordered to pay costs personally, even if he has not been added as defendant (*London School Board* v. *Wall* (C. A.), (1891) 7 T. L. R. 566).

95. It shall be lawful for any executor or administrator to sue and be sued in the court in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in the High Court.

Executors may sue and be sued.

9 & 10 Vict. c. 95, s. 66.

Trustees, Executors, etc.]—Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and will be considered as representing such parties in the action; but the court may, at any stage of the proceedings, order any of them to be made parties to the action, either in addition to or in lieu of the previously existing parties (Order III. r. 6). This rule applies to trustees, executors and administrators sued in proceedings to enforce a security by foreclosure or otherwise.

In county courts, executors and administrators may sue and be sued in their own names, as if the action were brought by or against them in their own right (see Order V. r. 6). Trustees, executors, or administrators so suing will, it is conceived, let in a set-off or counterclaim, available against them in their private capacity. At law, the rule as to joinder was that all the executors named in the will should be joined as plaintiffs, though one only had proved (see 1 Wms. Saund. 291, *k*, *l*), except in case of renunciation (20 & 21 Vict. c. 77, s. 79); but the rule in equity was much more elastic (see Williams on Executors). Assuming that the provisions of the 51 & 52 Vict. c. 43, s. 97, extend to actions against executors, the plaintiff will only require to select as defendant an executor who has administered; if not, all who have administered should be joined (Bul. & L. 18, note (*b*); Dicey on Parties, 322).

For further provisions as to actions against executors and administrators, see Order XXX.

Executors and Administrators.]—The ordinary judgment against execu-

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tors and administrators is to pay the debt and costs to be levied out of the assets of the testator, if the defendant have so much; but if not, then the *costs* out of the defendant's own goods. If a plaintiff executor fails, the judgment is the same as in ordinary actions; but the costs will, unless the court shall otherwise order, be awarded in favour of the defendant, and be levied *de bonis propriis* (Order XXX. r. 1).

Where devastavit.]—In all cases where the defendant is charged in the summons with wasting assets, if the judge is of opinion that the defendant has wasted the assets, the judgment will be that the debt or damage and costs shall be levied *de bonis testatoris, si*, etc., *et si non, de bonis propriis*, and the non-payment of the amount of the demand immediately, on the judge finding such demand to be correct, and that the defendant is chargeable in respect of assets, is conclusive evidence of wasting to the amount with which he is so chargeable (Order XXX. r. 4; Form 238. See form of warrant, Form 245; see also *Winch* v. *Winch*, (1853) 22 L. J. C. P. 104, where it was held that the county court has jurisdiction to try a *devastavit*).

Where the defendant does not appear at the trial, or admits his representative character and the plaintiff's demand, and does not deny assets, the judgment will be that the demand and costs shall be levied *de bonis testatoris, si*, etc., *et si non*, as to the costs, *de bonis propriis* (Order XXX. r. 4A; Form 238A).

Where an executor or administrator admits his representative character, and only denies the demand, if the plaintiff prove it, the judgment will be that the demand and costs shall be levied *de bonis testatoris, et si non*, etc., as to the costs, *de bonis propriis* (Order XXX. r. 5; Form 239).

Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment will be to levy the costs of proving the demand *de bonis testatoris, si*, etc., *et si non, de bonis propriis;* and as to the demand, judgment of assets *quando acciderint*, and the plaintiff must pay defendant's costs of proving the administration of assets unless the court otherwise orders (Order XXX. r. 6; Form 240).

Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does *not* prove the administration alleged, the judgment will be to levy the amount of the demand, or such amount of assets as is shown to have come to the hands of the defendant, and costs, *de bonis testatoris, si*, etc., *et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets *quando acciderint* (Order XXX. r. 7; Form 241).

Where a defendant admits his representative character and the plaintiff's demand, but alleges and proves a total or partial administration of the assets, the judgment will be of assets *quando acciderint*, and the plaintiff must pay the defendant's costs of proving the administration unless the court otherwise orders (Order XXX. r. 8; Form 242).

Where a defendant admits his representative character and the plaintiff's demand, and alleges a total or partial administration of the assets, but does *not* prove the administration alleged, and does not establish any other ground of defence, the judgment will be to levy the amount of the demand, or such amount of assets as is shown to have come to the defendant's hands, and costs, *de bonis testatoris, si*, etc., *et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets *quando acciderint* (Order XXX. r. 9; Form 243).

In actions against executors or administrators for which no special provision is made, if the defendant fails as to any of his defences, the judgment, unless the court otherwise orders, will be for the plaintiff as to his costs of disproving such defence, and such costs are to be levied *de bonis testatoris, si*, etc., *et si non, de bonis propriis* (Order XXX. r. 12).

It was formerly held that, if, after a plea of *plene administravit* and

judgment of assets *quando acciderint*, the defendant received assets, the plaintiff must proceed by summons stating the judgment *quando*, and suggesting assets, and that a suggestion of a *devastavit* would be wrong (*Ellis* v. *Watt*, (1851) 8 C. B. 614; 19 L. J. C. P. 113). This was provided for by a rule of practice (Order XXX. r. 10), which directs that, where judgment has been given against an executor or administrator that the amount be levied upon assets of the deceased *quando acciderint*, the plaintiff may issue a summons in the prescribed form (Form 244); and, if it appears that assets have come to the hands of the executor or administrator since the judgment, the judge may order that the debt, damages and costs be levied *de bonis testatoris, si*, etc., *et si non*, as to the costs, *de bonis propriis*. The party applying may also charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in an original summons, and the provisions of r. 4 apply to such inquiry. The judge may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si*, etc., *et si non, de bonis propriis* (see form of judgment, Form 246; of warrant, Form 245).

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96. It shall be lawful for any person under the age of twenty-one years to prosecute any action in the court for any sum of money not greater than *one hundred* (*a*) pounds which may be due to him for wages or piece work, or for work as a servant, in the same manner as if he were of full age.

Minors may sue for wages. 9 & 10 Vict. c. 95, s. 64. 13 & 14 Vict. c. 61, s. 1.

NOTE.—(*a*) Jurisdiction increased from 50*l*. (see sect. 3 of Act of 1903).

Infants.]—An infant when suing for any sum not exceeding 100*l*. for wages or piecework, or for work done as a servant, may prosecute such action in the same manner as if he were of full age. In such a case, the provisions of Order IX. r. 24, as to settlement of claims on behalf of infants and payment into court and application of moneys recovered or awarded do not apply. When he is suing for any cause of action, other than the above, or is a claimant in an interpleader proceeding, he must sue by a next friend (Order III. r. 10). For Procedure see Order V. r. 16.

Infant plaintiff.

97. Where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the court; and every such person against whom judgment shall have been obtained, and who shall have satisfied such judgment, shall be entitled to demand and recover in the court contribution from any other person jointly liable with him.

One of several persons liable may be sued. 9 & 10 Vict. c. 95, s. 68.

Joint Defendants.]—Where there is a demand against two or more defendants who are jointly liable, it is sufficient to serve one with process, leaving out the others, and judgment and execution may go against the defendant or defendants served, who, when the judgment has been satisfied, may recover contribution from any persons jointly liable. Where a plaintiff avails himself of this provision, and does not proceed against all of several joint contractors, every defendant sued may avail himself of any set-off or counterclaim to which he would have been entitled if all the persons liable had been made defendants (Order X. r. 7). It should be remembered that it is a principle of law that a judgment against one of several joint contractors

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is a bar to an action against the others (*King* v. *Hoare*, (1844) 13 M. & W. 494; 14 L. J. Ex. 29; 67 R. R. 694; *Kendall* v. *Hamilton*, (1879) 4 App. Cas. 504; 48 L. J. C. P. 705); and that the provision of the County Courts Act above mentioned does not prevent the principle from applying in the county courts, so as to estop the plaintiff from maintaining another action. In a remitted action two defendants were represented by the same solicitor, and, judgment with costs having been given for one and against the other, the successful defendant was held entitled to recover from the plaintiff half the costs of the defence (*Beaumont* v. *Senior*, (1903) 1 K. B. 282; 72 L. J. K. B. 141).

As to the effect of judgment by default against one defendant; in an action against two joint defendants, where fraud is alleged and proved, see *Ch. Goldrei Foucar & Son* v. *Louis Sinclair and the Russian Chamber of Commerce in London*, (1917) 33 T. L. R. 318.

Under sect. 97 of the Act the plaintiff may sue one or more partners in their own names for a joint debt, and is not obliged to join all.

If plaintiff sues one of several persons jointly liable under 51 & 52 Vict. c. 43, s. 97, the defendant may counterclaim as if all had been joined (Order X. r. 7).

Confession of debts or part of debts, etc., and judgment thereupon.

13 & 14 Vict. c. 61, s. 8.

98. Any person against whom a plaint shall be entered in any court may, if he think fit, whether he be summoned upon such plaint or not, in the presence of any registrar, registrar's clerk, or solicitor, sign a statement confessing and admitting the amount of the debt or demand, or part of the amount of the debt or demand, for which such plaint shall have been entered; and it shall be the duty of the registrar of the court in which the plaint was entered, as soon as conveniently may be after receiving such statement, to send notice thereof to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business, and thereupon it shall not be necessary for the said plaintiff to prove the debt or demand so confessed and admitted as aforesaid; but the court, at the next sitting thereof, whether the parties or either of them attend such court or not, shall, upon proof by affidavit of the signature of the party, if such statement was not made in the presence of a registrar, or one of his clerks, enter up judgment for the debt or demand so confessed and admitted.

For form of admission, see Form 65.

The confession must be signed by the party himself, not by his agent (*R.* v. *Judge Mulligan*, (1909) 25 T. L. R. 341). This confession should be delivered to the registrar five clear days at least before the return-day, and ten clear days before that day in cases under the Act of 1903; it may, however, be delivered at any time before the action is called on, but then the defendant will be liable to be ordered to pay the costs which the plaintiff may have incurred in consequence of the defendant's delay (Order IX. r. 2; Order XXIIA. r. 8).

The court may accept an admission of the claim, or of any part thereof, by letter, addressed to the court, purporting to be written by or on behalf of the defendant, if satisfied that such letter was in fact written by or by the authority of the defendant; a note of the letter having been accepted as an admission must be entered in the minute book (Order IX. r. 3).

The defendant may add to his confession an offer to pay the amount by instalments (see Form 65). Notice of the confession is sent by the registrars

to the plaintiff by post or by delivery at his usual place of abode or business (Forms 67, 68), and no proof of the claim is then required.

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The affidavit used to obtain judgment may be made by the solicitor or his clerk (Order IX. r. 9; Forms 66, 70, 72). The plaintiff need not appear at the hearing, unless the defendant has proposed to pay the amount confessed by instalments, and he objects thereto. The plaintiff must, however, see that the fees are paid according to the notice sent to him by the registrar (see Forms 67, 68). By confessing judgment the defendant saves half the hearing fee and subsequent costs.

Agreement as to amount of debt, and conditions of payment. 13 & 14 Vict. c. 61, s. 9.

99. If the person against whom a plaint shall be entered in a court can agree with the person on whose behalf such plaint shall have been entered upon the amount of the debt or demand in respect of which such plaint shall have been entered, and upon the terms and conditions upon which the same shall be paid and satisfied, it shall be lawful for such persons respectively, in the presence of the registrar of the court in which such plaint shall have been entered, or one of his clerks, or in the presence of a solicitor, to sign a statement of the amount of the debt or demand so agreed upon between such persons respectively, and of the terms and conditions upon which the same shall be paid or satisfied, and such registrar shall receive such statement, and shall thereupon, upon proof by affidavit of the signatures of the parties, if such statement was not signed in the presence of the registrar, or one of his clerks, enter up judgment for the plaintiff for the amount of the debt or demand so agreed on and upon the terms and conditions mentioned in such statement; and such judgment shall to all intents and purposes be the same and have the same effect, and shall be enforced and enforceable in the same manner as if it had been a judgment of the judge of the said court.

The agreement must be signed by the defendant himself; it is not sufficient that it should be signed by an agent on his behalf (*R.* v. *Judge Mulligan*, (1909) 25 T. L. R. 341). If the agreement is executed in the presence of a solicitor, the signatures of the parties must be verified by affidavit of the solicitor or his clerk (Order IX. r. 9; Form 70). The agreement and the affidavit, when necessary, must be delivered to the registrar, who must then enter up judgment for the plaintiff for the amount of the debt or demand agreed upon, and upon the terms and conditions mentioned in the statement: and the judgment will have the same effect as an ordinary judgment. The parties may also agree to the amount of the plaintiff's costs, besides court fees, and in such case the amount of the plaintiff's costs must be stated separately in the judgment (Order IX. r. 4).

Fees.]—A fee of 1*s.* in the pound is payable upon the amount for which judgment is entered by consent under, or when the defendant does not appear to, a default summons.

Judge alone to determine all questions, unless a jury be summoned 9 & 10 Vict. c. 95, s. 69.

100. The judge shall be the sole judge in all actions brought in the court, and shall determine all questions as well of fact as of law, unless a jury shall be summoned as hereinafter mentioned.

Hearing before Registrar.]—A registrar may, at the request of the parties, and by leave of the judge, hear and determine any disputed claim where the sum claimed or the amount involved does not exceed 2*l.* (51 & 52 Vict.

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c. 43, s. 92). The leave of the judge to exercise this power may be either general or special (Order XXII. r. 24). When the registrar has obtained the leave, he must ask the parties whether they desire to have the case heard by him or the judge (Order XXII. r. 25).

Illegality.]—If a contract and all the surrounding circumstances are fully before the court, the court must take notice of any illegality in the transaction rendering it non-enforceable, but if all the circumstances are not before the court, the court can only take notice of illegality appearing on the face of the contract (*North Western Salt Co.* v. *Electrolytic Alkali Co.*, (1914) A. C. 461; 83 L. J. K. B. 530).

The judge has power to order any person who in his opinion has been guilty of perjury in any proceedings before him, to be prosecuted, Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), s. 9, *post*, p. 232.

Reference to Registrar.]—Any mere matter of account may be referred by the judge to the registrar for inquiry and report (51 & 52 Vict. c. 43, s. 92).

Trial with jury when parties require it.

9 & 10 Vict. c. 95, ss. 70, 71.
28 & 29 Vict. c. 99, s. 7.

101. In all actions where the amount claimed shall exceed five pounds, it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action, unless the action is of the nature of the causes or matters assigned to the Chancery Division of the High Court of Justice; and in all actions where the amount claimed shall not exceed five pounds, it shall be lawful for the judge in his discretion, on the application of either of the parties, to order that such action be tried by a jury; and in every case such jury shall be summoned according to the provisions in this Act contained: The party requiring a jury to be summoned shall give to the registrar of the court, or leave at his office, such notice thereof as shall be prescribed; and the said registrar shall cause notice of such demand of a jury, made either by the plaintiff or defendant, to be communicated to the other party to the said action, either by post or by causing the same to be delivered at his usual place of abode or business, but it shall not be necessary for either party to prove on the trial that such notice was communicated to the other party by the registrar. Every party requiring a jury to be summoned shall, at the time of giving the said notice, and before he shall be entitled to have such jury summoned, pay to the registrar of the court the sum of five (*a*) shillings for payment of the jury, and such sum shall be considered as costs in the action, unless otherwise ordered by the judge. Whenever it is required that a jury should be summoned for the trial of any matter arising out of the jurisdiction given to the court by section sixty-seven of this Act, the jury shall be summoned from the list of jurors in the possession of the registrar of the court in which the action or matter was commenced.

NOTE.—(*a*) Now eight shillings (Order XXII. r. 1A).

Jury.]—Actions in county courts are tried in most cases before the judge alone, who decides the issues both of law and fact.

The number of jurymen is now eight (see sect. 102, and 3 Edw. 7, c. 42,

s. 4). A special jury, as such, cannot be had in the county court (*Ex parte Armitage*, (1880) 17 Ch. D. 13; 29 W. R. 772). Section 101 Notes.

Particular Actions.]—When an action of contract or tort is remitted, the provisions as to juries apply. Interpleaders, replevin, actions of ejectment or for the recovery of possession, or to enforce any right relating to land (as to what is a right relating to land, see *Rex* v. *Surrey County Court Judge*, (1910) 2 K. B. 410; 79 L. J. K. B. 802), or to recover damages in respect of such right, may at the instance of either party be tried by jury, and by order of the judge or registrar any other action or matter or any question of fact therein may be tried by jury (Order XXII. r. 3). The application may be by notice for directions (Order XV. rr. 1, 4), or *ex parte* or on notice (Order XII. r. 11). When a new trial is granted, the judge may make it a condition that it shall take place before a jury, although the former trial did not (Order XXXI. r. 2), or either party may demand and obtain a jury in the manner described above (*R.* v. *Harwood*, (1853) 22 L. J. Q. B. 127; 94 R. R. 860; *Ford* v. *Taylor*, (1878) 3 C. P. D. 21; 47 L. J. C. P. 116).

There is no absolute right to have a trial by jury in equity actions or matters, but the above rules give a discretion to allow such actions or issues of fact therein to be tried by jury (see as to the exercise of the discretion in the High Court, *Swindell* v. *Birmingham* (C. A.), (1876) 3 Ch. D. 127; 45 L. J. Ch. 756; *West* v. *White*, (1877) 4 Ch. D. 631; 46 L. J. Ch. 333; *Ruston* v. *Tobin* (C. A.), (1870) 10 Ch. D. 558).

Verdict.]—When the jury have once given a general verdict, the judge is not entitled to ask any further question of the jury for the purpose of ascertaining whether the ground of their verdict was one which there was evidence to support: *Arnold* v. *Jeffreys*, (1914) 1 K. B. 512; 83 L. J. K. B. 329.

The judge trying a case with a jury may, when he has refused to withdraw the case from the jury on the plaintiff's evidence, direct judgment for defendant after hearing the whole case (*Skeate* v. *Slaters, Ltd.*, (1914) 2 K. B. 429; 83 L. J. K. B. 676).

Notice of Demand of.]—Notice of a demand of a jury must be made in writing to the registrar, according to the form in the Appendix, ten clear days at least (in actions under the Employers' Liability Act fifteen clear days at least) before the return-day, and the summons to the jurors must be delivered to the bailiff forthwith and served six clear days at least before the return-day. The registrar must forthwith give to the other party notice of the demand (Order XXII. r. 1A; Forms 142, 143, 144).

Where notice has not been given in time, or if at the trial both parties desire to try by jury, the judge may, on such terms as he thinks fit, adjourn the action in order that the necessary steps for such trial may take place accordingly (Order XXII. r. 2). If an adjournment is granted for other reasons, a party who has not given due notice for a jury cannot give notice for a jury on the adjourned hearing (*Fletcher* v. *Baker*, (1873) L. R. 9 Q. B. 370; 43 L. J. Q. B. 112; *R.* v. *Leeds C. C.*, (1885) 16 Q. B. D. 691; 55 L. J. Q. B. 365).

102. The sheriff of every county, and the high bailiffs of Westminster and Southwark, shall cause to be delivered to the registrar of the court a list of persons qualified and liable to serve as jurors in the courts of assize and nisi prius for their county, city, and borough respectively, within fourteen days from the receipt of the jury book from the clerk of the peace of the county or other officer, each list containing only the names of persons residing within the jurisdiction of the court, for which list the said Who shall be jurors, and their number. 9 & 10 Vict. c. 95, ss. 72, 73. 28 & 29 Vict. c. 99, s. 7.

Section 102. sheriffs and high bailiffs shall be entitled to receive a fee after the rate of twopence for every folio of seventy-two words; and whenever a jury shall be required the registrar of the court shall cause as many of the persons named in the list as shall be prescribed, to be summoned to attend the court at a time and place to be mentioned in the summons, and shall administer, or cause to be administered, to such of them as shall be impanelled, an oath to give true verdicts according to the evidence; and the persons so summoned shall attend at the court at the time mentioned in the summons, and in default of attendance shall forfeit such sum of money as the judge shall direct, not being more than five pounds for each default; and the delivery of such summons to the person whose attendance is required on such jury, or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, shall be deemed good service: Provided always, that no person shall be summoned or compelled to serve on such jury more than twice within one year, or who shall have been summoned and shall have attended upon any jury for the same county at the assizes, or any court of nisi prius, or at the central criminal court within six months next before the delivery of such summons. Whenever there are any jury trials *eight* jurymen shall be impanelled and sworn, as occasion shall require, to give their verdicts in the actions which shall be brought before them in the said court, and being once sworn shall not need to be resworn in each trial; and either of the parties to any such action shall be entitled to his lawful challenge against all or any of the said jurors in like manner as he would be entitled in the High Court; and the jurymen so sworn shall be required to give an unanimous verdict.

The prescribed number of jurymen to be summoned is sixteen, unless the judge otherwise orders (Order XXII. r. 4).

Summonses.]—Summonses (Form 144) are issued by the registrar, on receipt of the demand for a jury, and are forthwith delivered to the bailiff for service (Order XXII. r. 1A). The persons summoned must attend at the court at the time mentioned in the summons: in default of attendance, they will forfeit such sum of money as the judge may direct, not exceeding 5*l.* for each default (for form of order, see Form 145). Payment may be enforced in the same manner as a judgment debt, or as money adjudged to be paid under the Summary Jurisdiction Acts (see sect. 167. See *post*, p. 866. For warrant of execution, see Form 146). The fine may be remitted on cause shown by affidavit, or by the juror in person (Order LII. r. 6). The delivery of the summons to the person, or to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, is good service. No person can be summoned or compelled to serve on a jury more than twice in one year, nor can a person who has been summoned and has attended any jury at the assizes, or any court of nisi prius, or at the central criminal court for the same county, within six calendar months next before the delivery of the summons.

Notice to Jurors.]—Where a jury has been summoned, but the action or

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matter is settled or withdrawn before the return-day, it is the duty of the party who caused the jury to be summoned to inform the registrar of the fact, who is thereupon to return the deposit, and, unless the jury are required in another action, forthwith to send notice to the persons summoned by post, that their attendance will not be required; where the action or matter is adjourned, the registrar must forthwith send notice by post to the persons summoned as jurors of the adjournment and of the day on which their attendance will be required (Order XXII. r. 5 (1)). Where a non-jury action is settled or withdrawn before the return-day, the parties must inform the registrar of the fact (Order XXII. r. 5 (2)). If notice under this rule is given three clear days before the return-day, and costs are taxed on the higher scale, item 97 may be allowed for such notice (Order XXII. r. 5 (3)). Where on the trial a jury has been impanelled, and the hearing is adjourned, the registrar must, if the adjournment is to a further date than the next day but one, forthwith give or send by post to the jurors impanelled notice of the adjournment and of the day on which their further attendance will be required (Order XXII. r. 5A (1)).

Where a jury has been summoned, but the action or matter is adjourned on the return-day before a jury has been impanelled, the registrar must, unless the judge orders the persons summoned as jurors to be discharged and a fresh jury to be summoned, forthwith give or send by post to the persons summoned as jurors notice of the adjournment and of the day on which their attendance will be required (Order XXII. r. 5A (2)).

Swearing.]—If there are several successive jury cases, it is not necessary to impanel a fresh jury in each case, nor need the jurymen be even re-sworn. They must be sworn to give true verdicts, according to the evidence, in the actions which shall be brought before them. If, therefore, there are many jury cases appointed for one day, after summoning a jury in the first two or three cases, it is unnecessary to summon more; the deposit of 8*s.* must, however, be taken in each case from the party requiring the jury.

Challenge].—Either party is entitled to his lawful challenge against all or any of the jurors, as he would be in the High Court. The verdict of the jury must be unanimous. Separation of the jury after the summing up does not invalidate the verdict (*Fanshaw* v. *Knowles*, (1916) 2 K. B. 538; 85 L. J. K. B. 1735).

Appointment of assessors. 38 & 39 Vict. c. 50, s. 5.

103. In any action or matter it shall be lawful for the judge, if he think fit, on the application of either party, to summon to his assistance, in such manner as may be prescribed, one or more persons of skill and experience in the matter to which the action or matter relates, who may be willing to sit with the judge and act as assessors; and their remuneration for so sitting shall be at such rate as may be prescribed, and shall be costs in the action or matter, unless otherwise ordered by the judge; but, where any person is proposed to be summoned as an assessor, objection to him, either personally or in respect of his qualification, may be taken by either party in the prescribed manner.

List of Assessors.]—It is the duty of the registrar of each county court, from time to time, at the request of the judge, to submit to him the names of as many persons as he may direct, whom, having regard to the nature of the ordinary business of the court, and to their fitness from ability and reputation, he believes to be qualified to act as assessors. From the names so submitted the judge frames a list of persons to act as assessors for each court within his circuit (Order XXI. r. 1). The registrar must apply to such persons as the judge may approve to know if they are willing to act as assessors and to attend any court they may be summoned to attend at a

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reasonable time beforehand (Order XXI. r. 2). When the judge has completed the list of assessors, the registrar must cause a printed list of their names in alphabetical order to be hung up in the court and office (Order XXI. r. 3; Form 135). Every assessor named in the printed list continues to be an assessor until a new list is framed and approved, or until he has given to the registrar notice in writing that he is unwilling to act as an assessor from and after a day named (Order XXI. r. 4). Upon receipt of such notice the registrar must remove the name from the list of assessors (Order XXI. r. 5).

Application for and Summons to Assessors.]—A party who desires assessors to be summoned must six clear days (in actions under the extended jurisdiction conferred by the Act of 1903 twelve clear days) at least before the return-day file an application (Form 136), giving the names of the assessors he wishes to be summoned, and if he has obtained the consent of the other party to the assessors named he must file the consent with his application (Order XXI. r. 7; Order XXIIA. r. 19).

Upon receipt of the application the registrar must forward a copy to the judge, who, if he sees fit, must return it with his approval, and the registrar must forthwith summon the assessors named (Form 137). If the judge does not think that assessors should be summoned, notice must be given by the registrar to all parties (Order XXI. r. 8; Form 141).

Where the party applying does not file the consent of the other party to the assessors proposed, the registrar must, after obtaining the consent of the judge, forthwith cause notice (Form 138) to be served on the other party, and the party so served must, as soon as may be after receipt of the notice, inform the registrar in writing whether or not he accepts the appointment of the assessors proposed in the notice, or any of them, and give the names of such assessors as he is willing should be summoned (Order XXI. r. 9; Form 138).

Where the party served with the notice does not accept the proposed appointment, he must forthwith after receipt of the notice inform the registrar in writing of his non-acceptance and of the reasons for it, and the registrar must thereupon fix a time and place for hearing the objection and selecting the assessors. The objection may be heard either on the return-day of the summons or before the judge acting under the powers conferred on him by sect. 9 of the County Courts Act, 1888, or by direction of the judge before the registrar. Notice (Form 139) of the time and place at which the objection will be heard must be given to all parties interested. On the hearing such order (Form 140) will be made as the judge or registrar thinks just, and any costs occasioned by the objection or consequent thereon may be ordered to be paid by the party objecting (Order XXI. r. 10). When assessors are appointed, they are to be summoned by the registrar (Order XXI. r. 10).

If at the time and place appointed for the trial the assessors summoned do not attend, the judge may either proceed to try the action, with the assistance of such of the assessors, if any, as do attend, or, if none attend, without assistance, or he may adjourn the trial (Order XXI. r. 11).

Assessors' Fees—Costs.]—Each assessor is entitled for each day's attendance to one guinea or two guineas according as the subject-matter of the action does or does not exceed 20*l.* in value, together with such sum, if any, for his expenses as the judge may order (Order XXI. r. 6).

Every person applying for assessors must at the time of application pay to the registrar the sum of two guineas if the amount of the subject-matter of the action does not exceed 20*l.*, and four guineas if it does exceed that amount, which payments will be costs in the action, unless otherwise ordered by the judge (Order XXI. r. 12).

Where an action is adjourned, the plaintiff must pay the assessors' fees for the day of adjournment forthwith after the order of adjournment is made (Order XXI. r. 13).

104. The judge may in any case, with the consent of both parties to the action, order the same, with or without other matters within the jurisdiction of the court in dispute between such parties, to be referred to arbitration, to such person or persons and in such manner, and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party, except by consent of the judge; and the award of the arbitrator or arbitrators, or umpire, shall be entered as the judgment in the action, and shall be as binding and effectual to all intents as if given by the judge: Provided that the judge may, if he think fit, on application to him at the first court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

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Actions may be settled by arbitration.

9 & 10 Vict. c. 95, s. 77.

Reference to Arbitration.]—The judge may, with the consent of both parties, at any time after an action has been commenced, in all cases within the ordinary jurisdiction of the court, and in cases of agreement under 51 & 52 Vict. c. 43, s. 64, order the action, with or without other matters within the jurisdiction of the court in dispute between the parties, to be referred to arbitration, in such manner and on such terms as he thinks reasonable and just. The same fees are payable as on entering judgment under a default summons; but where any reference is ordered to the registrar or other officer of the court, the ordinary hearing fee must be paid (Order XX. r. 1; Forms 134, 134A).

An order of reference, when once made, cannot be revoked by either party, except by consent of the judge (sect. 104).

The Act to amend the law of evidence (14 & 15 Vict. c. 99) provides, by sect. 16, that "every court, judge, justice, officer, commissioner, arbitrator or other person, now or hereafter having by law or by consent of parties authority to hear, receive and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively."

The award of the arbitrator or umpire is entered as the judgment in the action, and is as binding as if given by the judge; but, at the first court held after the expiration of one week after the entry of the award, the judge may set it aside, or, with the consent of both parties, may revoke the reference or order another (sect. 104).

An arbitrator has authority to decide as to a custom affecting the contractual rights of the parties if not inconsistent with the express terms of the contract (*Produce Brokers Co., Ld.* v. *Olympia Oil and Cake Co., Ld.*, (1916) A. C. 314).

The High Court had, before the Act of 1888, no jurisdiction to entertain an appeal from the refusal of a judge to set aside an award (*Mayer* v. *Farmer*, (1878) 3 Ex. D. 235; 47 L. J. Ex. 760).

Application, how made.]—The application to refer before the trial cannot be made *ex parte*, as the consent of both parties is required. It may be made on notice (Order XII. r. 11) or by notice for directions (Order XV. rr. 1, 4).

Before the 19 & 20 Vict. c. 108, s. 25, it was held that a defendant, by consenting to a reference, did not waive his right to obtain a prohibition, if the court had no jurisdiction over the cause (*Knowles* v. *Holden*, (1855) 24 L. J. Ex. 223; 101 R. R. 909). It is conceived, however, that the defendant would now be held to have waived such right. The order

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of reference is proof in other proceedings of an agreement to refer (*Roper* v. *Levy*, (1851) 7 Ex. 55; 21 L. J. Ex. 28). The death of either party before award would revoke the authority of the arbitrator (*Cooper* v. *Johnson*, (1819) 2 B. & A. 394; 20 R. R. 483; but see Arbitration Act, 1889).

Where parties who have a dispute agree to abide by the decision of the judge, but do not follow the practice required to give him jurisdiction, his position becomes that of an arbitrator, and no appeal lies from his decision (*Pearce* v. *Winkworth*, (1873) 28 L. T. 710). Where, during the hearing of an action of trespass, the parties agreed to withdraw a juror and abide by the decision of the judge, and before his decision the defendant withdrew his consent, the court held that the power of the judge as arbitrator was gone, but that the cause remained, and so ordered the judge to rehear it (*Norburn* v. *Hilliam*, (1869) L. R. 5 C. P. 129; 39 L. J. C. P. 183).

Staying Proceedings.]—The judge has jurisdiction to stay proceedings under sect. 4 of the Arbitration Act, 1889, where there is a submission to arbitration (*Morriston Tinplate Co.* v. *Brooker*, (1908) 1 K. B. 403; 77 L. J. K. B. 197; see *Jureidini* v. *National British and Irish Millers Insurance Co.*, (1915) A. C. 499; 84 L. J. K. B. 640, where charge of fraud made).

Counsel.]—Counsel's fee on a reference cannot be allowed, except by order of the judge (see item 92).

Where judgment does not exceed 20*l.*, court may order payment by instalments. In other cases consent of plaintiffs necessary. 19 & 20 Vict. c. 108, s. 45.

105. Where judgment has been obtained for a sum not exceeding twenty pounds, exclusive of costs, the court may order such sum and the costs to be paid at such time or times, and by such instalments, if any, as it shall think fit, and all such moneys shall be paid into court; but in all other cases the full amount for which judgment has been obtained shall be ordered to be paid either forthwith or within fourteen clear days from the date of the judgment, unless the plaintiff, or his counsel, solicitor, or agent, will consent that the same shall be paid by instalments, in which case the court shall order the same to be paid at such time or times, and by such instalments, if any, as shall be consented to; and all such moneys, whether payable in one sum or by instalments, shall be paid into court.

Ordinary Judgments for Payment of Money.]—Money payable under the judgment is payable within fourteen days from the date of the judgment, unless the court otherwise orders (Order XXIII. r. 11). If the amount, exclusive of costs, exceed 20*l.*, the judgment may direct payment forthwith or within fourteen clear days, and the costs to be taxed and paid forthwith or within fourteen clear days after taxation (Order XXIII. r. 12), and by consent of the plaintiff may order payment by instalments (see Form 151).

Where under a judgment or order money is payable within fourteen days of the date of the judgment or order, or in the case of costs within fourteen days after taxation, the judge may at any time before the expiration of the fourteen days, for good cause shown on application made on oath or affidavit in accordance with the rules as to interlocutory applications, make an order for payment at an earlier date. An order so made must be served in accordance with Order XXIII. r. 7; and, if made *ex parte*, any party affected by it may within two days after service apply to set it aside (Order XXIII. r. 12A).

By Instalments.]—If the amount, exclusive of costs, do not exceed 20*l.*, the judge or registrar may order the judgment and costs to be paid by instalments.

The party entitled to enforce a judgment may at any time after judg-

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ment obtain *ex parte* an order from the judge or from the registrar sitting in court for payment by instalments, or renewing or diminishing the instalments payable under a previous order. The application may be made in person or by solicitor or by request in writing giving the letter, number, names of the parties to the action or matter, and the instalments by which the applicant desires the amount due to be paid. The request must be left at or sent by post to the registrar's office accompanied by the plaint note (or duplicate mentioned in Order VII. r. 1), or where a defendant is entitled to enforce a judgment or order, by the summons (or duplicate mentioned in Order LIV. r. 26) and a stamped and directed envelope; when the request has been dealt with, the registrar will return the plaint note, summons, or duplicate, with a minute of the order made, in the envelope. By leave of the judge the registrar may deal with any such application out of court without requiring the attendance of the applicant, but the registrar may, and where no payment has been made within six years must, refer the application to the judge, who may make such order as he thinks right, and may require the attendance of the applicant. The order must be entered in the minute book, and prepared and served in accordance with Order XXIII. r. 7, and has the same effect as a fresh order for payment by instalments made on the hearing of a judgment summons. This is not an interlocutory application within Order XII. r. 11 (Order XXIII. r. 14; Order XXV. r. 55; Order LV.; Form 157).

Where the judgment or order is for payment of a sum not exceeding 20*l.*, exclusive of costs, by instalments or otherwise, and the judge is satisfied that the person liable is unable to pay at the time or by the instalments ordered, he may, upon the application of the person liable, made upon notice to the person entitled to enforce the judgment or order two days at least before the hearing, order the amount due and unpaid to be paid by instalments, or, if already payable by instalments, by the like or smaller instalments; the order may be varied from time to time. The judge may also, on the application of the person entitled to enforce the judgment or order made on the like notice to the person liable, order the amount to be paid in one sum or by larger instalments than those previously ordered, and may vary his order. An order made under this rule is entered in the minute book and prepared and served in accordance with Order XXIII. r. 7, and has the same effect as a fresh order for payment made on the hearing of a judgment summons (Order XXIII. r. 15).

Instalments are payable as directed. If no date is mentioned, the first becomes due on the twenty-eighth day, and every successive instalment after a like period from the day of the last previous instalment becoming due (Order XXIII. r. 11; Form 151).

Default in payment of an instalment subjects the defendant to execution for the whole amount remaining unpaid, unless the judge or registrar otherwise orders (see sects. 149, 186).

Judgment will not be given for a fraction of a penny (Order VI. r. 8).

Service.]—A judgment or order for the payment of money or costs or both or any other order, except an order on a default summons, after being prepared by the registrar, is delivered to a bailiff, who must, within twenty-four hours, send the same by post or otherwise to the party on whom service has to be made (Order XXIII. r. 7). It is unnecessary to prove that the judgment was posted or reached the opposite party (Order XXIII. r. 7). Where judgment is entered up against a party served with a default summons, no order need be drawn up or served, unless the judgment is for payment by instalments or unless the plaintiff has abandoned part of his claim under Order XIV. r. 13 (Order XXIII. r. 8).

Interest.]—The judgment does not carry interest (*R.* v. *Essex C. C.* (C. A.), (1886) 18 Q. B. D. 704; 56 L. J. Q. B. 315).

106. The judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or

Judge may grant time.
9 & 10 Vict. c. 95, s. 81.

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defence of the action or matter, and also may from time to time adjourn any court, or the hearing or further hearing of any action or matter, in such manner as the judge may think fit.

Adjournment.]—The judge may adjourn any court, hearing, or further hearing of any action or matter as may seem fit to him (see Form 92). When anything required by the practice of the court to be done by either party before or during the trial is not done, the court may in its discretion, and on such terms as it thinks fit, adjourn the trial, to enable the parties to comply therewith (Order XII. r. 15). The court may at any time postpone the trial of any action or matter upon the joint application of the parties (Order XII. r. 12). In any case not coming within Order XII. rr. 12—15, the court has a discretion, on the application of any party made on motion in accordance with r. 11, to postpone or adjourn for good cause the trial of any action or matter upon such terms as may be just; the order, if made in the absence of the other party, must be served on him (Order XII. r. 16). The order under this rule may be on notice under Order XII. r. 11, or by notice for directions (Order XV. rr. 1, 4), not *ex parte*. No adjournment by the parties is operative (*Morgan* v. *Rees* (C. A.), (1881) 6 Q. B. D. 508; 50 L. J. Q. B. 491). If from the state of the proceedings the case cannot be tried on the return-day, the court may postpone the trial, and notice must be given by the registrar to all parties and persons interested not present when the order was made (Order XII. r. 14; Form 92).

When a cause is adjourned, no order of adjournment need be drawn up or served unless directed (Order XXIII. r. 5). When service is directed, the order must be prepared by the registrar, and delivered to the bailiff, who must serve it by post or otherwise. Proof of service is unnecessary (Order XXIII. r. 7).

Where, in any action or matter, interlocutory proceedings are contemplated or pending, which cannot be concluded in time to enable the parties to prepare for trial on the day fixed for it, the court may, on the application of any party, make an order postponing the trial on such terms as to costs or otherwise as it may think fit. The order, if made in the absence of the other party, must be served on him (Order XII. r. 13).

The judge may adjourn the hearing where the defendant wishes to set up a defence of which notice is required (Order X. r. 10); also when either party requires a jury (Order XXII. r. 2); also where assessors do not attend (Order XXI. r. 11); also to add parties (Order XXII. r. 18).

Also where a summons is served on a defendant about to remove out of the jurisdiction (Order VII. r. 9). So also when service has come to the knowledge of the defendant less than ten days before the trial (Order VII. r. 28).

As to adjournment when the plaintiff has become bankrupt, see sect. 94; and when two actions are brought in different courts for the same cause of action, Order XXII. r. 11; for production or proof of documents, Order XVIII. r. 9; in case of the death or absence of the judge, *ante*, sect. 10.

Defendant may pay money into court; notice to be given to plaintiff.

9 & 10 Vict. c. 95, s. 82.

107. It shall be lawful for the defendant in any action or matter within such time as shall be prescribed, to pay into court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be communicated by the registrar to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff; but if the plaintiff shall elect to proceed, and shall

recover no further sum in the action or matter than shall have been so paid into court, he shall pay to the defendant the costs incurred by him in the said action or matter after such payment; and such costs shall be settled by the court, and an order shall thereupon be made by the court for the payment of such costs by the plaintiff. Section 107.

Payment of Money into Court.]—A defendant in any action or matter may pay into court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such payment may be made either with or without a denial of liability (Order IX. r. 12 (1). See *J. R. Munday, Ltd.* v. *London County Council, post*, p. 434.

When without Denial of Liability.]—A payment without denial of liability admits *pro tanto* the claim or cause of action or complaint in respect of which it is made; though if the claim is for a debt composed of several items, a general payment will not admit that something is due under each item (*Hennell* v. *Davies*, (1893) 1 Q. B. 367; 62 L. J. Q. B. 220). The payment ought to be made at least five clear days (ten clear days in cases under the Act of 1903) before the return-day (see *Stevens* v. *Hounslow*, (1889) 38 W. R. 236; 61 L. T. 839), with court fees proportionate to the amount paid in, and proportionate solicitor's costs, if any, unless the payment into court be made under a defence of tender, when the defendant may make the payment without costs (Order IX. r. 12 (1); Order XXIIA. r. 10). If the defendant claims to be entitled to a set-off or counterclaim, he may pay in the residue, but must pay into court court fees and solicitor's costs proportionate to the amount paid in (Order IX. r. 17). The money may be paid in any day when the office is open, during office hours (Order II. r. 9). An acknowledgment of the payment will be given in all cases (Order II. r. 11).

Within twenty-four hours from the time of such payment, the registrar must give notice of the payment to the plaintiff (see as to default of officer, *Francis* v. *Dowdeswell*, (1874) L. R. 9 C. P. 423, 432; 43 L. J. C. P. 248) by post, or by causing the notice to be delivered at his usual place of abode or business (51 & 52 Vict. c. 43, s. 107; Order IX. r. 12 (2); Forms 73, 74).

Where Plaintiff accepts it.]—If the plaintiff elects to accept the sum paid into court in satisfaction of his claim, whether the same has been paid in, in due time or not, or with or without costs, or with or without a notice of denial of liability, and sends to the registrar and to the defendant by post, or leaves at the registrar's office and at the defendant's dwelling or place of business, a written notice (Form 76), stating such acceptance, within such reasonable time before the return-day as the time of payment by the defendant permits, the action will abate, and the plaintiff will not be liable for any costs incurred by the defendant after receiving the notice (Order IX. r. 13 (1), (2)). In default of acceptance the action may proceed, but the plaintiff may accept the money at any time before the case is called on and opened, subject to the payment of any costs reasonably incurred by the defendant since payment into court, which may be allowed by the court (Order IX. r. 13 (5), (6)). If the plaintiff claims too small a sum, and the amount claimed is paid into court without denial of liability and taken out by the plaintiff, the latter cannot bring a fresh action for the larger amount, and give credit for the sum paid into and taken out of court; the matter is *res judicata* (*Sanders* v. *Hamilton*, (1907) 96 L. T. 679).

The statute gives the plaintiff the "costs incurred," and the court may in its discretion order the defendant to pay such fees and costs beyond the fees and costs (if any) paid into court, as the plaintiff may have properly incurred for work done, before the receipt of notice of payment into court, and in attending the court to obtain the order for the same, including, in

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the judge's discretion, any items which might have been allowed at the trial, but no hearing fee is to be charged (Order IX. r. 13 (3)).

Notice of Application for Costs.]—When the plaintiff intends to apply for such costs, he must give notice of his intention in his notice of acceptance of the sum paid in, unless the time of payment into court does not permit of notice of acceptance being given, in which case the plaintiff may apply for costs without giving the notice (Order IX. r. 13 (1), (4); Form 76).

If the plaintiff proceeds, and recovers no more than was paid into court, he must pay the costs incurred by the defendant after the payment into court; such costs to be settled by the court, and an order made for payment of them by the plaintiff (sect. 107).

The defendant may also, at *any* time less than five clear days (ten clear days in actions under the Act of 1903) before the return-day, pay money into court, with costs, as above mentioned, and notice will be given of the payment as above; but the defendant may not, except by leave of the court, give a notice denying liability at the time of such payment. If it is so paid in, or in any case where it is paid in without costs, the plaintiff may elect to accept in satisfaction the sum paid in, and send the written notice (Form 76), and claim costs or further costs as above mentioned. If the plaintiff does not accept money so paid in in satisfaction, he may proceed as if there had been no such payment, and will be entitled to his costs on the amount recovered by him, unless the court otherwise orders (Order IX. r. 12 (3), (4); Order XXIIA. r. 10). If nothing is paid in for costs, and the judge finds the sum paid in sufficient and gives judgment for the defendant, he may give the plaintiff his costs up to the payment into court, and the subsequent costs to the defendant (*Sykes* v. *Wesleyan and General Assurance Society*, (1907) 76 L. J. K. B. 626).

Money may be taken out.]—When money is paid into court without a denial of liability the plaintiff may take it out at once whether he accepts it in satisfaction or not (sect. 107). It has been held that if a High Court action abates by reason of the death of the defendant after paying money into court without a denial of liability, the money should be paid out to the plaintiff and not to the executors of the defendant (*Brown* v. *Feeney*, (1906) 1 K. B. 563; 75 L. J. K. B. 494).

Payment with Denial of Liability.]—In order that payment shall not operate as an admission, the defendant, at the time of paying money into court, must file with the registrar (with the copies required by Order LIV. r. 13), a notice (Form 75) stating his name and address, and that notwithstanding such payment he denies his liability. Payment into court with a denial of liability cannot be made in any action or counterclaim for libel or slander. A proportionate part of the court fees and solicitor's costs, if any, must be paid in, as in other cases, unless the payment into court is made under a defence of tender (Order IX. r. 12 (1)). The registrar, with the notice of payment above mentioned, must send to the plaintiff a copy of the notice denying liability (Order IX. r. 12 (2); Forms 74, 75).

Time for Payment.]—The payment must be made five clear days (ten clear days in actions brought under the Act of 1903) at least before the return-day (Order IX. r. 12 (1); Order XXIIA. r. 10), and, except by leave of the judge or registrar, cannot be made afterwards with a notice denying liability (Order IX. r. 12 (3); Order XXIIA. r. 10).

If the plaintiff then accept the money in satisfaction, he must give notice as provided and the action will abate (Order IX. r. 13 (1), (2); Form 76); and the money may be taken out of court at once (*Wood* v. *Leetham*, (1892) 61 L. J. Q. B. 215).

As to manner of obtaining money paid into court to the credit of a party who neither resides nor carries on business within the district of the court, see Order IX. r. 22.

If not accepted in satisfaction, the money will be retained in court until

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after the trial, and if the plaintiff recovers less than the amount paid into court, the balance will be repaid to the defendant, unless the court otherwise orders. The court may order any costs awarded to the defendant to be set against the amount recovered by the plaintiff. If the defendant succeeds the whole amount will be repaid to him, unless the court otherwise orders (Order IX. r. 19). In either case, judgment should be entered for the defendant, with, subject to the general discretion of the judge, costs (*Wood* v. *Leetham*, (1892) 61 L. J. Q. B. 215).

Where an executor or administrator is defendant, and he admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he must pay it into court under the above rules (Order XXX. r. 11).

The rules also apply to payment into court in actions of libel remitted from the High Court (Order IX. r. 14). A plaintiff may, in answer to a counterclaim, pay money into court under the same conditions (Order IX. r. 16). The above provisions do not apply to payments into court in equity actions or matters under order of the court (Order IX. r. 23).

Taxation; Costs of Issues.]—Where in an action for negligence the defendant paid money into court with a denial of liability, and the trial resulted in a verdict for an amount less than that so paid in, it was held that the judge's order giving the defendant the general costs of the action and the plaintiff the costs of the issues found in his favour was right (*Wagstaffe* v. *Bentley*, (1902) 1 K. B. 124; 71 L. J. K. B. 55), and it is immaterial that the issue on which the plaintiff succeeds is not an issue going to the whole cause of action (*Hubback* v. *British North Borneo Co.*, (1904) 2 K. B. 473; 73 L. J. K. B. 654). Under similar circumstances, the plaintiff having been nonsuited, a new trial was ordered, the costs of the first trial to abide the event. At the second trial the plaintiff obtained a verdict for the sum paid into court, and it was held that the defendants were entitled to the general costs of the action, but that the county court judge had a discretion as to giving the plaintiff the costs of the issue of negligence, on which he had succeeded (*Dunn* v. *South Eastern Rail. Co.*, (1903) 1 K. B. 358; 72 L. J. K. B. 127).

Tender.]—If the money is paid into court with the defence of tender, no court fees or costs need be paid in (Order IX. r. 12 (1)). The plaintiff may accept the money in satisfaction, but is not entitled to take it out of court, or to any costs, without an order of the court, which may make such order as to the costs of either party as may be just, and may order any costs awarded to the defendant to be deducted from the amount paid into court and to be paid to the defendant (Order IX. r. 18).

Money is obtained out of court on production of the plaint note, just as when it has been paid in under a judgment.

As to payment into court by officers of court, as amends, see p. 26; under a default summons, Order IX. r. 15; when assignment of *chose in action* disputed, Order XXVII. r. 15; when defendant sets up lien on specific property, Order XII. r. 7; when money found due to infant or person of unsound mind, Order IX. r. 24; in replevin, s. 134; under Trustee Acts, Part V.

Payment not to be communicated to Jury.]—Neither the fact that money has been paid into court, nor the amount paid in, is to be communicated to a jury, who must find their verdict without reference to any payment into court.

When payment into court is made, and an apology tendered, in actions for libel, under the provisions hereafter mentioned (*Jones* v. *Mackie*, (1867) L. R. 3 Ex. 1; 37 L. J. Ex. 1), it is believed that the payment is only conditional, and does not admit the cause of action (Order IX. r. 26).

108. Where a party is required to give security, such security shall be at the cost of the party giving it, and in the form of a bond, How securities to be

Section 108. — given and enforced. 19 & 20 Vict. c. 108, s. 70.

with sureties, to the other party or intended party in the action or matter: Provided always, that the court in which any action on the bond shall be brought may by order give such relief to the obligors as may be just, and such order shall have the effect of a defeasance of such bond.

In what Cases.]—The principal cases in which security is required to be given in the county court are as follows:—

(1.) By treasurers, registrars, and high bailiffs (51 & 52 Vict. c. 43, s. 40; see *ante*, p. 20). The costs of discovery are secured by a payment into court to which these provisions do not apply (see *post*, p. 482).

(2.) Upon its appearing, on application for the entry of a plaint, that the plaintiff does not reside in England (Order V. r. 10). When the plaint is entered by a solicitor, it is sufficient if he gives an undertaking to pay the costs of the defendant.

(3.) By plaintiff, when defendant in foreign district makes affidavit of merits (Order XII. r. 9; Order XXIIA. r. 15).

(4.) When the trustee of a bankrupt plaintiff elects to continue an action (51 & 52 Vict. c. 43, s. 94; see *ante*, p. 98).

(5.) Upon a defendant objecting to a cause being tried in the county court (see sect. 62).

(6.) By parties for the safe keeping or payment of the value of goods (Order XII. rr. 1, 2, 3; Order II. r. 40).

(7.) By persons appointed receivers (Order XIII. rr. 2, 14 (4); pp. 464—466).

(8.) Upon application for a warrant to return goods to a replevisor (51 & 52 Vict. c. 43, ss. 135, 136, *post*, pp. 161—162).

(9.) Upon obtaining leave to defend an action brought under the "Summary Procedure on Bills of Exchange Act, 1855" (51 & 52 Vict. c. 43, s. 107).

(10.) On application in the county court for a new trial, where security is ordered to be taken by the court (see sects. 91, 93).

(11.) On orders for certiorari or transfer, when security ordered (see sect. 126).

(12.) On appeal, when security for costs or otherwise ordered (see sect. 120).

The security in any case may be either by bond, or by a deposit of money (see sects. 108, 109).

If by Bond.]—The party intending to take the proceeding must find sureties to join with him in the bond (see sects. 108, 109), and must serve by post or otherwise, on the opposite party and the registrar at his office, notice of the persons whom he proposes as his sureties (Form 235). The registrar must forthwith give notice to both parties of the day and hour on which he proposes that the bond shall be executed, and must state in the notice to the obligee that, if he have any valid objection to make to the proposed sureties or either of them, he must make it at that time (Order XXIX. r. 1; Form 237). The sureties must make an affidavit of their sufficiency before the registrar (Form 236), unless the opposite party dispenses with it (Order XXIX. r. 2). The bond must be given at the cost of the party giving it, and must be made to the other party or intended party to the action or matter (sect. 108). It must be executed in the presence of the judge, registrar, or a commissioner to administer oaths, or of the clerk to the registrar nominated to take affidavits (Order XXIX. r. 3). It must be given to the party or persons requiring the security, and be deposited with the registrar until the action is finally disposed of (Order XXIX. r. 5).

The registrar has only to see that the bond is duly executed, and that the sureties are sufficient; he cannot decline to approve of the bond upon the ground that the defendant is by law incompetent to execute it (*Young* v. *Brompton Waterworks Co.*, (1862) 1 B. & S. 675; 31 L. J. Q. B. 14; 124

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R. R. 709. In this case it was held that an incorporated joint-stock company, limited, could properly execute such a bond).

In cases of objection to the trial in the county court the bond must be in a sum not exceeding 150*l.*, and the security must be approved by the registrar (see sect. 62).

In cases of replevin the bond must be in a sum sufficient to cover the alleged rent or damage, and the probable costs of the action in the High or county court, according to the court in which the replevisor elects to sue (see sects. 135, 136).

Where the high bailiff is ordered to take possession of goods until security is given for their safe keeping or payment of their value in default, but the amount of security is not specified, an inventory and appraisement must be made; upon receiving as a deposit the amount of the appraisement, or sufficient security to be approved by the registrar, for their safe custody and for their delivery up on request, the high bailiff will relinquish possession on condition that they shall be re-delivered to him on request or held to abide the order of the court. Where the warrant specifies the amount of security, no less deposit or security will be sufficient (Order II. r. 40).

In cases other than those which have been above mentioned, where the Act or rule does not specify the sum for which security must be given, the amount must be fixed by the judge or registrar.

Action on.]—If any action be brought on the bond, the court in which the action is brought may, by order, give such relief to the obligors as may be just, and such order will have the effect of a defeasance of the bond (sect. 108).

Forms of Bonds.]—See, as to bond by defendant objecting to jurisdiction, Form 82. As to bond by defendant in an action under the Bills of Exchange Act, Form 42; in replevin, Forms 287 and 288; by receiver, Form 303; for security for costs by plaintiff out of England, Form 16.

Officers not to be Sureties.]—No officer of the court may become a surety under any of the above provisions (Order XXIX. r. 6; see *Carr* v. *Stringer*, (1858) 4 Jur. N. S. 439; 111 R. R. 876).

The party giving security, or depositing money under the provisions mentioned below, is excused from a strict compliance with the statute, or the rules, if such compliance is rendered impossible by the act of the court or registrar, or if performance of the conditions is prevented or waived by the opposite party (*Francis* v. *Dowdeswell*, (1874) L. R. 9 C. P. 423; 43 L. J. C. P. 248; *Waterton* v. *Baker*, (1868) L. R. 3 Q. B. 173; 37 L. J. Q. B. 65; *Park Gate Co.* v. *Coates*, (1870) L. R. 5 C. P. 634; 39 L. J. C. P. 317; and see *Ex parte Johnson*, (1870) L. R. 5 Ch. 741).

If Security by Deposit.]—Where a party is required to give security, he may, in lieu of giving a bond, deposit with the registrar a sum equal in amount to the sum for which he would otherwise give security, together with a memorandum, to be approved of by the registrar, and to be signed by the party, his solicitor or agent, setting forth the conditions on which the money is deposited, and the registrar must give a written acknowledgment of the deposit (see sect. 109; Form 234). The party, upon making the deposit, must give notice to the opposite party, by post or otherwise, of the deposit having been made (Order XXIX. r. 4).

Any objection to receive the money without the memorandum named in the statute should be made before the acknowledgment is given by the registrar; as the want of the memorandum cannot afterwards be relied on as vitiating the deposit if the other requisite forms have been complied with (*Griffin* v. *Coleman*, (1859) 4 H. & N. 265; 28 L. J. Ex. 134; 118 R. R. 426; *Walters* v. *Coghlan*, (1872) L. R. 8 Q. B. 61).

Payment out of Court of Deposit.]—The judge of the court in which the money has been deposited may, on the same evidence as would be required to enforce or avoid a bond, given by way of security, order the sum deposited to be paid out to such party or parties as he shall think just (see sect. 109).

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In High Court.]—Where security is required to be given in the High Court, it may be by bond or deposit, as if it were required to be given in a county court (see sects. 108, 109); and if an action be brought on the bond, the High Court or a judge has the same powers, as to giving relief to the obligors, and to the disposal of the money deposited, as are above stated to be possessed by the county court (see sects. 108, 109).

Where security is required to be given, a deposit of money may be made in lieu thereof.

19 & 20 Vict. c. 108, s. 71.

109. Where a party is required to give security, he may in lieu thereof deposit with the registrar, if the security is required to be given in the court, or with a master of the Supreme Court if the security is required to be given in the High Court, a sum equal in amount to the sum for which he would be required to give security, together with a memorandum, to be approved of by such registrar or master, and to be signed by such party, his solicitor or agent, setting forth the conditions on which such money is deposited, and the registrar or master shall give to the party paying a written acknowledgment of such payment; and the judge of the county court, when the money shall have been deposited in such court, or a judge of the High Court when the money shall have been deposited in the High Court, may, on the same evidence as would be required to enforce or avoid such bond as in the last preceding section is mentioned, order such sum so deposited to be paid out to such party or parties as he shall think just.

See notes to sect. 108.

Service of summonses to witnesses and others.

38 & 39 Vict. c. 50, s. 2.

110. Either of the parties to any action or matter may obtain from the registrar summonses to witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in the possession or control of the person summoned as a witness; and such summonses, and any summonses which are now or may be required to be served personally, may, under such regulations as may be prescribed, be served by a bailiff of the court or otherwise.

See Order XVIII. rr. 3, 3A, 4; Forms 123, 124, 124A.

Witnesses.]—Except where it is otherwise provided by the rules, evidence is to be taken orally on oath (Order XVIII. r. 1).

The attendance of witnesses for this purpose is enforced by means of summonses, to be served either in the home or in any foreign district; they may be issued without leave, and are then served by bailiff. They may, also, by leave of the court, be issued in blank and served by the party applying for the same or some person in his permanent and exclusive employ, or by his solicitor, or a solicitor acting as agent for such solicitor, or by some person in the employ of either of them, or some person employed by either of them to serve such summonses who might be so employed to serve a summons in an action in the High Court. In no case may more than one name be placed on any summons (Order XVIII. r. 3; Forms 123, 124, 124A). A summons to a witness may be issued by post. The plaintiff or his solicitor must transmit to the registrar (*a*) the plaint note, or summons, or a duplicate; (*b*) a request for the issue of summonses to witnesses, and (where the service is to be by bailiff) their names and addresses, or (if service is not to

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be by bailiff) a request to serve them in accordance with Order XVIII. r. 3; (*c*) a money order for the fees, and (where service is to be by bailiff) the amount to be tendered to each witness for expenses; (*d*) a stamped addressed envelope (Order XVIII. r. 3A). It is sufficient if a summons to a witness is served within a reasonable time; it may be served by delivering it to the witness personally, or to some person apparently not less than sixteen years old at the house or place of dwelling or place of business of the witness, or in the cases mentioned in Order VII. rr. 18, 19, 21, and 22, in the manner prescribed by those rules for the service of an ordinary summons (Order XVIII. r. 4; Form 125). For the purposes of this rule a place of business is not deemed to be the place of business of a witness unless he is the master or one of the masters of it (Order XVIII. r. 4). The parties themselves and their wives are competent witnesses (14 & 15 Vict. c. 9, s. 9).

Summons to produce Documents.]—The summons may be issued with or without a clause requiring the production of books, deeds, papers, and writings, in the possession or control of the person summoned as a witness (see sect. 110; Form 124).

Where a witness served with such a summons does not produce the documents at the trial, the judge may, upon admission or proof that the summons was served within a reasonable time, and that such documents are in the possession or under the control of the witness, and that they are relevant, make an order for their production by the witness, and may deal with all costs occasioned by their non-production, as may be just. This rule does not affect the rules as to the admission of secondary evidence of such documents (Order XVIII. r. 5; Form 126).

Penalty for witnesses neglecting summons. 9 & 10 Vict. c. 95, s. 86.

111. Every person summoned as a witness, either personally or in such other manner as shall be prescribed, to whom at the same time payment or a tender of payment of his expenses shall have been made on the prescribed scale of allowances and who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced, or who shall refuse to be sworn or give evidence, and also every person present in court who shall be required to give evidence, and who shall refuse to be sworn or give evidence, shall forfeit and pay such fine, not exceeding ten pounds, as the judge shall direct; and the whole or any part of such fine, in the discretion of the judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall be accounted for by the registrar to the treasurer.

A fine on a witness for non-attendance may be remitted on cause shown. The practice is, under Order LII. r. 6, the same as in the case of a juror (Order LII. r. 7A). Where a fine is inflicted on a judgment debtor for refusing or neglecting without reasonable cause to appear at the hearing of a judgment summons, the judge has no jurisdiction to apply the fine in reduction of the judgment debt, though he may order the same or part thereof to be allotted to the plaintiff for his expenses caused by such non-appearance (*R.* v. *Snagge*, (1909) 1 K. B. 644; 78 L. J. K. B. 562). The payment of the fine may be enforced as an ordinary judgment, or as money adjudged to be paid under the Summary Jurisdiction Acts (see sect. 167; Forms 167, 127—129; see these statutes, *post*, pp. 866—868).

Bringing up Prisoners.]—Where the witness is a prisoner, not under process in a civil proceeding, the judge may, upon application by affidavit

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(Form 130), issue a warrant to bring him up to give evidence: the prisoner will then be brought up as by writ of habeas corpus; but a reasonable sum must be tendered for the conveyance and maintenance of the officers and prisoner in going to, remaining at, and returning from court (see sect. 112; Form 131).

If a prisoner be in custody on civil process, he can only be brought up by a writ of *habeas corpus ad testificandum*, issued from the High Court pursuant to 44 Geo. 3, c. 102. The application should be made to a judge of the High Court at chambers (*Browne* v. *Gisborne*, (1843) 2 Dowl. N. S. 963; 12 L. J. Q. B. 297).

Expenses.]—All witnesses, and all plaintiffs and defendants personally attending the court, may be allowed for travelling expenses the sums actually and reasonably paid by them (Order LIII. r. 39). A witness can also recover from the person on whose behalf he is summoned, or from any other person by agreement, an allowance for loss of time (*Chamberlain* v. *Stoneham*, (1890) 24 Q. B. D. 113; 59 L. J. Q. B. 95; 51 & 52 Vict. c. 43, s. 111) according to the scale of allowance to witnesses on taxing costs.

Judges differ as to the meaning of "expenses"; some hold expenses to include an allowance according to scale for loss of time, others that "expenses" simply means travelling expenses, and that allowances for loss of time must be claimed in court before being sworn. The latter seems the better course, as a litigant could not reasonably be expected to determine what the allowance should be.

Judge may issue warrant for bringing up a prisoner to give evidence.

19 & 20 Vict. c. 108, s. 31.

112. A judge in any case where he shall think fit, upon application on an affidavit by either party, may issue an order under his hand and the seal of the court for bringing up before such court any prisoner or person confined in any gaol, prison, or place under any sentence or under commitment for trial or otherwise, except under process in any civil action, or matter (*a*), to be examined as a witness in any action or matter depending or to be inquired of or determined in or before such court; and the person required by any such warrant or order to be brought before the court shall be so brought under the same care and custody, and be dealt with in like manner in all respects as a prisoner required by any writ of habeas corpus awarded by the High Court to be brought before such court to be examined as a witness in any action or matter pending before such court is by law required to be dealt with: Provided always, that the person having the custody of such prisoner or person shall not be bound to obey such order unless a tender be made to him of a reasonable sum for the conveyance and maintenance of a proper officer or officers and of the prisoner or person in going to, remaining at, and returning from such court.

See notes to sect. 111.

(*a*) See *supra*.

Costs to abide the event.

9 & 10 Vict. c. 95, s. 88.

113. All the costs of any action or matter in the court, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the court shall think just, and in default of any special direction shall abide the event of the action or matter, and execution may issue for the recovery of any

such costs in like manner as for any debt adjudged in the said court. Section 113.

The fact that the judge is dissatisfied with the evidence of a witness called on behalf of the plaintiff is no ground for depriving the plaintiff of costs to which he is entitled as the result of succeeding in the action (*Hudsons, Ld.* v. *De Halpert*, 108 L. T. 416).

See separate chapter on Costs, Part II.

114. Whenever an action or matter is commenced over which the court has no jurisdiction, the judge shall, unless the parties consent to the court having jurisdiction, order it to be struck out, and shall have power to award costs in the same manner, to the same extent, and recoverable in the same manner, as if the court had jurisdiction therein, and the plaintiff had not appeared, or had appeared and failed to prove his demand or complaint. Court may award costs where action or matter is struck out for want of jurisdiction. 30 & 31 Vict. c. 142, s. 14.

See separate chapter on Costs, Part II.

115. If any party shall sue another in any court for any debt or other cause of action for which he has already sued him and obtained judgment in any other court, proof of such former action having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second action, and shall be adjudged to pay three times the costs of such second action to the opposite party. (*a*) No second action for same cause. Treble costs. 13 & 14 Vict. c. 61, s. 18.

See separate chapter on Costs, Part II.

NOTE (*a*).—See, as to suing for a debt for which judgment has already been obtained by error against the wrong party, *Isaacs* v. *Salbstein and Another*, (1916) 2 K. B. 139; 85 L. J. K. B. 1433.

116. With respect to any action brought in the High Court which could have been commenced in a county court, the following provisions shall apply :— Costs when not recoverable in High Court. 30 & 31 Vict. c. 142, s. 5. 45 & 46 Vict. c. 57, s. 4.

1. If in an action founded on contract the plaintiff shall recover a sum less than twenty pounds, he shall not be entitled to any costs of the action, and, if he shall recover a sum of twenty pounds or upwards, but less than one hundred (*a*) pounds, he shall not be entitled to any more costs than he would have been entitled to if the action had been brought in a county court; and
2. If in an action founded on tort the plaintiff shall recover a sum less than ten pounds, he shall not be entitled to any costs of the action; and, if he shall recover a sum of ten pounds or upwards, but less than twenty pounds, he shall not be entitled to any more costs than he would have been entitled to if the action had been brought in a county court; unless in any such action, whether founded on contract or on tort, a judge of the High Court certifies

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that there was sufficient reason for bringing the action in that court, or unless the High Court or a judge thereof at chambers shall by order allow costs. Provided that, if in any action founded on contract the plaintiff shall within twenty-one days after the service of the writ, or within such further time as may be ordered by the High Court or a judge thereof, obtain an order under order fourteen of the rules of the Supreme Court empowering him to enter judgment for a sum of twenty pounds or upwards, he shall be entitled to costs according to the scale for the time being in use in the Supreme Court.

NOTE.—(*a*) Extended from 50*l.* (see sect. 3 of Act of 1903).
See separate chapter on Costs, Part II., and *ante*, pp. 46—47.

Costs of action brought elsewhere than in county court. 30 & 31 Vict. c. 142, s. 29.

117. Where any action shall be brought in any other court than the High Court which could have been brought in a county court, and the verdict recovered is for a less sum than ten pounds, the plaintiff shall not recover from the defendant a greater amount of costs than he would have been allowed if the action had been brought in a county court.

See separate chapter on Costs, Part II.

Costs of solicitor to be taxed by registrar. 19 & 20 Vict. c. 108, ss. 34, 35, 36.

118. All costs and charges between party and party shall be taxed by the registrar of the court in which such costs and charges were incurred, but his taxation may be reviewed by the judge on the application of either party, and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force. All costs and charges between solicitor and client shall, on the application either of the solicitor or client, but not otherwise, be taxed by the registrar of the court in which such costs and charges were incurred, but his taxation may be reviewed by the judge on the application of either party, and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force unless the registrar shall be satisfied that the client has agreed in writing to pay them, in which case they may be allowed; and no solicitor shall have a right to recover from his client any such costs or charges unless they shall have been allowed on taxation.

See separate chapter on Costs, Part II.

The section does not make taxation a condition precedent to the solicitor's right to sue for his costs, even if the time within which the client is entitled to taxation has not expired (*Bell* v. *Girdlestone*, (1913) 2 K. B. 225; 82 L. J. K. B. 696).

Costs on higher scale. 45 & 46 Vict. c. 57, s. 5.

119. The judge may award costs on any scale higher than that which would be otherwise applicable to the plaintiff on any amount recovered, however small, or to a defendant who successfully

defends an action brought for any amount, however small, provided that the said judge certifies in writing that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons (*a*), or of general or public interest. Section 119.

See separate chapter on Costs, Part II.

NOTE.—(*a*) "Questions of importance to class of persons." See *Day* v. *Day*, (1916) 85 L. J. K. B. 917.

PART V.

APPEALS, ETC.

120. If any party in any action or matter shall be dissatisfied with the determination or direction of the judge in point of law or equity, or upon the admission or rejection of any evidence, the party aggrieved by the judgment, direction, decision, or order of the judge may appeal from the same to the High Court, in such manner and subject to such conditions as may be for the time being provided by the rules of the Supreme Court regulating the procedure on appeals from inferior courts to the High Court; Provided always, that there shall be no appeal in any action of contract or tort, other than an action of ejectment or an action in which the title to any corporeal or incorporeal hereditament shall have come in question, where the debt or damage claimed does not exceed twenty pounds, nor in any action of replevin, where the amount of rent or the damage or value of the goods seized does not exceed twenty pounds, nor in any action for the recovery of tenements where the yearly rent or value of the premises does not exceed twenty pounds, nor in proceedings in interpleader where the money claimed or the value of the goods or chattels claimed, or of the proceeds thereof, does not exceed twenty pounds, unless the judge shall think it reasonable and proper that such appeal should be allowed, and shall grant leave to appeal. At the trial or hearing of any action or matter, in which there is a right of appeal, the judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the action or matter. Parties aggrieved may appeal by notice of motion. 13 & 14 Vict. c. 61, ss. 14, 15. 19 & 20 Vict. c. 108, s. 68. 28 & 29 Vict. c. 99, s. 18. 30 & 31 Vict. c. 142, s. 13. 38 & 39 Vict. c. 50, s. 6. 47 & 48 Vict. c. 61, s. 23.

In what Cases.]—The County Courts Act of 1888 has consolidated the provisions of several statutes regulating appeals, and provides generally, subject to the limitations hereafter mentioned, that "any party in any action or matter" may appeal for error of the kind hereafter mentioned. These words are wide enough to include all those cases in which jurisdiction is given by particular Acts which are not County Courts Acts. Some of these Acts—*e.g.*, the Friendly Societies Act, 1896—do not in terms give an appeal, but give power to the judge to state a case for the opinion of

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the High Court on any question of law (59 & 60 Vict. c. 25, s. 68 (7); see also 37 & 38 Vict. c. 42, ss. 4, 36 (Building Societies Act, 1874), Part V.); and others, *e.g.*, the Settled Land Act, 1882, the Partition Acts, the Succession Duty Act, 1853 (16 & 17 Vict. c. 51, s. 50, Part V.), the Local Loans Act, 1875 (38 & 39 Vict. c. 83, ss. 12, 25, Part V.), contain no provision for appeal. It was considered as doubtful whether the Act of 1888 operated so as to give an appeal (see *Wilkinson* v. *Jagger*, (1887) 20 Q. B. D. 423; 57 L. J. Q. B. 254). That doubt is now set at rest. The Court of Appeal has decided that sect. 120 of the Act gives an appeal (subject to the limitations contained in the section) in every action or matter which may come before a county court, unless the court is satisfied that the words of that section were intended by the Legislature to be cut down (*The Delano* (C. A.), (1895) P. 40; 64 L. J. P. 8).

An appeal lies under the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 13, from the refusal of a county court judge to set aside the award of an arbitrator on the ground of misconduct, where a question of law is involved (*Williams* v. *Wallis*, (1914) 2 K. B. 478; 83 L. J. K. B. 1296).

The Supreme Court of Judicature (Procedure) Act, 1894, contains several provisions respecting appeals, and enacts that where there is a right of appeal to the High Court from any court or person the appeal shall be heard and determined by a divisional court, whose determination shall be final unless leave to appeal is given by that court or by the Court of Appeal.

Appeals from Interlocutory Decisions.]—It has been decided that since the Act of 1888, it is no longer an objection to the hearing of an appeal that it is against an interlocutory order (*Gilson* v. *Kilner*, (1894) 69 L. T. 310). See *Jonas* v. *Long*, (1888) 20 Q. B. D. 564; 57 L. J. Q. B. 298, as to interlocutory appeals in equity under the Act of 1865. Hence an appeal lies against an order granting a new trial (*Murtagh* v. *Barry*, (1890) 24 Q. B. D. 632; 59 L. J. Q. B. 388; *Bryant* v. *North Met. Tramways Co.*, (1890) 6 T. L. R. 396; *How* v. *L. & N. W. Ry. Co.*, (1892) 1 Q. B. 391; 61 L. J. Q. B. 368); or refusing it (*Dingor* v. *Matthews*, (1889) 65 L. T. 748, n.; *Pole* v. *Bright*, (1892) 1 Q. B. 603; 61 L. J. Q. B. 139); an order refusing to review a taxation of costs (*Wilson* v. *Statham*, (1891) 2 Q. B. 261; 60 L. J. Q. B. 725; and see *Goodman* v. *Blake*, (1887) 19 Q. B. D. 77; 56 L. J. Q. B. 441), under repealed Acts; an order refusing to order a better answer to interrogatories (*Meek* v. *Witherington*, (1892) 67 L. T. 122); and an order refusing attachment of the person (*Vallentin* v. *Woodley*, (1889) 5 T. L. R. 462). Assuming that the appeal will lie generally, it will clearly be subject to the same rules and limitations which affect appeals against final judgments. It will lie, therefore, in those actions or matters only in which an appeal could have been brought had the decision complained of been a final judgment, and doubtless on the same grounds only. Thus, in an action to recover a debt of 10*l.*, there could be no appeal against any interlocutory order made in it without leave, and no appeal under any circumstances in any case, except for error of law (see *Smith* v. *Baker* (H. L.), (1891) A. C. 325; 60 L. J. Q. B. 683).

There is no appeal against an order fining a person for assaulting an officer in the execution of his duty, such proceeding being of a criminal nature (*Lewis* v. *Owen*, (1894) 1 Q. B. 102; 63 L. J. Q. B. 233).

Though the right of appeal is extended to interlocutory orders generally, it does not follow that an appeal will always lie against, for instance, the judge's decision to review a taxation of costs; so far as it is a matter of discretion it is a matter purely for the judge; but should his decision be affected by error of law or the misapplication of a legal principle, then an appeal will lie.

It was held under the old Acts that no appeal lay from the refusal of the judge to set aside an award (*Mayer* v. *Farmer*, (1878) 3 Ex. D. 235; 47 L. J. Ex. 760); and except for error of law causing the decision, no appeal would lie now (see *Williams* v. *Wallis*, *supra*).

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It was formerly held that no appeal lay from an order of commitment (*Rackham* v. *Blowers*, (1849) 15 Jur. 758), and it has, since the Debtors Act, 1869, been always assumed that no appeal will lie; but it has been suggested that in some cases there may be an appeal under sect. 103, sub-s. 4, of the Bankruptcy Act, 1883 (*Draycott* v. *Harrison*, (1886) 17 Q. B. D. 147).

It was held with regret by the court prior to the Act of 1888, that no appeal lay by a garnishee against an erroneous garnishee order (*Mason* v. *Wirral Board*, (1879) 4 Q. B. D. 459; 48 L. J. Q. B. 679). The decision did not turn on whether the decision was final or interlocutory, but on the point that the garnishee was not an original party to the action. In so holding the court followed the cases in which, prior to the 19 & 20 Vict. c. 108, s. 68, it had been held on the same ground that no appeal lay in interpleader matters (*Beswick* v. *Boffey*, (1855) 9 Ex. 315; 23 L. J. Ex. 89).

The words of the 13 & 14 Vict. c. 61, s. 14, under which the above cases were decided, were "if either party in any cause" be dissatisfied, he may appeal. The words of the 1888 Act, are "if any party in any action or matter," and the words "action" and "matter" together include every proceeding in the court, whether commenced by plaint or otherwise (51 & 52 Vict. c. 43, s. 186). They are wide enough to include both interpleader and garnishee proceedings, and the intention to give an appeal in interpleaders is shown by the limit imposed upon the absolute right of appeal in such cases by sect. 120. The mere giving of an appeal "in proceedings in interpleader" by the 19 & 20 Vict. c. 108, s. 68, was held to give an appeal to the claimant (*Vallance* v. *Nash*, (1858) 2 H. & N. 712; 27 L. J. Ex. 142; 115 R. R. 759); and to the execution creditor, and to a landlord who appeared on the summons (*Foulger* v. *Taylor*, (1860) 5 H. & N. 202; 29 L. J. Ex. 154; 120 R. R. 542); and it is therefore submitted that the Act of 1888 continues the right of appeal in interpleaders, and also confers a right of appeal on parties to garnishee proceedings.

Jurisdiction given by Consent.]—The appeal section does not expressly mention actions in which jurisdiction is given by consent of the parties (see 51 & 52 Vict. c. 43, s. 64). Prior to the 19 & 20 Vict. c. 108, s. 68, which expressly gave an appeal in such cases, it was held that no appeal would lie (*Groves* v. *Janssens*, (1854) 9 Ex. 481; 23 L. J. Ex. 91). But the section which gave the power to confer jurisdiction (19 & 20 Vict. c. 108, s. 23), was passed some years after the 13 & 14 Vict. c. 61, s. 14, and that fact may have influenced the minds of the judges. It is, however, submitted that the Act of 1888 gives an appeal in "any action," and that where parties confer jurisdiction and bring an action the proceeding afterwards commenced by plaint is none the less an action (see sect. 186), and that there is therefore clearly an appeal.

Title incidentally in Question.]—Where parties give jurisdiction when a question of title beyond the jurisdiction incidentally arises, their right of appeal is expressly reserved (51 & 52 Vict. c. 43, s. 61).

There is an absolute right of appeal in all actions in which title is in question; in all actions of ejectment; in all actions where an injunction has been granted or apparently claimed, see *Dixon* v *Brown*, *post*, p. 126 (*Brune* v. *James*, (1898) 1 Q. B. 417; 67 L. J. Q. B. 283); and in all equity actions and matters.

The appeal lies in all cases quite irrespectively of the fact whether they are tried by jury or by the judge alone (*Cawley* v. *Furnell*, (1852) 12 C. B. 291; 20 L. J. C. P. 197; *East Anglian Co.* v. *Lythgoe*, (1851) 10 C. B. 726; 20 L. J. C. P. 84).

Where the judge gives leave to move in the county court for a new trial, the dissatisfied party, if he have a right to appeal, may appeal at once to the High Court, instead of moving in the county court (*Outhwaite* v. *Hudson*, (1851) 7 Ex. 380).

There is no appeal where the rules of practice are entirely disregarded;

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as where the parties to an action in a superior court agree to try the case without plaint or formalities before the county court judge as arbitrator (*Pearce* v. *Winkworth*, (1873) 28 L. T. 710).

When actions of contract and tort, or equity actions or matters are sent for trial to a county court under 51 & 52 Vict. c. 43, ss. 65, 66, 69, or interpleaders under 47 & 48 Vict. c. 61, s. 17, there is, it is believed, an appeal in the same manner and under the same conditions as in other actions or matters commenced in a county court (see *Cousins* v. *Lombard Bank*, (1876) 1 Ex. D. 404; 45 L. J. Ex. 573; *Bowles* v. *Drake* (C. A.), (1882) 8 Q. B. D. 325; 51 L. J. Q. B. 66).

Limit on Right of Appeal.]—No appeal will lie if, before the decision of the court be pronounced, both parties agree, in writing signed by themselves or their solicitors or agents, that the decision of the judge shall be final (51 & 52 Vict. c. 43, s. 123). The agreement does not require a stamp (*ib.*).

The next friend of an infant plaintiff, who has failed in an action, cannot bind him by agreement not to appeal in consideration of forbearance of costs against the next friend (*Rhodes* v. *Swithenbank* (C. A.), (1889) 22 Q. B. D. 577; 58 L. J. Q. B. 287).

There is no appeal of right in any action of contract or tort, not being an action in which title is in question, where the debt or damage does not exceed 20*l.* (51 & 52 Vict. c. 43, s. 120): but where an injunction and 20*l.* damages for trespass were claimed, and the claim for the injunction was withdrawn during the hearing, and damages for the trespass were assessed at 15*l.*, there is apparently leave to appeal without leave (*Dixon* v. *Brown*, (1915) 2 K. B. 294; 84 L. J. K. B. 1248).

Generally the right of appeal depends upon the amount claimed. If it exceeds 20*l.*, although the judgment be for less, an appeal lies (*Harris* v. *Dreesman*, (1854) 9 Ex. 485; 23 L. J. Ex. 210). So a defendant whose counterclaim exceeds 20*l.* has an absolute right of appeal, though the plaintiff's claim is less (*Smith* v. *Gill*, (1896) 2 Q. B. 166; 65 L. J. Q. B. 556). But if the nature of the case is such, that the judge cannot lawfully award more than 20*l.*, there is no right of appeal, although the damages claimed are unliquidated and exceed 20*l.* Thus in an action against a bailiff for omission to levy a debt and costs, amounting to 12*l.* 17*s.* 8*d.*, in which the judge decided against the plaintiff it was held that no appeal would lie, though he had claimed 20*l.* 1*s.* (*Mayer* v. *Burgess*, (1855) 4 E. & B. 655; 24 L. J. Q. B. 67; 99 R. R. 677). A plaintiff cannot at the trial abandon the excess of his claim over 20*l.*, so as to deprive the defendant of his right of appeal (*North* v. *Holroyd*, (1867) L. R. 3 Ex. 69; 37 L. J. Ex. 42).

There is no appeal of right in any action of replevin where the amount of rent or damage or value of the goods seized does not exceed 20*l.*, nor in any action for the recovery of tenements where the yearly rent or value of the premises does not exceed 20*l.* (51 & 52 Vict. c. 43, s. 120), nor in interpleader proceedings where neither the money claimed nor the value of the goods or of their proceeds exceeds 20*l.*; but the appeal in interpleaders will lie if the value of the goods seized exceeds 20*l.*, although the claim in the original action is below it (*Vallance* v. *Nash*, (1858) 2 H. & N. 712; 27 L. J. Ex. 142; 115 R. R. 759). Where the goods are appraised and a deposit made to prevent a sale, the appraised value is the value for the purpose of appeal (*White* v. *Milne*, (1888) 58 L. T. 225); and if it does not exceed 20*l.*, there is no appeal even though a claim for damages exceeding 20*l.* be made (*Lumb* v. *Teal*, (1889) 22 Q. B. D. 675; 58 L. J. Q. B. 298).

Appeal by Leave.]—When there is no right of appeal on account of the limit imposed, the judge may, if he thinks fit, give leave to appeal; and it is believed in no other cases (51 & 52 Vict. c. 43, s. 120). Where leave is not asked for at the trial, and the judge dies before the expiration of the period during which leave could be applied for, leave cannot be granted by a judge of the High Court, and there is no jurisdiction to hear an appeal (*Fell* v. *L. & Y. Ry. Co.*, (1907) 96 L. T. 785).

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The judge may impose terms as a condition for granting leave, *e.g.*, that the appellant shall pay the respondent's costs in any event, and if unsuccessful pay the costs of trial on the higher scale (*Goodes* v. *Cluff*, (1884) 13 Q. B. D. 694). Under rule 129 of Bankruptcy Rules, 1886—1914, no appeal lies from a county court in bankruptcy proceedings unless the money or money's worth involved exceeds 50*l*. This means without the costs of the proceedings (*Arnold, In re*, (1915) 3 K. B. 1078; 84 L. J. K. B. 110).

On what Grounds.]—The power of appealing is confined to those cases in which one of the parties is dissatisfied with the "determination or direction of the judge in point of law or equity, or upon the admission or rejection of any evidence"; therefore, where there is no jury, the judge's findings of fact are final if there is any evidence on which he could so find (*Cousins* v. *Lombard Bank*, (1876) 1 Ex. D. 404; 45 L. J. Ex. 573; *Smith* v. *Baker* (H. L.), (1891) A. C. 325; 60 L. J. Q. B. 683); still if the inferences of fact drawn by the judge from the evidence could not have been arrived at without an error in point of law, an appeal will lie (*Cawley* v. *Furnell*, (1852) 12 C. B. 291; 20 L. J. C. P. 197; *Cuthbertson* v. *Parsons*, (1852) 12 C. B. 304; 21 L. J. C. P. 165; and see *Le Blanche* v. *L. & N. W. Rail. Co.* (C. A.), (1876) 1 C. P. D. 286; 45 L. J. C. P. 521). This rule applies to equity actions; to support an appeal, a misapplication by the judge of the principles of equity to the facts must be shown (*Hill* v. *Persse*, (1876) 25 W. R. 275).

Where there is a misdirection or a non-direction to a jury, the objection to the judge's direction must be taken at the time if the objector desires to appeal to the High Court direct (*Clifford* v. *Thames Ironworks and Shipbuilding Co.*, (1898) 1 Q. B. 314; 67 L. J. Q. B. 244); but the objection may also be taken for the first time upon an application for a new trial, and if refused relief then appeal will lie (*Handley* v. *London, Edinburgh, and Glasgow Assurance Co.*, (1902) 1 K. B. 350; 71 L. J. K. B. 39).

If the trial is by jury, their findings of fact cannot be questioned on appeal in the High Court; but only by an application to the judge of the county court for a new trial.

An appeal was held to lie under the County Courts Equitable Jurisdiction Act, on the ground that a decree was irregular in form, and that costs were wrongly disallowed (*Cooper* v. *Busbridge*, (1867) 16 L. T. 5). It has also been held, that whether certain conversations amount in equity to a contract between the parties is not a mere question of fact but a question of equity, the judge's decision upon which may be the subject of appeal (*Williams* v. *Williams*, (1868) 37 L. J. Ch. 854).

An appeal may lie even under circumstances which would justify a prohibition (*Sweetland* v. *Turkish Cigarette Co.*, (1899) 47 W. R. 511; 80 L. T. 472; *Barker* v. *Palmer*, (1882) 8 Q. B. D. 9; 51 L. J. Q. B. 110); but it is difficult to understand how, if a county court had no jurisdiction, there could be an appeal, which presupposes jurisdiction.

No appeal lies from a ruling that the stamp on a document is sufficient (*Mander* v. *Ridgway*, (1898) 1 Q. B. 501; 67 L. J. Q. B. 335).

The point which a party relies on should be distinctly raised before the judge of the county court, since it is a condition precedent to the right of appeal that the point should be made at the trial (*Rhodes* v. *Liverpool Co.*, (1879) 4 C. P. D. 425; *Pierpoint* v. *Cartwright*, (1880) 5 C. P. D. 139; *Clarkson* v. *Musgrave*, (1882) 9 Q. B. D. 386; 51 L. J. Q. B. 525; *Smith* v. *Baker* (H. L.), (1891) A. C. 325; 60 L. J. Q. B. 683, *per* Lord Halsbury, L.C., and Lords Watson and Morris). This rule applies even when the ground of appeal is that the jurisdiction of the county court in the matter in question has been ousted by a public statute: *Taylor* v. *National Amalgamated Approved Society*, (1914) 2 K. B. 352; 83 L. J. K. B. 1020.

The court will not hear an appeal where a point has been taken and the judge has given judgment *pro formâ* in order that the opinion of the High Court may be taken (*Chapman* v. *Withers*, (1887) W. N. 235; 58 L. T. 24).

The mere fact that a defendant, who has unsuccessfully applied for a

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nonsuit calls witnesses, will not debar him from appealing on this ground (*G. N. Ry. Co.* v. *Rimell*, (1856) 18 C. B. 575; S. C. *nom. G. W. Ry. Co.* v. *Rimell*, (1856) 27 L. J. C. P. 201; *Groves* v. *Cheltenham, etc. Building Society*, (1913) 2 K. B. 100; 82 L. J. K. B. 664).

An appeal on the ground of misdirection in law does not succeed unless substantial wrong has been occasioned thereby, and this, whether the ground of appeal is misdirection by the judge of the jury, or misdirection of himself. See R. S. C. Order XIX., r. 7, and *Tullis* v. *North Pole Ice Co., Ltd.*, (1916) 33 T. L. R. 114.

Mode of Appeal.]—Appeals from county courts must be brought in accordance with the provisions of the Rules of the Supreme Court (Order LIX. r. 1; 47 & 48 Vict. c. 61, s. 23; 51 & 52 Vict. c. 43, s. 120). They provide that every appeal must be by notice of motion only (R. S. C., Order LIX. rr. 10, 18). See these Rules, *post*, pp. 230—232.

The method of appeal by motion now clearly applies to all actions or matters commenced or authorised by the County Courts Act, and also to those cases in which a special Act has given an appeal and prescribed the mode of it as by case stated by the judge, *e.g.*, under the Rivers Pollution Act, 1876 (39 & 40 Vict. c. 75, Part V.; *Kirkheaton Local Board* v. *Ainley* (C. A.), (1892) 2 Q. B. 274; 61 L. J. Q. B. 812). Where, however, the special Act has not given an appeal, but merely power to state a special case, *e.g.*, under the Friendly Societies Act, 1896, the Agricultural Holdings Act, 1883, the practice is still unsettled. (*R.* v. *Kettle*, (1886) 17 Q. B. D. 761; 55 L. J. Q. B. 470, was under the County Courts Acts and does not decide the point. The point was discussed but not decided in *Wilkinson* v. *Jagger*, (1887) 20 Q. B. D. 423; 57 L. J. Q. B. 254.) Under the provisions as to disputes in the Building Societies Act, 1874, an appeal is directly forbidden; it seems clear, therefore, that in that case a case must be stated. It is possible that whenever there is power to state a special case, the judge may under the Arbitration Act (52 & 53 Vict. c. 49, s. 19) be compelled to state it by order of a judge of the High Court at chambers (*Tabernacle Building Society* v. *Knight*, (1892) A. C. 298; 62 L. J. Q. B. 50); but as the rule is never to grant a mandamus where there is another effectual remedy, it is presumed that an order to the judge to state a case would only be granted if the court held that an appeal could not in the particular case be maintained by motion in the ordinary manner.

Notice of Motion.]—The notice of motion (see Form 9, Appendix A) must be an eight days' notice (R. S. C., Order LIX. r. 10), p. 231, and it must be served and the appeal entered within twenty-one days from the date of the "judgment, order or finding complained of" (R. S. C., Order LIX. r. 12). It is believed that the notice must fix a day not less than eight days from the date of the notice as that upon which the court will be moved; but that the eight days need not be part of the twenty-one (see *Dingor* v. *Matthews*, (1889) 65 L. T. 748, n.). The time for appealing may be extended by the High Court (R. S. C., Order LIX. r. 16); but some good ground must be shown (R. S. C., Order LIX. r. 17). Where through a mistake of counsel the appellant was a day too late for entry of the appeal the court extended the time on payment of costs (*Cusack* v. *L. & N. W. Rail. Co.* (C. A.), (1891) 1 Q. B. 347; 60 L. J. Q. B. 208).

It is not clear whether an appeal could be entered during the long vacation, or even notice of motion given.

The time from which the twenty-one days begins to run is that at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given (R. S. C., Order LIX. r. 12). The question as to the date of the decision of the judge in the county court has already been considered. The county court judge, by ordering judgment to be entered as of a later day than that on which he delivers it, cannot extend the time for appealing (*Wilberforce* v. *Sowton*, (1878) 48 L. J. C. P. 28). When judgment is reserved, and notice of the judgment

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is afterwards sent to the parties, for the purpose of appeal, time will, it is believed, still run from the date of the notice, and not from an earlier day for which judgment is ordered to be entered (*Waterton* v. *Baker*, (1868) L. R. 3 Q. B. 173, 176, *per* Cockburn, C.J.; 37 L. J. Q. B. 65; *Francis* v. *Dowdeswell*, (1874) L. R. 9 C. P. 423, 430, *per* Lord Coleridge, C.J.; 43 L. J. C. P. 248). If on a special finding of facts the county court judge directs judgment, but reserves leave to move him to enter judgment the other way, the time for appeal against the judgment would, probably, date from the day of the hearing of the motion (*Foster* v. *Green*, (1861) 6 H. & N. 793; 30 L. J. Ex. 263).

On appeal against an order granting or refusing a new trial, time runs from the date of the making of the order, not from the date of the original judgment (*Dingor* v. *Matthews*, (1889) 65 L. T. 748, n., *post*, p. 603, overruling *McHardy* v. *Liptrott*, (1887) 19 Q. B. D. 151).

Grounds of Appeal.]—The notice of motion must state the grounds of appeal (R. S. C., Order LIX. r. 10, Appendix B.; see Form 9, Appendix). The absence of grounds would, it is believed, now be fatal unless amended (R. S. C., Order LIX. r. 16). Nevertheless, the grounds appear to be matters of procedure imposed for the benefit of the respondent, and he might, it is believed, waive any objection to them or their absence (see *Park Gate Co.* v. *Coates*, (1870) L. R. 5 C. P. 634; 39 L. J. C. P. 317; *Ward* v. *Raw*, (1872) L. R. 15 Eq. 83). The appellant, moreover, would not be prejudiced by any act of the court, or the respondent himself which prevented his stating the grounds of appeal. "Thus, if the judge were to pronounce judgment at one court day, and to state the grounds of his decision at a future day, after the expiration of the [twenty-one days] the appellant might be unable to show his grounds of appeal. In that case, I think that if the grounds were given as early as possible after the latter day, the delay would be the act of the court, and the appellant would be excused" (*per* Brett, J., *Francis* v. *Dowdeswell*, (1874) L. R. 9 C. P. 423, 432; 43 L. J. C. P. 248).

The notice of motion must state whether the whole or part only of the judgment, order or finding is complained of.

The notice of motion must be served within the time above named on every party directly affected by the appeal. Service on the solicitor of a party who acts by solicitor suffices (Order LIV. rr. 3—6), but service on the London agent of a country solicitor does not (*Powell* v. *Thomas*, (1891) 1 Q. B. 97; *Jackson* v. *Marygrett*, (1893) 41 W. R. 267; 68 L. T. 91). When an action is sent from the High Court to the county court, service may be made on the solicitor who acts in the county court, not on his London agent (*Malley* v. *Shepley*, (1893) 62 L. J. Q. B. 31; see Order XXXIII. r. 1; Order LIV. rr. 3—6). The High Court has a general power to order service of the notice of appeal on any party not served, or on a person not a party if his presence be deemed necessary (R. S. C., Order LIX. r. 17; Order LVIII. r. 2).

The appeal must be entered within the time above named, by lodging a copy of the notice of motion at the Crown Office Department of the Central Office at the Royal Courts of Justice (R. S. C., Order LIX. r. 11).

Extended Jurisdiction.]—In the case of an appeal in an action under the extended jurisdiction sent for trial to a foreign court, a copy of the notice of motion must be lodged by the appellant with the registrar of that court (Order XXIIA. r. 27 (1)). If it is lodged before the documents in the action have been transmitted to the home court under Order XXIIA. r. 26, the registrar of the foreign court will, if there is no stay, proceed under that rule, and will transmit the copy with the other documents to the registrar of the home court; if there is a stay, the registrar of the foreign court will retain the documents until the appeal is disposed of (Order XXIIA. r. 27 (2)). If the copy is not lodged until after the documents have been transmitted to the home court, the registrar of the foreign court must forthwith transmit

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the copy to the registrar of the home court, and give him notice of a stay of proceedings (if any) (Order XXIIA. r. 27 (3)). When the appeal has been heard or otherwise disposed of, either party may deposit with the registrar of the foreign court the judgment of the Court of Appeal, or an office copy, or a memorandum signed by the parties and showing how the appeal has been disposed of, and the like proceedings will be taken as are prescribed where an application for a new trial has been heard or otherwise disposed of, and the provisions of Order XXII. r. 26, and of Order XXXII. rr. 2, 3, 4, will apply with the necessary modifications (Order XXIIA. r. 27 (4)).

Security.]—No security is required unless ordered by the High Court; and the court may equally order security in applications for new trials as well as in final appeals (*Wightwick* v. *Pope*, (1902) 2 K. B. 99; 71 L. J. K. B. 709). The appeal will not, however, operate as a stay of proceedings, unless the judge so orders, or unless within ten days after the decision a deposit be made of, or security given to the satisfaction of the county court for, a sum to be fixed by it, not exceeding the amount of the money or the value of the property affected by the judgment, order or finding appealed from (R. S. C., Order LIX. r. 14, *post*, p. 231). The money "affected by the judgment" includes the costs as well as the debt; the judge may therefore, as a condition of a stay, order security to be given for the costs, although the amount of the judgment debt is paid into court (*Grimshaw* v. *Parker*, (1910) 2 K. B. 161; 79 L. J. K. B. 780). Where an infant sues by a next friend, the High Court may order security for the costs of the appeal if the next friend is without means (*Swain* v. *Follows*, (1887) 18 Q. B. D. 585; 56 L. J. Q. B. 310); so where an appellant has disposed of his goods to avoid paying respondent's costs (*Moore* v. *Pinnick*, (1901) 70 L. J. K. B. 471); but, as a general rule, not in any case where the judge has given unconditional leave to appeal (*Ex parte Society of Apothecaries*, (1890) 38 W. R. 478).

Security must always be by bond or deposit of money. No doubt the respondent may waive his right to security (*Park Gate Co.* v. *Coates*, (1870) L. R. 5 C. P. 634; 39 L. J. C. P. 317; *Waterton* v. *Baker*, (1868) L. R. 3 Q. B. 173; 37 L. J. Q. B. 65); and if the appellant, not being himself in fault, failed to complete his security, either through the default of the respondent or of the judge or registrar, he could not be deprived of the benefit of the stay of proceedings (*Francis* v. *Dowdeswell*, (1874) L. R. 9 C. P. 423, 432; 43 L. J. C. P. 248).

Cross Appeal.]—A respondent need not give notice of motion by way of cross appeal, but if he intends on the hearing of the appeal to contend that the decision of the county court should be varied, he must, within eight days apparently from the service of the notice of motion, give notice of his intention to the parties who may be affected by it. The omission to give the notice will not affect the power of the court, but may be a ground for adjournment or special order as to costs (R. S. C., Order LIX. r. 17; Order LVIII. rr. 6, 7; see Form 10, Appendix, *post*, p. 875). The grounds of cross appeal must be stated (*Williams* v. *Taperell*, (1892) 92 L. T. 213). A respondent cannot by way of cross appeal raise questions which he could not have originated by appeal (*The Alne Holme*, (1893) P. 173; 62 L. J. P. 51).

Judge's Notes.]—To facilitate appeals the judge must, at the request of either party, make a note of any question of law raised at the trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the action or matter (51 & 52 Vict. c. 43, s. 120). This provision has given rise to much discussion. "The statute seems to suppose that the point of law may be stated at once at the trial, and then a note taken of all the evidence; but it is obvious that a point of law may arise in the course of the case; or it may arise afterwards at the end" (*Morgan* v. *Rees* (C. A.), (1881) 6 Q. B. D. 508, 513, *per* Bramwell, L.J.; 50 L. J. Q. B. 491). In this case it was held that a statement by the solicitor of the plaintiff that the case was important and might be taken to the High Court was technically insufficient. So a request made an hour and

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a half after judgment was held to be too late (*Pierpoint* v. *Cartwright*, (1880) 5 C. P. D. 139).

The provisions as to obtaining notes above referred to are for the benefit of the party intending to appeal, and do not constitute a condition precedent to the right of appeal (*Wohlgemuthe* v. *Coste*, (1899) 1 Q. B. 501; 68 L. J. Q. B. 373). Where, without any request having been made, the judge had taken a note, and had added a statement of the points of law raised and determined, the Court of Appeal held that an appeal would lie (*Seymour* v. *Coulson* (C. A.), (1880) 5 Q. B. D. 359; 49 L. J. Q. B. 604). Where evidence had been given by affidavits, and the judge compiled notes from them, they were allowed to be used on the appeal (*Hill* v. *Persse*, (1876) 25 W. R. 275).

A rule provides that if the notes are not produced, the court may hear the appeal on any other evidence or statement of what occurred in the court below which the court may deem sufficient (R. S. C., Order LIX. r. 8); see *post*, p. 231. In *Abrahams* v. *Dimmock*, (1915) 1 K. B. 662; 84 L. J. K. B. 802, the Court of Appeal decided that though the point of law must be raised at the trial it is sufficient if raised by the judge himself and discussed. It is not a condition precedent to appeal that the judge should have taken a note, or been asked to take a note, or if he has not taken one, that he should certify to this effect. *Cook* v. *Gordon*, (1892) 67 L. J. Q. B. 445, in so far as it was an authority for the contrary view must be considered overruled. Still, the point of law must be raised (*Smith* v. *Baker*, (1891) A. C. 325. In one case the appeal was adjourned, in order that the certificate of the county court judge that there was no note might be obtained (*Brown* v. *Book*, (1892) 8 T. L. R. 227). In another, where no request had been made and the judge's notes were very incomplete, the court heard the motion without any notes (*Morgan* v. *Davies*, (1878) 3 C. P. D. 260; *The Confidence*, (1879) 40 L. T. 201). In another, where there was no request, and no notes, the court ordered that the witnesses examined at the trial might be called on appeal, and examined as to their evidence (*The Crescent* (C. A.), (1893) 62 L. J. P. 63). When counsel had merely requested the judge "to take the usual note," the court held that his duty was to raise the question of law, and then to ask the judge to make a note of the evidence and of his decision, and it dismissed an application to state a case, or to furnish a copy taken for the use of the court (*R.* v. *Kerr*, (1894) 70 L. T. 595). *Abrahams* v. *Dimmock*, *supra*, is not inconsistent with this case.

Where there is a right of appeal, and the judge has at the request of either party made a note as above mentioned, he must at the expense of any party (see sect. 186) furnish a copy of the note, or allow a copy to be taken by or on behalf of such party, whether notice of motion by way of appeal has been served or not, and he must sign the note.

In the event of no request being made as required by sect. 120, the judge will not be bound either to take a note or to furnish or sign a copy (*Morgan* v. *Rees* (C. A.), (1881) 6 Q. B. D. 508; 50 L. J. Q. B. 491; *ante*, p. 130). Where the point of law arose in the summing up and could not have been revised without the evidence being read, the court allowed a transcript of a shorthand note taken by a writer of the Corporation of the City of London, but not signed by the judge, to be used on the appeal, and allowed the successful plaintiff the costs of obtaining the note (*Barber* v. *Burt*, (1894) 2 Q. B. 437; 63 L. J. Q. B. 700); but such costs are allowed on vital points only (*In re Sprange*, (1898) 77 L. T. 808). In cases tried with a jury the costs of the note of the summing up only will be allowed (*Barber* v. *Burt*, *supra*).

The note ought to be sealed with the seal of the county court (Order LIV. r. 14), and must be used at the hearing of the appeal (sect. 121). It is the duty of the appellant, in accordance with the practice of the Court of Appeal, to supply copies of the notes for the use of the judges (*McGrah* v. *Cartwright*, (1889) 23 Q. B. D. 3; 58 L. J. Q. B. 331).

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Hearing of Appeals.]—The appeal lies to a divisional court of the High Court of Justice, constituted as prescribed by rules of the High Court, and whose decision is final unless leave to appeal is given by that court or by the Court of Appeal (57 & 58 Vict. c. 16, s. 1 (5); R. S. C., Order LIX. r. 4).

The appeal must be entered in the proper list (the Civil paper) for hearing on such days as the Lord Chief Justice of England may direct, and will come on to be heard in its order, unless the High Court otherwise directs (R. S. C., Order LIX. r. 15). One counsel only will be heard on each side. The appellant begins and has a reply after the respondent has been heard.

If one of the parties dies after the entry of an appeal the High Court has jurisdiction to give leave to add the personal representatives of the party dying (*Blakeway* v. *Patteshall*, (1894) 1 Q. B. 247; *Hemming* v. *Williams*, (1871) L. R. 6 C. P. 480; 40 L. J. C. P. 270).

The court cannot entertain objections not made in the court below (*Cox* v. *Slater*, (1866) 14 L. T. 511; *Williams* v. *Evans*, (1875) L. R. 19 Eq. 547; 44 L. J. Ch. 319; *Yorke* v. *Smith*, (1852) 21 L. J. Q. B. 53; *Smith* v. *Baker* (H. L.), (1891) A. C. 325; 60 L. J. Q. B. 683, *per* Lord Halsbury, L.C., and Lords Watson and Morris). Where a new point was raised in the county court more than an hour after judgment the court dismissed the appeal, although the judge made a note and reserved the point (*Pierpoint* v. *Cartwright*, (1880) 5 C. P. D. 139; *Rhodes* v. *Liverpool Co.*, (1879) 4 C. P. D. 425). If, upon the facts appearing on the notes, the judgment can be supported on grounds different from those taken in the court below, judgment will not be disturbed (*Chapman* v. *Knight*, (1880) 5 C. P. D. 308; 49 L. J. C. P. 425).

The High Court has power to draw any inference of fact and to amend the grounds of appeal, and may grant a new trial on such terms as it thinks fit, or order judgment to be entered for any party, or dismiss the appeal, or make any final or other order, on such terms as it thinks just, to ensure the determination of the real questions between the parties (see sect. 122; R. S. C., Order LIX. rr. 7—16). No appeal will succeed merely on the ground of misdirection or improper reception or rejection of evidence, unless, in the opinion of the court, substantial wrong or miscarriage has been thereby occasioned in the court below (R. S. C., Order LIX. r. 7; framed to meet *Matthews* v. *Ovey*, (1884) 13 Q. B. D. 403).

The power to enter judgment is well settled whether the trial be before a judge alone (*Eastland* v. *Burchell*, (1878) 3 Q. B. D. 432; 47 L. J. Q. B. 500; *Whiteman* v. *Hawkins*, (1878) 4 C. P. D. 13; *King* v. *Oxford*, (1885) 51 L. T. 94), or with a jury (*Snowden* v. *Baynes*, (1890) 24 Q. B. D. 568; 59 L. J. Q. B. 325; (C. A.), 25 Q. B. D. 193; *Amos* v. *Duffy* (C. A.), (1890) 6 T. L. R. 339; *Whatley* v. *Holloway*, (1890) 6 T. L. R. 190; (C. A.), 353).

Workmen's Compensation Act.]—Appeals under this Act lie to the Court of Appeal direct. See Act, Sched. II. (4).

Appeal from Order of High Court.]—The judgment of the divisional court is final unless special leave to appeal to the Court of Appeal be granted by that court or by the Court of Appeal (57 & 58 Vict. c. 16, s. 1 (5); *Godman* v. *Moses* (C. A.), (1900) 69 L. J. Q. B. 823); an application for leave to appeal when made to the Court of Appeal should be always made *ex parte*; if the court wishes the other side to be heard it will direct notice to be served (57 & 58 Vict. c. 16, s. 1 (6); *County Council of Dorset* v. *Pethick*, (1898) 14 Times Rep. 183). Where Divisional Court orders new trial, an appeal to the Court of Appeal is from an interlocutory, not final, order. See *M. Isaacs & Sons, Ltd.* v. *Salbstein*, (1916) 85 L. J. K. B. 1436. Where leave to appeal is given by a county court judge, a right of appeal is created within the meaning of sect. 1, sub-s. 5, of the Judicature Act, 1894, and a further appeal lies to the Court of Appeal by leave of the divisional court or of the Court of Appeal (*Moore, Nettlefold & Co.* v. *Singer Manufacturing Co.* (C. A.), (1904) 1 K. B. 820; 73 L. J. K. B. 457). In the Court of Appeal the argument will be confined to the point as to which leave

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to appeal has been given (*Jones* v. *Biernstein*, (1900) 1 Q. B. 100; 69 L. J. Q. B. 1). Leave to proceed as a pauper may be granted by the Court of Appeal to a party appealing thereto from the divisional court which has affirmed the judgment of the county court (*Clements* v. *L. & N. W. Rail. Co.* (C. A.), (1894) 2 Q. B. 482). No appeal lies against the refusal to grant leave (*Kay* v. *Briggs* (C. A.), (1889) 22 Q. B. D. 343; 58 L. J. Q. B. 182). From the Court of Appeal an appeal lies as of right to the House of Lords (*Crush* v. *Turner*, (1879) 4 App. Cas. 221; *Thomas* v. *Kelly*, (1889) 13 App. Cas. 506; 58 L. J. Q. B. 66); *aliter* where the county court was sitting in bankruptcy (4 & 5 Geo. 5, c. 59, s. 103; see *post*, p. 280).

Proceedings after Judgment.]—When the court has pronounced judgment, either party may deposit the same, or an office copy, with the registrar of the county court, and upon being so deposited the judgment will be filed, and may be enforced as if it had been made by the county court (Order XXXII. r. 2).

Where the Divisional Court has given judgment on an appeal, and the judgment has been drawn up and perfected, there is no power to restore it to the list, even though it was heard in the absence of the respondent, and the decision was against him, (*Hession* v. *Jones*, (1914) 2 K. B. 421; 83 L. J. K. B. 810).

When a new trial is ordered, the cause must be entered for trial at the first county court held next after twelve clear days from the time when the order or office copy has been deposited, unless the parties agree that it shall take place sooner, or the judge otherwise orders. The new trial must be conducted in the same manner as any new trial granted by the county court itself (Order XXXII. r. 3).

If the order of the High Court be that judgment be entered for either party, the judgment must be entered accordingly, and the successful party will be at liberty to proceed as on a judgment of the county court (Order XXXII. r. 4).

Costs.]—Although the court refuses to hear an appeal on the ground that the appeal will not lie, it frequently does entertain it so far as to dismiss it with costs (*Carr* v. *Stringer*, (1858) E. B. & E. 123; 113 R. R. 570), but as its power depends on jurisdiction, it is difficult to see how it can do so (*Lawford* v. *Partridge*, (1857) 1 H. & N. 621; 26 L. J. Ex. 147; 108 R. R. 74; *Brown* v. *Shaw*, (1876) 1 Ex. D. 425; *Clarke* v. *Roche* (2), (1877) 36 L. T. 78; see, however, *Ex parte Pringle* (C. A.), (1889) 60 L. T. 796). It seems that the court cannot make a conditional order that the costs of the appeal shall abide the event of the new trial (*Gibbon* v. *Gibbon*, (1853) 13 C. B. 205; 22 L. J. C. P. 131, 135, *in notis*). The costs of appeal, as a general rule, follow the event; and unless there are special circumstances to take a case out of the rule, the appellant, if successful, is now allowed his costs of appeal (*Mountney* v. *Collier*, (1852) 1 E. & B. 630; 22 L. J. Q. B. 124; 93 R. R. 317; *Schroeder* v. *Ward*, (1863) 13 C. B. N. S. 410; 32 L. J. C. P. 150; *Richardson* v. *N. E. Rail. Co.*, (1872) L. R. 7 C. P. 75, 83; 41 L. J. C. P. 60).

Where the judge of a county court ruled a point of law against a plaintiff, with leave to move to set aside the verdict, and the plaintiff, instead of so moving, appealed to a superior court, which decided the point in his favour: it was held that he ought to have his costs of appeal, since he was not bound to try the experiment of going a second time before the same judge, who had once expressed an opinion against him (*Outhwaite* v. *Hudson*, (1851) 7 Ex. 380; 21 L. J. Ex. 151).

Costs of appeal will not be allowed unless the application for them is made at the time the case is disposed of (*Taylor* v. *G. N. Rail. Co.*, (1866) L. R. 1 C. P. 430; 35 L. J. C. P. 210).

Procedure on appeal. 38 & 39 Vict. c. 50, s. 6.

121. In any action or matter in which there is a right of appeal, and the judge has at the request of either party made a note of

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any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the action or matter, he shall at the expense of any person or persons being party or parties in any such action or matter, furnish a copy of the note so taken at the said trial or hearing, or allow a copy to be taken of the same, by or on behalf of such person or persons, and he shall sign such copy, whether a notice of motion in the matter of the said appeal has been served or not, and the copy so signed shall be used and received at the hearing of such appeal.

Judge's Notes.]—The judge may make an alteration in his note of a judgment after its delivery for the purpose of explanation or the clearing away of a possible misunderstanding (*Lowery* v. *Walker*, (1911) A. C. 10; 80 L. J. K. B. 138).

Jurisdiction of High Court. 13 & 14 Vict. c. 61, s. 14.

122. On the hearing of an appeal the High Court shall have power to draw any inference of fact, and may either order a new trial on such terms as the court shall think just, or may order judgment to be entered for *any* party, as the case may be, or may make a final or other order on such terms as the High Court may think proper to ensure the determination on the merits of the real questions in controversy between the parties.

Parties may agree not to appeal. 19 & 20 Vict. c. 108, s. 69.

123. No appeal shall lie from the decision of the judge, if before such decision is pronounced the parties shall agree, in writing signed by themselves or their solicitors or agents, that his decision shall be final, and no such agreement shall require a stamp.

The next friend of an infant plaintiff, who has failed in an action, cannot bind him by agreement not to appeal in consideration of forbearance of costs against the next friend (*Rhodes* v. *Swithenbank* (C. A.), (1889) 22 Q. B. D. 577; 58 L. J. Q. B. 287).

No appeal allowed except as in this Act mentioned. 13 & 14 Vict. c. 61, s. 16.

124. No judgment or order of any judge, nor any action or matter brought before him or pending in his court, shall be removed by appeal, motion, certiorari, or otherwise, into any other court whatever, save and except in the manner and according to the provisions in this Act mentioned.

Assessors on appeal. 38 & 39 Vict. c. 50, s. 11.

125. Where an Admiralty action has been heard in the court with the assistance of nautical assessors, elder brethren of the Trinity House shall be summoned to assist on the hearing of an appeal by the High Court if either party shall require the same, and the High Court shall be of opinion that the assistance of the elder brethren is necessary or desirable.

Assessors merely sit to advise the judge. If he differs from them, he must decide in accordance with his own opinion (*The Beryl*, (1884) 9 P. D. 137; 53 L. J. Adm. 75).

Where action may be removed on

126. It shall be lawful for the High Court or a judge thereof to order the removal into the High Court, by writ of certiorari or

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otherwise, of any action or matter commenced in the court under the provisions of this Act, if the High Court or a judge thereof shall deem it desirable that the action or matter shall be tried in the High Court, and upon such terms as to payment of costs, giving security, or otherwise as the High Court or a judge thereof shall think fit to impose.

security given.

9 & 10 Vict. c. 95, s. 90. 19 & 20 Vict. c. 108, s. 38. 28 & 29 Vict c. 99, s. 3.

After the service of proceedings on a defendant, it is open to him, in certain cases, to obtain their removal into the High Court by *certiorari* or order (*a*), and thus to stop the proceedings in the county court. A power to object to the jurisdiction of the county courts in cases where a claim exceeds a certain sum is also given; but those provisions extend only to cases where the claim exceeds a certain sum.

By Certiorari or Order.]—The section which now confers the power of removal above mentioned consolidates the provisions which formerly applied to common law and equity proceedings respectively (9 & 10 Vict. c. 95, s. 90; 19 & 20 Vict. c. 108, s. 38; 28 & 29 Vict. c. 99, s. 3), and places all upon the same footing, quite irrespectively of the amount in dispute. (Formerly there was a distinction between cases in which the claim exceeded or did not exceed 5*l.*) The two sets of provisions just mentioned provided, in the case of common law actions, for removal by writ of *certiorari*, and in the case of equity actions or matters, for removal by order. Now any action or matter (terms which include every proceeding in a county court (see sect. 18)), *if commenced* under the Act of 1888 (as to when an action is commenced in a county court within the meaning of sect. 126, see *General Estates Co.* v. *Beaver*, (1912) 2 K. B. 398; 81 L. J. K. B. 761), may be removed by the High Court or a judge either by *certiorari* or otherwise, *i.e.*, presumably, by mere order; but, except in the cases and in the manner mentioned in the Act, no action, matter, judgment, or order can be removed from the county court (see sect. 124).

In what cases.

Section 126 does not confer the power of removal on the judges of any particular division, but it is apprehended that in practice, for convenience, applications in common law actions and matters should be made to a divisional court or a judge of the King's Bench Division, and in equity actions and matters to a judge of the Chancery Division, and that, according to the nature of the matters in issue, the removal should be into one division or the other.

By what division.

Grounds for Removal.]—The grounds upon which the High Court or a judge may remove an action or matter are that they shall deem it desirable that the action or matter shall be tried in the High Court; and in that case they may impose such terms as to payment of costs, giving security, or otherwise as they may think fit (see sect. 126). The party applying must show that the action is more fit to be tried in the High Court (*Donkin* v. *Pearson*, (1911) 2 K. B. 412; 80 L. J. K. B. 1069). But the section is not confined to cases in which the action is in itself more fit to be tried in the High Court than in the county court. It gives an absolute discretion to the High Court to consider, having regard to all the circumstances, whether it is desirable that the action should be tried in the High Court, or remain in the county court (*Challis* v. *Watson*, (1913) 1 K. B. 547; 82 L. J. K. B. 529).

The Crown may of right obtain the removal of any plaint affecting the revenue or its rights at any stage of the case (*Mountjoy* v. *Wood*, (1856) 1 H. & N. 58; 108 R. R. 453; *Stanley of Alderley* (*Lord*) v. *Wild*, (1900) 1 Q. B. 256; 69 L. J. Q. B. 318); but in other cases the writ is not granted of course, but *ex debito justitiæ* (*R.* v. *Surrey Justices*, (1870) L. R. 5 Q. B. 466; 39 L. J. M. C. 145). The section is so general, that possibly actions brought under the peculiar jurisdiction of county courts in cases of

(*a*) It is in fact generally done by *certiorari*.

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partnerships and intestacies (they could not formerly be removed : *Durant* v. *Tomlin*, (1848) 11 L. T. O. S. 267), and interpleader proceedings (they were not removable before: *Ex parte Summers*, (1852) 18 Jur. 522), may be removable. It is important to observe that actions and matters *commenced* under the Act of 1888 are alone removable under these provisions (*Donkin* v. *Pearson*, *supra*); yet it has been held that a petition to wind up under the Building Societies Act may be removed (*Re East Dulwich Building Society* (North, J.), (1891) 39 W. R. 32); but a writ of *certiorari* cannot be issued to bring up an order of a county court judge when exercising bankruptcy jurisdiction (*Skinner* v. *Northallerton County Court Judge*, (1898) 2 Q. B. 680; 68 L. J. Q. B. 24; 79 L. T. 327; affirmed H. L., (1899) A. C. 439; 68 L. J. Q. B. 897).

It is conceived that an action, the particulars of which disclose a cause of action not within the jurisdiction of the county court, cannot be removed, the proper remedy being by prohibition. A justice of the peace who has objected to be sued in the county court, under the provisions referred to (*ante*, p. 42), cannot remove the plaint by *certiorari* (*Weston* v. *Sneyd*, (1857) 1 H. & N. 703; 26 L. J. Ex. 161; 108 R. R. 787).

As to the removal by *certiorari* of unsatisfied judgments, see sect. 151; as to replevin, see sect. 137; as to the removal by order of actions of ejectment, see sect. 59.

Usual Ground of Removal.]—That difficult questions of law are likely to arise on the trial is a usual ground (see *Longbottom* v. *Longbottom*, (1853) 8 Ex. 203; 22 L. J. Ex. 74; *Hunt* v. *G. N. Rail. Co.*, (1851) 2 L. M. & P. 268; 20 L. J. Q. B. 349; 84 R. R. 840). Where there were six or seven actions pending against the same defendant, and arising out of the same matter, and difficult questions of law were likely to arise in them, the Court of Appeal granted a *certiorari* to remove an action under the Employers' Liability Act against the same defendant involving the same facts and law (*Potter* v. *G. W. Colliery Co.* (C. A.), (1894) 10 T. L. R. 380); and where a plaint was removed by *certiorari* on an affidavit that difficult questions of law were likely to arise, the court refused to quash the writ, though counter-affidavits were made that no such difficult questions would arise (*Rees* v. *Williams*, (1851) 7 Ex. 51; 21 L. J. Ex. 24). But where the court considered that a defence was not *bonâ fide* they quashed the writ, although it was sworn that difficult matters of law would arise (*Kenworthy* v. *Sidebottom*, an unreported case argued in the C. P. D. on the 16th May, 1876). Where the claim was under 20*l.*, a *certiorari* was refused, though it was sworn that various nice questions of law and fact, important to the applicant, would probably arise (*Soloman* v. *L. C. & D. Rail. Co.*, (1861) 10 W. R. 59). The fact of the plaintiff being an officer of the court would probably be a ground which would be entertained (*Box* v. *Green*, (1854) 9 Ex. 503; 23 L. J. Ex. 219), but as there is now ample power to change the venue (see sect. 85), it would hardly be of much weight alone.

Practice on application for Certiorari.]—The application for a *certiorari* must be made to a judge at chambers, not to the court (*Bowen* v. *Evans*, (1848) 3 Ex. 111; 18 L. J. Ex. 38; *Robertson* v. *Womack*, (1850) 19 L. J. Q. B. 367). It may be made to a master (R. S. C., Order LIV. r. 12), but not, it seems, to a district registrar (R. S. C., Order XXXV. r. 6). There is no cause "proceeding" in the registry to give the power.

Affidavit.]—The application must be made on affidavit intituled "In the High Court of Justice, —— Division," but not in any cause or matter (*Ex parte Nohro*, (1823) 1 B. & C. 267). The proceedings are on the civil, not on the Crown side.

The affidavit must be drawn up in the first person, and divided into paragraphs; each paragraph must be numbered consecutively, and must be confined as much as possible to a distinct portion of the subject (R. S. C., Order XXXVIII. r. 7). The affidavit must state the description and true place of abode of the deponent (Order XXXVIII. r. 8), and, subject as

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aforesaid, generally the rules of the High Court as to affidavits must be observed (see Annual Practice, notes to R. S. C., Order XXXVIII. r. 7, and following rules).

As the judge to whom the application is made may exercise his discretion with respect to the terms upon which he will grant it, it is important that the affidavit should state all the facts material to the case. Where a *certiorari* had been obtained by a plaintiff upon an affidavit which omitted to disclose facts as to costs which the defendant had already incurred, the Court of Exchequer, upon those facts being brought before it, quashed the writ (*Parker* v. *B. & E. Rail. Co.*, (1851) 2 L. M. & P. 136; 20 L. J. Ex. 112). Where, however, a *certiorari* had been issued by leave of a judge, upon an affidavit which stated generally that difficult questions would arise, but did not state what those questions were, or the grounds upon which they would arise, the court refused to set the writ aside, as it did not appear that those particulars were not pointed out to the judge at chambers (*Golding* v. *Caudwell*, (1851) 2 L. M. & P. 175).

If a *certiorari* be refused by the court or judge, no other judge may grant it. The applicant may, however, appeal from a judge to the court, or make a second application on different grounds. See s. 132, *post*, p. 156.

Order.]—When security is ordered to be given, it may be by bond, or by deposit of money. The Court held to be unreasonable a term which had been imposed by a judge at chambers, that the defendant, if successful, should only recover county court costs. Such an order is sometimes made by consent.

The grant of an order *nisi* or summons for a *certiorari* will, if the court or a judge so direct, operate as a stay of proceedings in the action or matter until the determination of the order or summons, or until the court or judge otherwise orders; and the judge of the county court must from time to time adjourn the trial to such day as he thinks fit. If, however, a copy of the order or summons be not served by the party who obtained it on the opposite party and on the registrar of the county court two clear days before the day fixed for the trial, the judge of the county court may order the party who obtained it to pay the costs of the day, or part of them, unless the High Court or judge has made some order respecting them.

Where a writ of *certiorari* has been granted on an *ex parte* application, and the party who obtained it does not lodge it with the registrar, and give notice to the opposite party that it has issued, two clear days before the day fixed for the trial, the judge of the county court may, in his discretion, order the party who obtained the writ to pay all the costs of the day, or so much as he thinks fit, unless the High Court or judge has made some order respecting them (see sect. 130; Form 148; see R. S. C., Forms G 13, J 9, K 30).

The court has power under this section to order the re-transfer from the county court to the High Court of an action originally commenced in the Chancery Division and remitted to the county court under sect. 69 (*General Estates Co.* v. *Beaver*, (1912) 2 K. B. 398; 81 L. J. K. B. 761).

Service of Writ of Certiorari.]—The writ should be delivered as early as possible to the registrar of the county court, so as to render all proceedings taken in that court after its service irregular and *coram non judice*. According to the old practice, the writ must have been delivered to the judge or officer of the court, before the jury appeared, or before one of them had been sworn; otherwise the inferior court might proceed with the cause (43 Eliz. c. 5). And this would seem to be still the law in a case tried before a jury. If the judge of the county court refuses to obey it, he is liable to an attachment for contempt (*Mungean* v. *Wheatley*, (1851) 6 Ex. 88; 20 L. J. Ex. 106). The effect of the service of the writ of *certiorari* is instantly to suspend the power of the county court in the cause which it removes (Tidd's Prac. 9th ed. p. 404; *Cross* v. *Smith*, (1703) 1 Salk. 148; *Bevan* v. *Prothesk*, (1761) 2 Burr. 1151; *Mungean* v. *Wheatley*, *supra*). Where the writ was left with a clerk at the registrar's office, it was held to be good service; but

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the court intimated that the strictly proper course to pursue, where there has been no personal service on the judge, and the cause does not come on for hearing until after the return-day, would be to rule the judge to return the writ (*Brookman* v. *Wenham*, (1851) 2 L. M. & P. 233; 20 L. J. Q. B. 278).

Where a defendant has removed an action from a county court by *certiorari*, the plaintiff is not bound to follow it; and if he decline, the defendant cannot sign judgment, nor recover from the plaintiff the costs of removal (*Garton* v. *G. W. Rail. Co.*, (1858) 1 E. & E. 258; 28 L. J. Q. B. 103; 117 R. R. 202). If the plaintiff continues the proceedings after the grant of a *certiorari*, he does not commence *de novo* in the High Court, but delivers statement of claim reciting the proceedings in the county court, and the issue of the *certiorari* (see *Ashley* v. *Ashley*, (1867) 17 L. T. 265; Bul. & L., 3rd ed. p. 33). The plaintiff cannot be compelled to proceed with the action in the King's Bench Division (*Harrison* v. *Bull*, (1912) 1 K. B. 612; 81 L. J. K. B. 656).

When the writ is granted, the costs in the court below will be costs in the cause (R. S. C., Order LXV. r. 3). A fee may be charged for making a return to a *certiorari* (*Batt* v. *Price*, (1875) 1 Q. B. D. 264; 45 L. J. Q. B. 170).

Order to remove Equity Proceedings.]—If application be made for an order, under the above provisions, for the transfer of an equity action or matter to the High Court, it is probable that the application should be made to a judge of the Chancery Division. According to the former practice the order was not made *ex parte*, but by summons to show cause (*Anon.*, (1876) W. N. 12). An affidavit would no doubt be required. After an order of transfer the plaintiff must deliver statement of claim before he can obtain an order for discovery (*Davies* v. *Williams*, (1880) 13 Ch. D. 550; 49 L. J. Ch. 352).

Where, by reason of the combination of legal and equitable remedies, defences, and counterclaims, any defence or counterclaim involves matter beyond the jurisdiction of the court, the High Court, or any division or judge thereof, may order the whole proceeding to be transferred to the High Court, or to any division of it (36 & 37 Vict. c. 66, s. 90).

The application under this provision ought, it is believed, to be made by summons as in the case last mentioned, to a judge of the division to which it is proposed to transfer the proceeding. After the making of the order the action or matter will proceed in the High Court as if it had been originally commenced there (36 & 37 Vict. c. 66, s. 90).

Where an order is made by a judge of the High Court under either of the two last-mentioned provisions, then, subject to such order, the record in the proceeding must be transmitted by the registrar, in the following manner: The registrar must make and certify under his hand office copies of all entries of record in the books of the court, and must forthwith transmit them, together with all such documents as have been filed in the action or matter, to the proper officer of the High Court. The copies and the cost of transmission must be paid for, in the first instance, by the party on whose application the transfer has been made; and the registrar may require deposit of the costs of such copies and transmission before making or transmitting the same; such payment is to be without prejudice to the question as to by which party the costs are ultimately to be borne (Order XXXIII. r. 7).

Objection by Defendant to Jurisdiction, when.]—Where the plaintiff claims more than 20*l.* in actions of contract, or more than 10*l.* in actions of tort, if the defendant gives notice that he objects to the action being tried in the county court, and gives security, to be approved of by the registrar, for the amount claimed, and the costs of trial in the High Court, not exceeding in the whole the sum of 150*l.* (for form of bond, see Form 82; see *Young* v. *Brompton*, (1862) 1 B. & S. 675; 31 L. J. Q. B. 14; 124 R. R. 709, decided under the corresponding section), and the judge certifies that in his opinion some important question of law or fact is likely to

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arise, all proceedings in the county court will be stayed. The entry of the plaints prevents the operation of any statute of limitation. This power does not prevent, and is quite distinct from, the removal of a cause by *certiorari* (see sect. 62).

Notice of Objection.]—Where a defendant intends to avail himself of the above power, he must give notice in writing (Form 79) of such intention to the registrar and to the plaintiff five clear days (but ten clear days in actions brought under the Act of 1903) at least before the return-day of the summons, and name therein the parties whom he proposes to be his sureties, or state his willingness to deposit money in lieu of giving security, otherwise he will not be entitled to object to a trial in the county court (Order X. r. 6; Order XXIIA. r. 12. For form of bond, see Form 82).

Application for Certificate.] — After giving the notice the defendant must apply *ex parte* (Order XII. r. 11) to the judge on affidavit (Form 80) for his certificate to the effect above mentioned, and if granted, notice must be sent to the plaintiff by the registrar by post or otherwise (Form 81). The affidavit must specify the important questions of law or fact likely to arise; and as regards questions of law must also specify the facts which are relied on as likely to raise them. If after the grant of the certificate the defendant fails to give security, or to make the deposit, before the return-day, he will not be entitled to object to the action being tried in the county court (Order X. r. 6; Order XXIIA. r. 12).

Effect of Notice, &c.]—When notice of objection, certificate, and due security have been given, the proceedings in the county court are at an end, and the plaintiff must begin *de novo* by issuing a writ in the High Court, the pleadings in the action being the same as in ordinary actions (see *Flitters* v. *Allfrey*, (1874) L. R. 10 C. P. 29; 44 L. J. C. P. 10). No provision limits the time in which the action is to be brought. Where money has been deposited, and no action brought, say, for three months, it is conceived that the defendant ought to be entitled to a return of the money. To obtain this result he should apply *ex parte* or on notice under Order XII. r. 11.

Where a new trial was granted by a county court judge on the application of the defendant, it was held that he could not afterwards object to the new trial being had in the county court (*Campbell* v. *Fairlie*, (1880) 49 L. J. Q. B. 445); and it would appear from the case just cited that the rule is the same whether the new trial be granted by the county court judge or by the High Court, and whether on the application of plaintiff or defendant. Nor can the defendant object, under these provisions, in cases where the county courts have exclusive original jurisdiction—*e.g.*, under the Employers' Liability Act (*R.* v. *City of London Court* (1) (C. A.), (1885) 14 Q. B. D. 905; 54 L. J. Q. B. 330).

The above provisions as to objecting to the jurisdiction differ from prohibition. It is only by means of the notice and security given by the defendant and the certificate of the judge that the cause, if within the ordinary jurisdiction, becomes one over which it has no jurisdiction. Prohibition would only lie if, after such notice, certificate, and security, the court entertained the cause.

It seems clear that the county court judge making an order under sect. 62 has no power to give the plaintiff costs of the proceedings properly instituted by him in the county court; and as upon an order being made the county court proceedings are *ipso facto* at an end and a new action has to be brought in the High Court, it seems equally clear that the High Court has no power over the costs in the county court action. There seems to be no remedy but legislation for this unsatisfactory state of affairs.

Objection by Justices.]—If an action be brought in a county court against a justice of the peace (by virtue of the general jurisdiction as to personal actions) for anything done by him in the execution of his office, he may, within six days after service of the summons, himself, or by his solicitor

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or agent, give notice in writing to the plaintiff that he objects to being sued in the county court for such cause of action. All subsequent proceedings in the county court will then be null and void. After giving notice of objection, the justice is not entitled to remove the plaint by *certiorari* into the High Court. The above provisions appear to be general, and to apply to all actions against justices for anything done by them as justices (*ante*, p. 42).

Default Summons.]—Where a defendant has been served with a default summons he may also object to the jurisdiction.

Judge of High Court may hear applications for prohibition.

13 & 14 Vict. c. 61, s. 22.

127. It shall be lawful for any judge of the High Court, as well during the sittings as in vacation, to hear and determine applications for writs of prohibition to any court and to make such orders for the issuing of such writs as might have been made by the High Court, and all such orders so made by any such judge of the High Court shall have the same force and effect as heretofore.

The writ of prohibition is a writ issuing out of the High Court to restrain any inferior courts within the limits and bounds of their several jurisdictions prescribed to them by law. It is granted in all cases where an inferior court exceeds its powers, either by acting where it has no jurisdiction, or where, having a primary jurisdiction, it takes upon itself the decision of something not included within its jurisdiction (2 Inst. 601; F. N. B. 40; 12 Rep. 65; Bac. Ab. tit. Prohibition). There was formerly great difference of opinion whether this writ was discretionary, or to be granted *ex debito justitiæ*: but it is now clear that at the suit of the party aggrieved it is of right, though discretionary in the sense that, from the circumstances of the case, the courts may exercise a legal, not arbitrary discretion (Bac. Ab. Prohibition (B.) and cases there cited; *Mayor of London* v. *Cox*, (1867) L. R. 2 H. L. 239, 278; 36 L. J. Ex. 225; see the opinion of the judges delivered by Willes, J., which contains a great body of learning on the Law and Practice of Prohibition; and *Worthington* v. *Jeffries*, (1875) L. R. 10 C. P. 379; 44 L. J. C. P. 209). And consequently, when a party establishes to the court facts upon which an application is properly founded, whether appearing on the face of the proceedings or not, he is entitled to the writ as of right (*Jackson* v. *Beaumont*, (1855) 11 Ex. 300; 24 L. J. Ex. 301; 105 R. R. 536; *Mayor of London* v. *Cox*, *ubi supra*).

What Court may grant a Prohibition.]—Any one of the superior courts of common law at Westminster could always award prohibitions to the county courts; so also could the Court of Chancery (F. N. B. 53; 4 Inst. 71; 1 Peere Wms. 476; *Wright* v. *Cattell*, (1850) 13 Beav. 81; 19 L. J. Ch. 527; *Jacobs* v. *Brett*, (1875) L. R. 20 Eq. 1; 44 L. J. Ch. 377). The writ from Chancery appears not to have been returnable, but if disobeyed that court granted an attachment returnable in the King's Bench or Common Bench (Inst. 81). A writ of prohibition might also issue out of the Petty Bag Office (*Wright* v. *Cattell*, (1850) 13 Beav. 81). The duties of the clerk of the petty bag are, under a rule of the Supreme Court dated January 30th, 1889, to be performed by the senior clerk of the Crown Office Department; and it is believed that no prohibition will be issued by him. By 51 & 52 Vict. c. 43, s. 127, any judge of the High Court may, as well during sittings as in vacation, hear and determine applications for writs of prohibition to any county court.

If the court has no jurisdiction, a writ of prohibition may be granted even on the application of a stranger (2 Inst. 602; *Wadsworth* v. *Queen of Spain*, (1851) 17 Q. B. 171; 20 L. J. Q. B. 488; 85 R. R. 398; *Mayor of London* v. *Cox*, *supra*; *Robinson* v. *Emanuel*, (1874) L. R. 9 C. P. 414; 43 L. J. C. P. 244). But the grant of the writ at the suit of a stranger is discretionary; not *ex debito justitiæ* as at the suit of the party aggrieved

(*Re Forster*, (1863) 4 B. & S. 187; 129 R. R. 713; *Mayor of London* v. *Cox*, *supra*). Section 127 Notes.

In what Cases granted.]—A prohibition is granted either absolutely or *hoc usque* only until a particular act be done. The first is peremptory and ties up the inferior jurisdiction till a consultation is awarded; the second is *ipso facto* discharged upon performing the act, and that without any writ of consultation (Bac. Ab. Prohibition (F.); *Treil* v. *Edwards*, (1705) 6 Mod. 308). A writ of prohibition will be granted to a county court in any case in which it exceeds the jurisdiction given by the several statutes by which it is governed, or takes upon itself the cognizance of any action of ejectment in which the value or rent of the lands exceeds 100*l*., or of any action in which the title to any corporeal or incorporeal hereditaments, of which the value or rent exceeds 100*l*., or to any easement or licence where the value or rent of the dominant or servient tenement exceeds 100*l*., or to any toll, fair, or market or franchise, is in question, or (except where such a case is sent for trial from the High Court) for any libel, or slander, seduction, or breach of promise of marriage. Or if a plaint be entered, under the common law jurisdiction, claiming more than 100*l*., for the whole or part of the unliquidated balance of a partnership account, or for a distributive share of personal estate under an intestacy, or of any legacy under a will, or if at the trial, after notice of objection pursuant to 47 & 48 Vict. c. 61, s. 18, the judge entertains a counterclaim, not within the jurisdiction of the court, further than he is justified in doing under sects. 89 & 90 of the Judicature Act, 1873, to defeat or counterbalance the plaintiff's claim (*Davis* v. *Flagstaff Silver Mining Co.* (C. A.), (1877) 3 C. P. D. 228; 47 L. J. P. C. 503); or if, in any of the special subjects of jurisdiction noticed in Part V. (*e.g.*, the Friendly Societies Acts *Hull* v. *M'Farlane*, (1857) 2 C. B. N. S. 796; 27 L. J. C. P. 41; 109 R. R. 896), or in any equity action or matter, the court exceeds the jurisdiction which is given to it; unless the defendant has consented before plaint entered, or consents at the hearing, to give the court jurisdiction, or by neglect or waiver, as hereafter mentioned, has lost his right to obtain it, the writ of prohibition will lie.

The writ will issue also if the action be in its nature one over which the county court has jurisdiction, but the defence raises a question which it has no power to try, as where a defence raises a question of title to hereditaments of more than 100*l*. value or rent (*Mayor of London* v. *Cox*, (1867) L. R. 2 H. L. 239; see *Pearson* v. *Glazebrook*, (1868) L. R. 3 Ex. 27; 37 L. J. Ex. 15). Other instances in which a writ of prohibition will be granted are *pro defectu triationis*; that is, the want of any means of trying, as when it is impossible to try the cause by the proper and legitimate evidence (*per* Lord Denman, C.J., in *Winsor* v. *Dunford*, (1848) 12 Q. B. 603, 608; 18 L. J. Q. B. 14). Taking a wrong course in trying is not, however, such a defect (*per* Patteson, J., in *Winsor* v. *Dunford*, *supra*).

Where the existence of jurisdiction in the county court depends upon the decision of a point of law going to jurisdiction, a prohibition will be issued if the county court assumes jurisdiction in consequence of a wrong decision of the point (*Elston* v. *Rose*, (1868) L. R. 4 Q. B. 4; 38 L. J. Q. B. 6; *Thompson* v. *Ingham*, (1849) 14 Q. B. 710; 19 L. J. Q. B. 189; 80 R. R. 376; *Crowley* v. *Vitty*, (1852) 7 Ex. 319; 21 L. J. Ex. 135; 86 R. R. 664). If it depends upon a question of fact, and the county court judge decides it upon evidence, the High Court will not review his decision, at any rate except upon very strong grounds (*Brown* v. *Cocking*, (1867) L. R. 3 Q. B. 672; 37 L. J. Q. B. 250; *Elston* v. *Rose*, *supra*). And where the question of fact upon which the jurisdiction depends is the very question at issue in the cause, the reluctance to interfere will be still stronger (*Joseph* v. *Henry*, (1850) 19 L. J. Q. B. 369; 15 Jur. 104; *Milner* v. *Rhoden*, (1851) 15 Jur. 1037).

The distinction between the two classes of cases as to facts going to jurisdiction is thus explained by Cockburn, C.J.: "If there has been a real conflict of testimony upon some fact which goes to the question of jurisdiction, the court will not interfere except on very strong grounds. The judge has then

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really exercised his discretion; but where he has given himself jurisdiction by coming to an erroneous conclusion upon a point of law, the case is very different, and he is in fact without jurisdiction, and has no authority to entertain the question" (*Elston* v. *Rose*, *supra*). So, where a lessee for years, with a rent reserved, brought ejectment, and the annual value of the premises to let to an occupying tenant exceeded 20*l*., but the value of the plaintiff's interest, after deducting the rent paid by him, was less than 20*l*. a year, and the judge decided that the yearly value did not exceed 20*l*., and that he had, therefore, jurisdiction, the court held that the value of the tenements meant the marketable value, and not the value of the plaintiff's interest, and that the judge had assumed jurisdiction, not by deciding upon conflicting facts, but on a wrong assumption as to a point of law, and so ordered that the writ should go. "I think," said Blackburn, J., "that the judge was wrong in the conclusion at which he arrived, because he applied a wrong rule of law to the facts" (*Elston* v. *Rose*, *supra*). So, where the judge wrongly decided on the facts that title to land was not in question a prohibition was allowed to go (*Thompson* v. *Ingham*, *supra*); as it was where a judge, through the erroneous construction of a will, held that he had power to make an order on trustees to pay income to a receiver, although they had a discretion as to its application (*R.* v. *Lincoln County Court*, (1887) 20 Q. B. D. 167; 57 L. J. Q. B. 136). And where, in interpleader proceedings, the particulars of the claimant were wrongfully held to be insufficient by the judge, and he refused to hear the claim, a prohibition was issued to restrain proceedings under the original judgment (*Hardy* v. *Walker*, *Ex parte McFee*, (1854) 9 Ex. 261; 23 L. J. Ex. 57; 96 R. R. 700). Where a judge, of his own motion, amended the plaint and reduced a claim originally in excess of the jurisdiction to an amount within the jurisdiction (*Hill* v. *Swift*, (1854) 10 Ex. 726; 24 L. J. Ex. 137; 102 R. R. 793), a prohibition issued.

The writ will issue where a judge has given leave to serve a summons on a defendant domiciled and resident in Scotland, notwithstanding that there is an alternative remedy under Order VII. r. 49, by application to the judge himself to set aside the service or discharge the order (*Channel Coaling Co.* v. *Ross*, (1907) 1 K. B. 145; 76 L. J. K. B. 145).

So a writ of prohibition will lie to prevent a person from splitting his demand and bringing several actions contrary to the provisions already noticed (*ante*, p. 80) (*Grimbley* v. *Aykroyd*, (1847) 1 Ex. 479; 17 L. J. Ex. 157); and to stay proceedings on a plaint entered without leave of the judge or registrar in a case where leave is required (*Brown* v. *L. & N. W. Rail. Co.*, (1863) 4 B. & S. 326; 32 L. J. Q. B. 318; 129 R. R. 766); and to restrain execution on an order for payment of costs where the court has no jurisdiction to award them (*Lawford* v. *Partridge*, (1857) 1 H. & N. 621; 26 L. J. Ex. 147; 108 R. R. 749), as where under 45 & 46 Vict. c. 57, s. 5 (now 51 & 52 Vict. c. 43, s. 119), the judge ordered costs on the higher scale without certifying in writing (*Howard* v. *Graves*, (1885) 52 L. T. 858). It will lie to prevent a judge from hearing a cause in which he is interested (*Ex parte Medwin*, (1853) 1 E. & B. 609; 22 L. J. Q. B. 169; 93 R. R. 304); from altering or rescinding a judgment after it has been once pronounced (*Jones* v. *Jones* (3), (1848) 5 D. & L. 628, 632; 17 L. J. Q. B. 170; 79 R. R. 884, *per* Coleridge, J.; *Irving* v. *Askew* (2), (1870) L. R. 5 Q. B. 208; 39 L. J. Q. B. 118; from entering judgment for the applicant on an application for a new trial (*Robinson* v. *Fawcett*, (1901) 2 K. B. 325; 70 L. J. K. B. 639); the same rule obtains upon an application for a new trial (*G. N. Rail. Co.* v. *Mossop*, (1856) 17 C. B. 130; 25 L. J. C. P. 22; 104 R. R. 626). It will lie to prevent a judge from proceeding with a citation to appear to answer a contempt committed out of court (*R.* v. *Lefroy*, (1873) L. R. 8 Q. B. 134; 42 L. J. Q. B. 121), and to stay proceedings on an order for commitment, where an order has been already obtained for the same debt, and is still in force (*Horsnail* v. *Bruce*, (1872) L. R. 8 C. P. 378; 42 L. J. C. P. 140), or has been executed (*Evans* v. *Wills*, (1876) 1 C. P. D. 229; 45 L. J. C. P.

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420), or where the judge has for other causes no jurisdiction to make it (*R.* v. *Brompton County Court* (C. A.), (1887) 18 Q. B. D. 213; S. C., *Reeve* v. *Fowle*, 56 L. J. Q. B. 49. This case was reversed on the facts, but the proposition of law was not impeached (1887) 13 App. Cas. 20; 57 L. J. Q. B. 387). So if a judge exceeds his jurisdiction under the Friendly Societies Acts, a prohibition will lie (*Hull* v. *M'Farlane*, (1857) 2 C. B. N. S. 796: 27 L. J. C. P. 41; 109 R. R. 896; *Smith* v. *Pryse*, (1857) 7 E. & B. 339; 26 L. J. Q. B. 95; 110 R. R. 623).

A writ of prohibition may be partial, and prohibit so much of a plaint as exceeds the jurisdiction of the inferior court, allowing it to proceed as to the residue. Thus, where the cause of action disclosed by the particulars was divisible, and part had arisen within the jurisdiction of a county court and part out of the jurisdiction, the Court of Queen's Bench granted a prohibition as to the latter only (*Ex parte Walsh*, (1853) 1 E. & B. 383; 22 L. J. Q. B. 137; 93 R. R. 192; see also *Free* v. *Burgoyne*, (1826) 5 B. & C. 400; *R.* v. *Westmoreland C. C.*, (1888) 36 W. R. 477).

In what Cases not granted.]—The court will not inquire by prohibition into the correctness of the judge's decision, where it is upon a matter clearly within his jurisdiction (*Winsor* v. *Dunford*, (1848) 12 Q. B. 603, 608; 18 L. J. Q. B. 14; *Joseph* v. *Henry*, (1850) 19 L. J. Q. B. 369; *Lexden Union* v. *Southgate*, (1854) 10 Ex. 201; 23 L. J. Ex. 316; 102 R. R 531; *Norris* v. *Carrington*, (1864) 16 C. B. N. S. 396; 139 R. R. 543). It cannot look to see whether the decision on a question of fact going to jurisdiction was, on the balance of evidence, right or not (see *per* Cockburn, C.J., *Brown* v. *Cocking*, (1868) L. R. 3 Q B. 676; 37 L. J. Q. B. 250). Where the judge of a county court gave judgment for the plaintiff, notwithstanding that the defendant's plea (that judgment had already been obtained and execution executed against him in another inferior court) was admitted to be true, the superior court declined to interfere (*Toft* v. *Rayner*, (1847) 5 C. B. 162). So, where an insolvent pleaded his discharge to a judgment summons, and the judge notwithstanding made an order for payment by instalments, and afterwards for committal of the defendant, it was held to be at most an error in the exercise of the powers of the judge, and that therefore prohibition would not lie (*Still* v. *Booth*, (1850) 1 L. M. & P. 440). It does not lie for receiving improper evidence (*Winsor* v. *Dunford*, (1848) 12 Q. B. 603, 611; 18 L. J. Q. B. 14), nor for the misconstruction of a statute (*In re Bowen*, (1851) 15 Jur. 1196), nor on the ground that a former action has been removed by *certiorari* and is still pending (*Edwards* v. *Rogers*, (1850) 1 L. M. & P. 196; 19 L. J. Ex. 149; 86 R. R. 889). Where an action was brought for false imprisonment, but the judge in giving judgment used expressions as if he were giving damages for a malicious prosecution (not then within his jurisdiction), the court held that it was not a case for a prohibition (*Chivers* v. *Savage*, (1855) 5 E. & B. 697; 25 L. J. Q. B. 85; 103 R. R. 689).

Where a defendant was sued in the double capacity of executor and administrator, and objected that the plaintiff should elect in which capacity he would proceed against him, and the judge overruled the objection, the court, assuming the objection was right, refused a prohibition (*Lexden Union* v. *Southgate*, *supra*). So where, in an action of ejectment, the judge decided on conflicting evidence that the yearly value of the premises did not exceed 20*l.*, the then limit of the jurisdiction, the court refused a prohibition though there was strong evidence that the yearly value did exceed 20*l.* (*Brown* v. *Cocking*, (1868) L. R. 3 Q. B. 672; 37 L. J. Q. B. 250). And where a defendant did not appear, and the judge held that service of the summons had been duly made, and gave judgment against the defendant in his absence, and it was afterwards discovered that service had been wrongly made, the court refused a prohibition, holding that the decision as to the service was one of fact within the judge's jurisdiction (*Robinson* v. *Lenaghan*, (1848) 2 Ex. 333; 17 L. J. Ex. 174; see also *Zohrab* v. *Smith*, (1847) 5 D. & L. 635; 17

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L. J. Q. B. 174; compare *Liverpool Gas Co.* v. *Everton*, (1871) L. R. 6 C. P. 414).

Where a summons was issued incorrectly against the defendant as executor of A. B., instead of executor of C. D., the plaint having been entered correctly, and the judge, on its being represented that the Statute of Limitations would bar the claim if a new summons were issued, ordered a new summons to issue, bearing the date and number of the first, the court declined to interfere (*Foster* v. *Temple*, (1848) 5 D. & L. 655; 17 L. J. Q. B. 230). The writ was not allowed to go, because, under process of the court, to levy a sum within its jurisdiction, the officer seized property to a greater amount (*Ex parte Summers*, (1852) 2 C. L. R. 1286; 18 Jur. 522).

No prohibition will lie to the judge or to the defendant before the trial merely because the latter gives notice of a counterclaim not within the statutory jurisdiction of the court, even, it is believed, after notice of objection pursuant to 47 & 48 Vict. c. 61, s. 18 (*Davis* v. *Flagstaff Co.*, (1877) 3 C. P. D. 228; 47 L. J. C. P. 503).

The Application for, when made.]—A prohibition may be granted upon the request of a stranger as well as of the defendant himself, the reason being that, when an inferior court exceeds its jurisdiction, it is chargeable with a contempt of the Crown as well as a grievance to the party (*Ede* v. *Jackson*, (1720) Fortescue, 345; *Wadsworth* v. *Queen of Spain*, (1851) 17 Q. B. 171; 20 L. J. Q. B. 488; 85 R. R. 398). At whatever stage of the proceedings the defect of jurisdiction is made manifest to the court, it may grant a prohibition (*Burder* v. *Veley* (1840) 12 A. & E. 233, 263; and per Willes, J., *Mayor of London* v. *Cox*, (1867) L. R. 2 H. L. 239, 279; 36 L. J. Ex. 225). Where there is a total want of jurisdiction, which is disclosed by the plaintiff's particulars, a prohibition may be obtained by the defendant before the trial (*Sewell* v. *Jones*, (1850) 1 L. M. & P. 525; 19 L. J. Q. B. 372; 90 R. R. 946, *per* Wightman, J.; *Hunt* v. *N. S. Rail. Co.*, (1857) 2 H. & N. 451; 26 L. J. Ex. 374; 115 R. R. 634). So, where the particulars showed a claim for damage to plaintiff's reversionary interest, a prohibition was granted, on the defendant showing that the title to land was *bonâ fide* in dispute (*Sewell* v. *Jones*, *supra*). And even though the court has now a limited jurisdiction in such cases, a prohibition may still be obtained before the trial, if the High Court or a judge, on the evidence used in support of the application, decides that the rent or value of the land exceeds 100*l.* a year (see *Symons* v. *Rees*, (1875) 1 Ex. D. 416; 3 Edw. VII. c. 42, s. 3).

A prohibition may in certain cases be obtained after hearing and judgment. The rules now applicable are stated by Willes, J., in delivering the opinion of the judges in the House of Lords in *Mayor of London* v. *Cox*, (1867) L. R. 2 H. L. 239, 282. "There is a distinction after sentence between a patent and a latent defect, for if the party below, whether plaintiff or defendant, thinks proper, instead of moving for a prohibition, to proceed to trial in the special or inferior court and is defeated, then if the defect be of power to try the particular issue only (*defectus triationis* as it has been called), the right to move for a prohibition is gone. If the defect be of jurisdiction over the cause (*defectus jurisdictionis*), and that defect be apparent upon the proceeding, a prohibition goes after sentence (see *Farquharson* v. *Morgan* (C. A.), (1894) 1 Q. B. 552; 63 L. J. Q. B. 474). If it be not apparent, but the party, instead of moving for a prohibition, pleads in the special or inferior court the facts ousting the jurisdiction, and such court improperly decides that it has jurisdiction, he may, notwithstanding such decision, upon satisfying a superior court that it was erroneous, obtain a prohibition. Where, however, the defect is not apparent, but depends upon some fact in the knowledge of the applicant which he had an opportunity of bringing forward in the court below, and he has thought proper, *without excuse*, to allow that court to proceed to judgment without setting up the objection, and

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without moving for a prohibition in the first instance, although . . . . the right to grant a prohibition in respect of the right of the Crown is not taken away, for mere acquiescence does not give jurisdiction, yet considering the conduct of the applicant, the importance of making an end of litigation, and that the writ, though of right, is not of course, the court would decline to interpose, except perhaps upon an irresistible case, and an excuse for the delay, such as disability, malpractice, or matter newly come to the knowledge of the applicant" (The Court of Appeal has after argument before the full court affirmed and adopted the opinion of Willes, J.: *Broad* v. *Perkins* (C. A.), (1888) 21 Q. B. D. 533; 57 L. J. Q. B. 638.)

Hence where there is an entire absence of jurisdiction in the county court, though not apparent on the proceedings, and the defendant takes the objection at the trial, the matter is, for the purpose of prohibition, thereby put on the same footing as if the defect had appeared on the face of the proceedings (*Marsden* v. *Wardle*, (1854) 3 E. & B. 695; 23 L. J. Q. B. 263; 97 R. R. 711; *Thompson* v. *Ingham*, (1849) 14 Q. B. 710; 19 L. J. Q. B. 189; 80 R. R. 376; *Denton* v. *Marshall*, (1863) 32 L. J. Ex. 89). It appears also that if the want of jurisdiction appears from the order made by the court, it is "a defect apparent upon the proceeding" within the rule mentioned in the above opinion of Willes, J. (*R.* v. *Shropshire C. C.*, (1887) 20 Q. B. D. 242; 57 L. J. Q. B. 143). In the case last cited, the judge of one court made without jurisdiction an order on the bailiff of another court, under the enactment corresponding with sect. 49 of the County Courts Act, 1888; and it was held that prohibition would go although no formal objection to the jurisdiction had been taken at the hearing (*R.* v. *Shropshire C. C.*, *supra*). Apparently in the opinion of the learned judges who heard the case, neither neglect to object to the jurisdiction nor acquiescence in the jurisdiction could prevent the issue of the prohibition, as the defect was apparent upon the proceedings. This view seems to accord with many cases decided before the Act of 1856, which enabled the parties to give jurisdiction by consent in a particular manner (*Knowles* v. *Holden*, (1855) 24 L. J. Ex. 223; 101 R. R. 909; *Yates* v. *Palmer*, (1849) 6 D. & L. 283, *per* Wightman, J.; *De Haber* v. *Queen of Portugal*, (1851) 20 L. J. Q. B. 498; 85 R. R. 398, *per* Lord Campbell, C.J.; *Wadsworth* v. *Queen of Spain*, (1851) 20 L. J. Q. B. 493, *per* Erle, J.); but the effect (if any) of those provisions and of sect. 114 of the County Courts Act, 1888 (see *per* Watson, B., *Lawford* v. *Partridge*, (1857) 26 L. J. Ex. 148), upon the question under consideration does not appear to have been yet discussed.

The writ may issue after execution has issued and a levy has been made if no sale has taken place (*Kimpton* v. *Willey*, (1850) 9 C. B. 719; 19 L. J. C. P. 269; 82 R. R. 515; *Marsden* v. *Wardle*, (1854) 3 E. & B. 695; 23 L. J. Q. B. 263; 97 R. R. 711); but if execution has been completed by seizure and sale, and the money paid out of court, the writ cannot go, for there is nothing to prohibit, and the applicant loses the writ by his own *laches* (*Hall* v. *Norwood*, (1664) 1 Sid. 165; and see *Denton* v. *Marshall*, (1863) 1 H. & C. 654; 32 L. J. Ex. 89; 130 R. R. 712; *Yates* v. *Palmer*, *supra*). When, however, under proceedings for the recovery of small tenements, a warrant of possession was obtained in a case in which the court had no jurisdiction, and the defendant obtained a rule *nisi* for a prohibition the day before the execution of the warrant, the court made it absolute, with a clause of restitution, although it was not served on the plaintiff until after the execution of the warrant of possession. But the defendant's attorney had protested at the trial against the jurisdiction, and upon his expressing his intention of applying for a prohibition the judge had ordered possession in seven days instead of a month (*Jones* v. *Owen*, (1848) 5 D. & L. 669; 18 L. J. Q. B. 8; 79 R. R. 888; a nice distinction between this case and that of *Denton* v. *Marshall* was drawn by Martin and Wilde, BB., in the latter case, viz., that in it a summons to show cause only had been obtained which

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had no effect until returnable, whilst in the former a rule *nisi* had been obtained).

If an objection to the jurisdiction is taken in the inferior court, the judge ought to enter it on the proceedings, in order that the superior court may see if there is ground for prohibition (*per* Parke, B., in *Pears* v. *Wilson*, (1851) 20 L. J. Ex. 383; 86 R. R. 502).

Waiver.]—It has been shown that in cases where the want of jurisdiction does not appear on the face of the proceedings, the defendant may, by lying by and acquiescing in the proceedings up to judgment, lose his right to a prohibition. Thus in the case of *Broad* v. *Perkins*, (1888) 21 Q. B. D. 533; 57 L. J. Q. B. 638, an action for libel was brought in the Lord Mayor's Court, and after judgment for the plaintiff, no objection to the jurisdiction having been previously made, the defendant applied for a prohibition on the ground that there was no publication within the jurisdiction. The full Court of Appeal refused the writ on the grounds stated by Willes, J. (*ante*, p. 144).

Where the jurisdiction of the county court depends upon the raising or not raising of some particular issue, the right to a prohibition is lost if the defendant appears before the court and abstains from raising the issue (*Mayor of London* v. *Cox*, (1867) L. R. 2 H. L. 239, 274; 36 L. J. Ex. 225; *Home* v. *Earl Camden*, (1795) 2 H. Black. 533) which would oust the jurisdiction; as, if the question of title to an office is not raised at the hearing of a plaint, but the party is taken to be duly appointed (*per* Erle, J., *Stevenson* v. *Stickle*, (1849) 13 Jur. 1103), or if title to corporeal or incorporeal hereditaments is admitted (*Gwynne* v. *Knight*, (1847) 1 Ex. 802; 17 L. J. Ex. 168; 74 R. R. 857). A mere irregularity in process may be similarly waived. Thus, a defendant was held to have waived any objection to the validity of an order for service of the summons out of the jurisdiction by appearing and giving notice of the Statute of Limitations (*Jones* v. *Jones*, (1850) 19 L. J. Q. B. 257; and see *per* Parke, B., *Knowles* v. *Holden*, (1855) 24 L. J. Ex. 224; 101 R. R. 909).

Where a summons was issued without leave, in a case in which leave was a condition precedent to jurisdiction, and the defendant being ignorant of it appeared and raised no objection, and judgment was given against him as to part of his claim, and the case adjourned to the following day, and he then objected to the jurisdiction, it was held that he had waived the defect. The court treated it as a case of irregularity (*Moore* v. *Gamgee*, (1890) 25 Q. B. D. 244; 59 L. J. Q. B. 505).

Consent to Jurisdiction.]—In addition to the authorities cited above, showing that by waiver or acquiescence a party neglecting to raise in the county court an objection to the jurisdiction which is open to him, may lose his right to or may not be permitted to obtain a prohibition, attention may be called to the provisions of sects. 61 and 64 of the County Courts Act, 1888, enabling the parties to give jurisdiction by consent in a particular manner, and also to sect. 114 of the same Act, which provides that whenever an action or matter is commenced which the court has no jurisdiction to try, the judge must order it to be struck out *unless the parties consent to the jurisdiction*. The consent is not required to be in writing, and the court before granting a prohibition in such a case would doubtless inquire whether from the statements and conduct of the parties consent must be inferred (see *ante*, pp. 43—44, and see *per* Watson, B., *Lawford* v. *Partridge*, (1857) 26 L. J. Ex. 148).

In face of the decisions and statutory provisions already mentioned, it is a matter of doubt whether a prohibition would now be granted in such a case as *Knowles* v. *Holden*, *supra*. There the parties appeared before the judge, and consented to a reference without objecting to the want of jurisdiction, but one of them during the progress of the reference objected to the jurisdiction of the arbitrators, on the ground that title to land came in question, and the arbitra-

tors proceeded with the reference: it was held that he was entitled to a prohibition. **Section 127 Notes.**

It has been held that where, on the hearing, a party objected to the jurisdiction of the county court, he did not waive his right to a writ of prohibition by obtaining from the judge a statement of a case for appeal (*Jackson* v. *Beaumont*, (1855) 11 Ex. 300: 24 L. J. Ex. 301; 105 R. R. 536).

Effect of Refusal of Writ.]—Where an application for a prohibition is made before the trial and refused, and the question upon which the jurisdiction depends is one of fact, which is decided adversely to the applicant, the refusal to grant the prohibition is a conclusive judgment as to such question of fact for the purpose of jurisdiction. So where a defendant in ejectment applied before the trial for a prohibition, on the ground that the annual value of the land to be recovered exceeded 20*l.*, and the prohibition was refused, the court upheld the decision of the county court judge rejecting evidence offered by the defendant to show for the purpose of ousting the jurisdiction, that the annual value exceeded 20*l.* (*Symons* v. *Rees*, (1875) 1 Ex. D. 416).

Practice.]—Although there is power in the judges of the Chancery Division to grant the writ, and although it could (possibly) issue out of the Petty Bag Office as before mentioned, the writ should be generally applied for to a divisional court or a judge of the King's Bench Division; and the proceedings form part of the civil proceedings on the Crown side. The application may be made during sittings or in vacation (see sect. 127).

By Rule 70 of the Crown Office Rules, 1906, an application for prohibition in civil proceedings on the Crown side shall be made by motion for an order *nisi*, or by summons before a judge at chambers. It may be made absolute *ex parte* in the first instance, on special circumstances being shown, in the discretion of the court or judge (*ib.*, r. 71). Order LIX. r. 8A of the R. S. C., which required that the application should be made by notice of motion, and not for an order *nisi*, is repealed (see Crown Office Rules, 1906, r. 1). The application cannot be made to a master or district registrar (R. S. C., Order LIV. r. 12 (*d*); Order XXXV. r. 6). No notice of the application must be served on the judge of the county court (*King* v. *Charing Cross Bank*, (1889) 24 Q. B. D. 27; 59 L. J. Q. B. 24; 51 & 52 Vict. c. 43, ss. 127, 128, 129, 130).

The application should be made on affidavit, but the court or judge may, on the application of either party, order the attendance of the deponents for cross-examination (*Harte* v. *Byrne*, (1851) 1 Ir. C. L. R. 557; it is assumed that an affidavit is still necessary). The affidavits must be intituled, "In the High Court of Justice, King's Bench Division" (Cr. Off. R. 1906, r. 6; the separate Crown Office Rules as to affidavits have mostly disappeared, and by R. S. C., Order LXVIII. r. 2, and Cr. Off. R. r. 5, Order XXXVIII. of the R. S. C. as to affidavits also applies to civil proceedings on the Crown side, and the rules of that order must be followed), and not in any cause or matter. If affidavits are objected to on showing cause for a defect of this kind the court would not generally allow them to be corrected and re-sworn (*Ex parte Evans*, (1842) 2 Dowl. N. S. 410; *R.* v. *Plymouth Rail. Co.*, (1889) 37 W. R. 334, *sed quære*). The affidavit must be drawn up in the first person, and divided into paragraphs, and every paragraph must be numbered consecutively, and as nearly as may be must be confined to a distinct portion of the subject. It must be written or printed bookwise (R. S. C., Order XXXVIII. r. 7). The application being, it is believed, in a sense interlocutory, the affidavit may contain statements as to the belief of the deponent as to facts deposed to, but the ground of belief must then be stated (R. S. C., Order XXXVIII. r. 3).

The affidavit must state clearly and distinctly the facts which show that the application ought to be granted, and should show affirmatively that

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the court has gone beyond its jurisdiction. So where the judge has jurisdiction to inquire into the objection it must be shown that it was substantiated (*Kimpton* v. *Willey*, (1850) 1 L. M. & P. 280; 19 L. J. C. P. 269; 82 R. R. 515, *per* Wilde, C.J.; for a suggested form of affidavit, see Form I, Appendix A, *post*, p. 869).

Hearing.]—Except by order of a judge of the High Court, the county court judge is not required to appear or be heard on any of the proceedings, nor is he without such order liable to pay the costs of them. The application is to be proceeded with and heard as if it were an appeal (see sect. 128).

When a divisional court or a judge has refused a prohibition no other court or judge may grant it; but a second application may be made to the same court or judge on different grounds (see sect. 132).

When the writ is granted the grounds for granting it should appear in the writ (for form of prohibition, see R. S. C., Appendix J., No. 11). The whole matter is disposed of by order, and no declaration or other proceedings in prohibition allowed (see sect. 128). Costs appear to be in the discretion of the court (*Wallace* v. *Allen*, (1875) L. R. 10 C. P. 607; 44 L. J. C. P. 351; *R.* v. *Justices of County of London* (C. A.), (1894) 1 Q. B. 453; 63 L. J. Q. B. 148).

Appeal.]—The order of a judge granting or refusing a prohibition may be appealed against in the ordinary way, by motion within eight days (51 & 52 Vict. c. 43. s. 132; 36 & 37 Vict. c. 66, s. 50; see Annual Practice, notes to Order LIV. r. 24, R. S. C.). The appeal from a judge at chambers in prohibition proceedings is in the first instance to the divisional court (*Watson* v. *Petts*, (1899) 1 Q. B. 54 (C. A.); 67 L. J. Q. B. 971). An appeal lies from a divisional court to the Court of Appeal (51 & 52 Vict. c. 43, s. 132; 36 & 37 Vict. c. 66, s. 19; *The Recepta* (C. A.), (1893) P. 255; *Davis* v. *Flaystaff Co.*, (1877) 3 C. P. D. 228; 62 L. J. P. 118; 47 L. J. C. P. 503). The practice is regulated by Order LVIII., R. S. C. (see Cr. Off. Rules, r. 206). No leave is requisite, even since the Act of 1888 (*Lister* v. *Wood* (C. A.), (1889) 23 Q. B. D. 229; 37 W. R. 738). From the Court of Appeal an appeal lies to the House of Lords (39 & 40 Vict. c. 59, s. 3). As to practice, see Annual Practice, notes to Appellate Jurisdiction Act, 1876, s. 3.

Setting aside Writ.]—A writ of prohibition issued out of the Petty Bag Office in vacation on an *ex parte* affidavit, disclosing no sufficient ground of prohibition, could be set aside on motion in a divisional court or by a judge at chambers. It is no answer to such an application, that the solicitor of the applicant has not entered his name and address in a book at the Petty Bag Office as required by the 12 & 13 Vict. c. 109, s. 44. But a prohibition issued out of the Petty Bag Office, which upon its face appears to be regular, and which contains a good ground for prohibition, could not be set aside though issued *ex parte*.

The last part of 13 & 14 Vict. c. 61, s. 22, enabling the court to set aside the writ, is not re-enacted in 51 & 52 Vict. c. 43, s. 127; the intention apparently being to require a dissatisfied party to appeal, not to apply to set aside the writ.

Effect of, on Proceedings in County Court.]—The granting of an order *nisi* or summons for a prohibition will, if the court or a judge so direct, operate as a stay of proceedings in the action or matter until the determination of the order or summons, or until the court or judge otherwise orders, and the judge of the county court must adjourn the trial. If, however, a copy of the order or summons is not served by the party who obtained it on the opposite party, and on the registrar of the county court, two clear days before the day fixed for the trial, the judge of the county court may order the party who obtained it to pay the costs of the day or part of them, unless the High Court or judge has made some order respecting them (see sect. 129).

Where a writ of prohibition has been granted *ex parte*, and the party who obtained it does not lodge it with the registrar, and give notice to the opposite party that it has issued two clear days before the return day, the judge of the county court may order him to pay the costs of the day or part of them; unless the High Court or judge has made some order respecting them (see sect. 130).

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Vexatious Actions Act, 1896.]—Though not strictly prohibition, the Vexatious Actions Act, 1896 (59 & 60 Vict. c. 51), may here be noticed. This Act provides that if the Attorney-General satisfies the High Court that any person has habitually and persistently instituted vexatious legal proceedings without any reasonable ground, whether in the High Court or in an inferior court, and whether against the same or different persons, the High Court may, after hearing such person or giving him an opportunity of being heard, and after assigning counsel if through poverty the person is unable to retain counsel, order that no legal proceedings shall be instituted by that person in the High Court or any other court without leave of the High Court or a judge thereof. The order is to be published in the *London Gazette*. The Act has no application to criminal proceedings (*In re Boaler*, (1914) 1 K. B. 122; 83 L. J. K. B. 139; affirmed on appeal, (1914) 83 L. J. K. B. 1629).

128. When an application shall be made to the High Court or a judge thereof for a writ of prohibition addressed to any court, the matter shall be finally disposed of by order, and no declaration or further proceedings in prohibition shall be allowed. Upon any such application the judge of the court shall not be served with notice thereof, and shall not, except by the order of a judge of the High Court, be required to appear or be heard thereon, and shall not, except by such order, be liable to any order for the payment of the costs thereof; but the application shall be proceeded with and heard in the same manner in all respects as any case of an appeal duly brought from a decision of a judge; and notice thereof shall be given to or served upon the same parties as in any case of an order made or refused by a judge in a matter within his jurisdiction, as the case may be.

Prohibition finally disposed of by order. 19 & 20 Vict. c. 108, s. 42.

129. The grant by the High Court, or by any judge thereof, of an order or summons to show cause why a writ of certiorari or prohibition should not issue to any court shall, if the High Court or a judge thereof so direct, operate as a stay of proceedings in the action or matter to which the same shall relate, until the determination of an order or summons, or until such High Court or judge thereof shall otherwise order; and the judge shall from time to time adjourn the trial of such action or matter to such day as he shall think fit, until such determination, or until such order be made; but if a copy of such order or summons shall not be served by the party who obtained it on the opposite party and on the registrar two clear days before the day fixed for the trial of the action or matter, the judge may, in his discretion, order the party who obtained the order or summons to pay all the costs of

Order to show cause as to certiorari or prohibition a stay of proceedings if High Court so direct. 19 & 20 Vict. c. 108, s. 40.

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the day, or so much thereof as he may think fit, unless the High Court or a judge thereof shall have made some order respecting such costs.

Costs of certiorari or prohibition if not sent to registrar. 19 & 20 Vict. c. 108, s. 41

130. Where a writ of certiorari or of prohibition to a court shall have been granted by the High Court or a judge thereof on an ex parte application, and the party who obtained it shall not lodge it with the registrar, and give notice to the opposite party that it has issued, two clear days before the day fixed for the trial of the action or matter to which it shall relate, the judge may, in his discretion, order the party who obtained the writ to pay all the costs of the day, or so much thereof as he shall think fit, unless the High Court or a judge thereof shall have made some order respecting such costs.

Order in lieu of mandamus. 19 & 20 Vict. c. 108, s. 43. 21 & 22 Vict. c. 74, s. 4.

131. No writ of mandamus shall issue to a judge or an officer of the court for refusing to do any act relating to the duties of his office, but any party requiring such act to be done may apply to the High Court, upon an affidavit of the facts, for an order or summons calling upon such judge or officer of the court, and also the party to be affected by such act, to show cause why such act should not be done; and if after the service of such order or summons good cause shall not be shown, the High Court may, by order, direct the act to be done, and the judge or officer of the court, upon being served with such order, shall obey the same on pain of attachment; and, in any event, the High Court may make such order with respect to costs as to it shall seem fit.

The proceedings by means of which the judge or the officers of a county court may be compelled to exercise their jurisdiction will now be explained. The common law remedy was by writ of mandamus, issued from the Court of King's Bench, ordering the performance of the neglected duty; but, so far as it applied to any judge or officer of a county court, a simpler proceeding by order has been substituted (sect. 131). The same principles, however, which governed the grant of a mandamus govern the grant of the order (*Irving* v. *Askew* (1), (1869) 20 L. T. 584). Still it would doubtless be granted to compel a judge to hear a plaint entered under the jurisdiction given to him in certain equity matters.

In considering the question whether the order will lie, the following considerations, applicable to the grant of a mandamus at common law, are, it is conceived, equally applicable to the grant of the order:—

1. *The writ is a high prerogative writ, and is not granted of right, ex debito justitiæ*: see Tapping on Mandamus, p. 4, and see note (*a*): "By the term 'prerogative writ' is meant either firstly, that the power to award it is not delegated by the Crown to the ordinary judges between party and party —that is, the justices of Common Bench — but is reserved for that court in which the Queen is supposed to be personally present; or, secondly, that such a writ is one of grace and favour granted according to discretion upon probable cause shown, and not a writ of right; that is, not such a writ as the subject has a right to call upon the court to issue under the clause of Magna Charta, by which the Queen is bound not to refuse or delay justice or right."

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So, although the court will generally grant the order where there is a good ground for its interference, it will, nevertheless, exercise a discretion, and if the circumstances are such as to show a kind of equitable reason why the order should not go, it will refuse it. So, where a judge acted under a particular impression as to a point of law, in a case involving a small amount, and the effect of granting a rule would have been to give the party moving an indirect appeal, when the statute had forbidden a direct one, the rule was refused (*Brown* v. *Taylor*, (1868) 18 L. T. 657; see *Sharrock* v. *L. & N. W. Rail. Co.* (C. A.), (1876) 1 C. P. D. 70; *Clarke* v. *Roche* (3), (1877) 36 L. T. 727). So, where a motion by way of appeal was refused, on the ground that the point relied on had not been made at the trial in such a way as to cause the judge to make a note of it, and the appellant afterwards applied for a rule to the judge to state a case, the court refused it (*Rhodes* v. *Liverpool Investment Co.*, (1879) 4 C. P. D. 425). The effect of their granting it would, in fact, have been to give two appeals instead of one. And the court will not compel a judge or officer to do that which might bring him in peril of an action (see *per* Lord Campbell, C.J., *R.* v. *Dowling*, (1853) 2 E. & B. 196, 204; 22 L. J. Ch. 295). And it seems that the order will not be granted to compel an act to be done under circumstances in which prohibition would lie (*Brown* v. *L. & N. W. Rail. Co.*, (1863) 32 L. J. Q. B. 318, 319, *per* Blackburn, J.). Nor will the order be granted unless applied for in a reasonable time; where more than twelve months had elapsed, the court refused a rule (*Coke* v. *Jones*, (1861) 4 L. T. 306; 9 W. R. 618).

2. *Two circumstances must concur to justify the grant of the order—viz., a specific legal right to the performance of the act required to be done, and the absence of an effectual remedy* (Com. Dig., Mandamus A; *R.* v. *Windham*, (1776) 1 Cowp. 377, *per* Lord Mansfield, C.J.; *R.* v. *Bristol Dock Co.*, (1810) 12 East, 429; 11 R. R. 440; *R.* v. *Nottingham Water Co.*, (1837) 6 A. & E. 355; 6 L. J. (N. S.) K. B. 89; 45 R. R. 484; *R.* v. *Garland*, (1870) L. R. 5 Q. B. 269, 272; 39 L. J. Q. B. 86).

Thus the courts have always refused to issue a mandamus where the ordinary remedy by action at law was adequate to enforce the legal right in question, though it was sometimes granted where an indictment might have been preferred, the test being whether mandamus or indictment was the more effectual remedy (*R.* v. *Hull Rail. Co.*, (1844) 6 Q. B. 70; 13 L. J. Q. B. 257; *R.* v. *Hopkins*, (1841) 1 Q. B. 161, 168; 10 L. J. Q. B. 63; 55 R. R. 235; *R.* v. *Severn Rail. Co.*, (1819) 2 B. & A. 646; 21 R. R. 433; *Ex parte Robins*, (1839) 3 Jur. 103; 54 R. R. 859). Nor was the writ granted where a statute prescribed another particular remedy for the non-performance of the act sought to be performed (*Stevens* v. *Evans*, (1761) Burr. 1157, *per* Dennison, J.; *R.* v. *Margate Pier Co.*, (1819) 3 B. & A. 220; 22 R. R. 356; *R.* v. *Reg. of Joint Stock Cos.*, (1888) 21 Q. B. D. 131; 57 L. J. Q. B. 433).

Hence it is apprehended that the order will be granted to the judge or officer of a county court to compel him to perform any act to which the person seeking the remedy is clearly by law entitled; but it is open to doubt whether, in those cases in which a particular remedy has been specified for neglect to do a particular act, the order will be granted. Thus particular provisions are made in case of the neglect of the bailiff of a foreign district to make a return to a summons sent to him for service, and of the neglect of a bailiff to levy execution. In such cases it is believed that the court would not grant the order, unless it could be shown that the applicant would not obtain an equivalent by the process specified. It will, however, lie to compel the judge to hear and determine an action to recover from a bailiff who has distrained for poor rates so much of his charge as is unreasonable, the remedy of the person aggrieved not being confined to an application to justices under sect. 2 of the Distress (Costs) Act, 1817 (*R.* v. *Philbrick*, (1905) 2 K. B. 108; 74 L. J. K. B. 464).

The court will not grant the order to compel a judge to hear a plaint over

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which he has no jurisdiction (*Brown* v. *L. & N. W. Rail. Co.*, (1863) 32 L. J. Q. B. 318; *Ex parte Payne*, (1849) 5 D. & L. 679; 18 L. J. Q. B. 197; 79 R. R. 892), nor will it interfere in a matter clearly within his discretion, if he has really exercised it (*Clifton* v. *Furley*, (1861) 7 H. & N. 783; 31 L. J. Ex. 170; 126 R. R. 703); but if he has acted in accordance with a general rule, made for the guidance of himself and his officers, and has not exercised his discretion otherwise than by applying that general rule, an order will lie (*R.* v. *Marylebone C. C.*, (1890) 34 S. J. 459). Where there is a clear right to the performance of an act the order will go, although the judge or officer has acted under a mistake of law, or a misapprehension of his duty; *e.g.*, to compel a registrar to issue a summons under the "Bills of Exchange Act" (*R.* v. *Southampton C. C.* (2), (1892) 61 L. J. Q. B. 706; *Holborow* v. *Jones*, (1869) *per* Smith, J., L. R. 4 C. P. 14; 38 L. J. C. P. 22), and to issue execution under a judgment (*R.* v. *Fletcher*, (1853) 2 E. & B. 279; 21 L. J. Q. B. 310; 95 R. R. 544; S. C., *R.* v. *Surrey C. C.*, 21 L. J. Q. B. 310). Where a judge wrongly decides a preliminary question, and refuses to go into the merits, the order will be granted; as in interpleader issues which he refuses to hear, upon the erroneous ground that the particulars are insufficient (*R.* v. *Richards*, (1851) 2 L. M. & P. 263; 20 L. J. Q. B. 351; 86 R. R. 898; *Churchward* v. *Coleman*, (1866) L. R. 2 Q. B. 18; 36 L. J. Q. B. 57; see also *R.* v. *Southampton C. C.*, (1891) 65 L. T. 320).

The order will lie to compel a judge to hear a cause sent for trial from the High Court (*Blades* v. *Lawrence*, (1874) L. R. 9 Q. B. 374; 43 L. J. Q. B. 133), and to try a cause by jury where there is a right to a jury, and due notice for it has been given (*R.* v. *Harwood*, (1853) 1 B. C. C. 144; 22 L. J. Q. B. 127; 94 R. R. 860). Where a judge refused to receive the verdict of a jury, a rule was granted to show cause why the verdict should not be received and entered (*Jardine* v. *Smith*, (1860) 8 W. R. 464).

Where, during the hearing of an action of trespass, the parties agreed to withdraw a juror, and to abide by the decision of the judge after viewing the premises, and before the judge delivered his decision the defendant withdrew his consent, a rule was granted ordering the judge to appoint a day for the rehearing of the cause, on the ground that the repudiation of the defendant was a repudiation of the whole agreement, and that the cause must be heard *de novo* (*Norburn* v. *Hilliam*, (1869) L. R. 5 C. P. 129; 39 L. J. C. P. 183).

3. *Though the writ will lie where that has not been done which a statute orders to be done, it will not be granted for the purpose of undoing what has been done* (*per* Lord Campbell, C.J., *Ex parte Nash*, (1850) 15 Q. B. 92, 95; 19 L. J. Q. B. 296, 297; 81 R. R. 520); *so it will not lie where an inferior court has decided in a particular case unjustly or improperly* (*R.* v. *Justices of Worcestershire*, (1854) 3 E. & B. 477; 23 L. J. M. C. 113; 97 R. R. 607; *Sturgis* v. *Joy*, (1853) 2 E. & B. 739, 740).

If the judge of a county court abstains from entering upon the merits of a case, in consequence of wrongly deciding a preliminary point upon which his jurisdiction depends, he may be set right, as has been already shown above, by an order to hear the case; but if he enters upon the hearing of a case, and decides it, however erroneously, the order will not be granted (see *per* Coleridge, J., *R.* v. *Richards*, (1851) 20 L. J. Q. B. 352; 86 R. R. 898; and *per* Erle, J., *Ex parte Milner*, (1851) 15 Jur. 1037). He is then *functus officio*; and the remedy for his error is by appeal, or in some cases by prohibition. Where an insolvent (before the late Bankruptcy Acts) filed a petition in a county court, and obtained an order for protection until his last examination, and afterwards applied to withdraw the petition, but the judge refused to allow him to do so, and adjourned the examination *sine die*, the court held that it had no power to compel him by rule to remove the petition from the file, or dismiss it, or name a day for the examination (*In re Corbett*, (1859) 4 H. & N. 452; 28 L. J. Ex. 254; 118 R. R. 549). Where a judge refused to hear witnesses tendered by the plaintiff, and he in consequence

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elected to be nonsuited, the court refused the rule, holding that whilst the nonsuit stood it left the judge no case on which he could be compelled to act (*Fortescue* v. *Paton*, (1860) 3 L. T. 268). So, where a judge, after hearing the plaintiff's case, and during the examination of the defendant's witnesses, discharged the jury, and directed a nonsuit to be entered, the court, regretting they had not the power, held that they could not grant the rule (*Kershaw* v. *Chantler*, (1868) 26 L. T. 474). So a rule was refused to order a judge to review a taxation of costs, the court holding that it was within the judge's discretion, and could not be reviewed by rule (*Clifton* v. *Furley*, (1861) 7 H. & N. 783; 31 L. J. Ex. 170; 126 R. R. 703). The decision may also be supported as being within the principle of the present rule, the refusal of the order to review being a decision upon the whole matter before the judge.

4. *A mandamus is never granted unless there has been a distinct demand for the performance of that which it is the object of the mandamus to enforce, and a direct refusal, either in terms or by circumstances which show an intention to withhold from doing the act required* (*R.* v. *Bristol Rail. Co.*, (1843) 4 Q. B. 162; 12 L. J. Q. B. 106; *R.* v. *Brecknock Co.*, (1835) 3 A. & E. 217; 4 L. J. M. C. 105).

Hence, if the judge or officer of a county court absolutely refuses to do the duty to the performance of which the applicant is entitled, the court will grant the order (*Ex parte Furber*, (1858) 3 H. & N. 521; 27 L. J. Ex. 453; 117 R. R. 836); but a mere qualified and temporary refusal, as by suggesting an adjournment with a view to an arrangement, is an insufficient refusal (*Irving* v. *Askew* (1), (1869) 20 L. T. 584); so is an offer by the judge to deal with the case, though not in the form desired by the plaintiff (*Reg.* v. *Pontypool C. C. Judge*, (1894) 63 L. J. Q. B. 702).

5. *The remedy by mandamus cannot be extended to cases to which it does not by law extend, though the parties waive the objection* (see *per* Lord Campbell, C.J., *R.* v. *Lords of Treasury*, (1851) 16 Q. B. 357, 359; 20 L. J. Q. B. 305; 83 R. R. 495).

Practice.]—The application for an order in the nature of a mandamus to a county court judge must be by *ex parte* motion for an order *nisi* (Cr. Off. Rules, 1906, rr. 49, 69) on affidavit of the facts (see sect. 131). The judge of the City of London court is not exempt from these provisions (*Blades* v. *Lawrence*, (1874) L. R. 9 Q. B. 374; 43 L. J. Q. B. 133). Where the act to be done is not within the judge's "ordinary jurisdiction," it has been held that a mandamus is the proper remedy, not an order, under these provisions; as when by an Act of Parliament the judge was appointed to decide certain disputes, and he refused to do so (*Re Brighton Sewers Act*, (1882) 9 Q. B. D. 723).

The order is applied for during the sittings in a divisional court of the King's Bench Division, by motion for a rule *nisi*, and in the vacation where urgent by summons to a judge in chambers to show cause, and the proceedings are on the Crown side (see Cr. Off. Rules, rr. 49, 69). The order cannot be granted out of vacation by a single judge whether sitting in court or at chambers (51 & 52 Vict. c. 43, s. 131; see *Clarke* v. *Roche* (1), (1877) 35 L. T. 705; 25 W. R. 309). The application should be made in a reasonable time. When more than twelve months had elapsed the court refused a rule (*Coke* v. *Jones*, (1861) 4 L. T. 306; 9 W. R. 618).

Affidavit.]—The affidavit upon which the order is moved should be intituled "In the High Court of Justice, King's Bench Division" (Cr. Off. Rules, r. 6, which see (with R. S. C., Order XXXVIII.) as to affidavits, and see *ante*, p. 147), but not in any action or matter. It should state such facts as show that the order ought to be granted; and, possibly, should also state, in compliance with Rule 65 of the Crown Office Rules, that the motion is made at the deponent's instance "as prosecutor" (see *Ex parte Young*, (1892) 37 S. J. 67). The order is not absolute in the first instance: It should call on the judge or officer of the county court, and the party

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affected to show cause. It should be served on the parties called on to show cause (see sect. 131). The party showing cause must take an office copy of the order and the affidavits on which it was moved, otherwise he cannot be heard. The affidavits used in showing cause should be intituled in the manner above described (Cr. Off. Rules, r. 6).

The want of the affidavit on the application for the order is an irregularity only; and it is too late for a judge, who fails to attend the argument, after the order has been made absolute and served, to object to the irregularity (*Ex parte Furber*, (1858) 3 H. & N. 521; 27 L. J. Ex. 453; 117 R. R. 836).

Costs.]—Where the order is granted to correct the decision of the judge upon some preliminary matter, the courts differed as to their power to reverse the order of the county court as to costs, the Exchequer having held that they could deal with them (*Whitehead* v. *Proctor*, (1858) 3 H. & N. 532; 117 R. R. 843), the Queen's Bench that they could not (*Churchward* v. *Coleman*, (1866) L. R. 2 Q. B. 18; 36 L. J. Q. B. 57). The costs of the order are in the discretion of the court, and may be granted to the applicant if the court thinks fit, though not asked for in the order (51 & 52 Vict. c. 43, s. 131; *Norburn* v. *Hilliam*, (1869) L. R. 5 C. P. 129; 39 L. J. C. P. 183). No order as to costs can be made if the application for the order be made to a court or judge having no jurisdiction to grant it (*Brown* v. *Shaw*, (1876) 1 Ex. D. 425). See further Cr. Off. Rules, rr. 66, 67.

Appeal.]—An appeal lies to the Court of Appeal under 36 & 37 Vict. c. 66, s. 19 (*Sharrock* v. *L. & N. W. Rail. Co.* (C. A.), (1876) 1 C. P. D. 70; *Morgan* v. *Rees* (C. A.), (1881) 6 Q. B. D. 508; 50 L. J. Q. B. 491; *Clarke* v. *Roche* (3), (1877) 36 L. T. 727; as to the practice, see Annual Practice, notes to Order LVIII. r. 1, R. S. C.). Where a party had failed to pay costs which he had been ordered to pay, the Court of Appeal ordered an appeal to be stayed until security for costs had been given (*Clarke* v. *Roche* (2), (1877); 46 L. J. Ch. 372; 36 L. T. 78).

An appeal lies from the Court of Appeal to the House of Lords (39 & 40 Vict. c. 59, s. 3; as to the practice, see Annual Practice, notes to Appellate Jurisdiction Act, 1876, s. 3).

How Order enforced.]—If the order be made absolute, it should be drawn up and served. If not obeyed, it is enforced by attachment (51 & 52 Vict. c. 43, s. 131; *Ex parte Furber*, (1858) 3 H. & N. 521).

Attachment for Contempt of Court generally.—A trustee cannot be attached unless the money ordered to be paid has at some time been in his possession or control (*Middleton* v. *Chichester*, (1871) L. R. 6 Ch. 152; 40 L. J. Ch. 237); so if ordered to pay the difference between the value of securities sold by him and their market value he is not liable to attachment in case of default (*Re Walker*, (1891) 60 L. J. Ch. 25). If an ordinary common law judgment be obtained for misapplied trust moneys, and execution be levied, no order to attach can be made, even if the amount recovered be insufficient to satisfy the judgment (*Drewitt* v. *Edwards* (C. A.), (1877) 26 W. R. 122).

An order can be made against a trustee even if between the date of the order to pay and the date of the application to attach a receiving order is made against him (*Re Edye*, (1891) 39 W. R. 198; 63 L. T. 762; *Re Smith* (C. A.), (1893) 2 Ch. 1; 62 L. J. Ch. 336).

The person in default is liable to attachment, even though his official position may be at an end, when the order to pay is made (*Re Strong* (C. A.), (1886) 32 Ch. D. 342; 55 L. J. Ch. 553; *Re Gent*, (1889) 40 Ch. D. 190; 58 L. J. Ch. 162).

Under the second class of cases above mentioned it was held that default by a solicitor to pay the costs of an order to deliver up certain documents and to pay costs rendered the solicitor liable to attachment (*In re Freston* (C. A.), (1883) 11 Q. B. D. 545; 52 L. J. Q. B. 545); but where an order had been made against a solicitor for delivery and taxation of his bill of costs,

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and he unsuccessfully appealed, and was ordered to pay the costs of appeal, it was held that default in payment of such costs did not render him liable to attachment (*In re Hope*, (1872) L. R. 7 Ch. 523; 20 W. R. 694). He may be attached even if he has become bankrupt (*Re Edye*, (1891) 39 W. R. 198).

An interlocutory order for payment of money into court may, if the case be within sect. 4 of the Debtors Act, be enforced by attachment before the trial (*Hutchinson* v. *Hartmont*, W. N. (1877) 29 (M. R.)), subject, however, to the provisions of the 41 & 42 Vict. c. 54, s. 1, above mentioned.

Practice.]—To found an application for an attachment it is essential that a sealed copy of the order which gives rise to the application should first have been duly served (Order XXV. r. 58), and even after such service the attachment can be obtained by express order of the court only (*Abud* v. *Riches* (M. R.), (1870) 2 Ch. D. 528; 45 L. J. Ch. 649). The order requiring the act to be done must state the time, or the time after its service, within which the act is to be done (Order XXIII. r. 9).

The order sought to be enforced, if final, having been settled by the registrar and sealed and filed (Order XXIII. r. 4), or, if interlocutory, sealed and filed by the registrar (Order XII. r. 8) as already described, the party entitled to the benefit of it must apply to the registrar. The registrar must then issue for service to the bailiff a sealed copy of the order, indorsed with a notice in the prescribed form (Form 346). The copy and notice may, if the party desires it, by leave of the registrar, be issued for service to the solicitor of the party entitled, and may then be served by any person by whom a default summons may be served under Order VII. r. 33 (Order XXV. r. 58). When so issued for service to a solicitor it seems that he ought to make all necessary copies, and present them to be sealed to the registrar (Order LIV. r. 5). It is not clear whether the costs of service by solicitor will be allowed.

If no order to serve by solicitor be made, service must be by bailiff. Service must in all cases be personal, unless the judge makes an order for substituted service pursuant to Order VII. r. 40 (Order XXV. r. 58).

If the person bound by the order fails to obey it, application may be made to the registrar, not less than three days after service of the copy order and notice, or by leave of the judge at an earlier period, and the registrar must then issue for service a notice under the seal of the court (Form 347) requiring the person who has failed to obey the order to appear on a day named therein to show cause why he should not be committed for his contempt. This notice must be served personally, or under an order for substituted service in the same manner as the order and notice (Order XXV. r. 59).

On the day named in the notice, the judge, on proof of service of the copy order duly indorsed and of the notice mentioned in the last paragraph, and of the disobedience of the person in default, may order (Form 348) a warrant of attachment to issue, unconditionally or on terms. He may also make such order as to costs as he thinks fit. The warrant will then issue without further notice, but the order of the judge must be drawn up and a sealed copy served before or at the time of execution, unless the judge otherwise orders. No proof of service of the copy order or notice will be necessary if the party appears (Order XXV. rr. 60, 61; Form 349; as to the prison, see 51 & 52 Vict. c. 43, s. 163).

The order must set out the particular ground of committal, in order that the person committed may know exactly what he ought to do to purge his contempt (*R.* v. *Lambeth C. C.* (2), (1887) 36 W. R. 475). The warrant authorizes the high bailiff to take the body of the person in default, and all constables and peace officers in their jurisdiction must aid in its execution, and the governor of the prison must receive and keep such prisoner until duly discharged (51 & 52 Vict. c. 43, s. 161).

Discharge from Custody.]—A person who has purged his contempt may apply to the registrar to be discharged, unless in the order for his committal it is directed that the application shall be made to the judge. He must give

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two clear days' notice to the other party of his intention to make the application, and must file an affidavit showing that he has cleared or is desirous of clearing his contempt (Order XXV. r. 63 ; Form 350). If application to the judge was directed, it must be made accordingly, the same practice being followed. The judge may hear the application at any place which he may appoint (Order XXV. r. 62 ; Form 351). On the return, the judge or registrar, as the case may be, can now, by virtue of the 41 & 42 Vict. c. 54, s. 1, in case of failure to purge the contempt by paying money, inquire into the case, and exercise a judicial discretion in deciding whether or not the prisoner should be kept in custody. This was not the case before the Act just cited (*Ransom* v. *Boyd*, (1877) W. N. 236). In other cases of contempt not purged the discharge cannot generally be granted. An appeal would possibly lie from the registrar to the judge. If the judge or registrar declined to hear the application, an order in the nature of a mandamus would lie (*ante*, p. 150) ; but if the case were decided on the merits and the discharge refused, there would appear to be no remedy except perhaps by *habeas corpus* from the High Court.

Injunctions (see *post*, p. 511).]—The remedy for breach of an injunction, whether final or interlocutory, is in the High Court by attachment or sequestration (see *Spokes* v. *Banbury Board*, (1865) L. R. 1 Eq. 42; 35 L. J. Ch. 105) ; but although there seems to be no reason why a county court judge should not have jurisdiction to order a writ of sequestration, no provision has been made for it by the rules. The power of the county court judges to attach has been confirmed by express decision (*Martin* v. *Bannister* (C. A.), (1879) 4 Q. B. D. 491; 48 L. J. Q. B. 676).

Mandamus (see *ante*, p. 150).]—Final and interlocutory orders of mandamus may, it is conceived, so long as they are not orders to pay money within the provisions of the Debtors Acts, be enforced by attachment.

Receivers (see *post*, p. 464).]—A receiver is, from his position as a *quasi*-officer of the court, directly under its control, and is, for the purpose of orders for payment of money, treated as a person in a fiduciary position (*Sprunt* v. *Pugh* (M. R.), (1878) 7 Ch. D. 567). Obedience to the orders of the court, subject to the Debtors Acts, may be enforced by attachment.

No judge to grant writ or order once refused.

19 & 20 Vict. c. 108, s. 44.

132. When the High Court or a judge thereof shall have refused to grant a writ of certiorari or prohibition to a court, or any such order as in the last preceding section mentioned, no other court or judge shall grant such writ or order ; but nothing herein shall affect the right of appealing from the decision of the judge of the High Court to the High Court itself, or prevent a second application being made for such writ or order to the High Court or a judge thereof on grounds different from those on which the first application was founded.

Second Application.]—When application for the order has been made, and refused, a second application may be made on grounds different from those on which the first application was founded (*supra*).

This section only applies to proceedings in the High Court, and prevents an application to another judge of the High Court or to another divisional court, when the first judge, or divisional court, has refused to grant the writ ; it does not forbid an appeal to the Court of Appeal from the refusal of the High Court to grant a writ of prohibition (*The Recepta*, (1893) P. 255 ; 62 L. J. P. 118).

PART VI.

REPLEVIN; RECOVERY OF TENEMENTS.

Section 133.

Actions of replevin may be brought by plaint.

9 & 10 Vict. c. 95, ss. 119, 120.

133. All actions of replevin which shall be brought in the court shall be brought by plaint, and in every such action the plaint shall be entered in the court of the district where the goods were seized.

Nature of Action.]—Replevin is a re-delivery to the owner of cattle or goods which have been wrongfully distrained or taken from him, upon surety that he will pursue an action against him who distrained (Co. Lit. 145, b; Bac. Ab. "Replevin").

It lies in nearly every case of an alleged wrongful taking of cattle and goods (Com. Dig. "Replevin"; *George* v. *Chambers*, (1843) 11 M. & W. 149; 12 L. J. M. C. 94; 63 R. R. 554; *Allen* v. *Sharp*, (1848) 2 Exch. 352; 17 L. J. Ex. 209; 76 R. R. 621; *Mellor* v. *Leather*, (1853) 1 E. & B. 619; 22 L. J. M. C. 76; 93 R. R. 310). The *taking* is essential in replevin. Although trover or detinue will lie for the wrongful withholding of goods after a demand by the owner, replevin will not lie in such a case (*Mennie* v. *Blake*, (1856) 6 E. & B. 842; 25 L. J. Q. B. 399; 106 R. R. 822; see as to remedies for wrongful distress, p. 928); but proceedings in the county court under the 19 & 20 Vict. c. 108, could formerly be had only in the two most ordinary cases; viz., of distress for rent and damage feasant. Now, however, the court has jurisdiction in all cases of replevin (51 & 52 Vict. c. 43, s. 134; 23 & 24 Vict. c. 126, s. 22). The court has jurisdiction, no matter what question of title is raised, unless the steps for removal of the plaint by *certiorari*, noticed presently, have been taken (*R.* v. *Raines*, (1853) 11 E. & B. 855; 22 L. J. Q. B. 223; 93 R. R. 442; *Fordham* v. *Akers*, (1864) 34 B. & S. 578; 33 L. J. Q. B. 67 129 R. R. 860).

Registrar to grant replevins.

19 & 20 Vict. c. 108, s. 64.

134. The sheriff shall have no powers and responsibilities with respect to replevin bonds and replevins; but the registrar of the court of the district in which any goods subject to replevin shall be taken, shall be empowered, subject to the regulations hereinafter contained, to approve of replevin bonds, and to grant replevins, and to issue all necessary process in relation thereto, and such process shall be executed by the bailiff. Such registrar shall, at the instance of the party whose goods shall have been seized, cause the same to be replevied to such party, on his giving one or other of such securities as are mentioned in the next two succeeding sections.

Proceedings before Plaint.]—Formerly the sheriff was the proper officer to re-deliver goods sought to be replevied, and he, upon complaint made to him, was bound to replevy without writ (Stat. Marlebridge; 2 Inst. 139).

The registrar of the county court of the district in which any distress subject to replevin may be taken must now approve of replevin bonds, grant replevins, and issue all necessary process in relation to them; and the process must be executed by the bailiff (51 & 52 Vict. c. 43, s. 134; 23 & 24 Vict. c. 126, s. 22).

No ill consequences will arise to the registrar upon granting a replevin where the goods are not replevisable, except where the goods are distrained under a judgment of a court or a conviction before justices, in which cases the registrar would be liable to an attachment (Bull. N. P. c. 4, p. 53).

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The person whose goods have been seized, in order to recover them, is bound to give security for the due prosecution of an action of replevin against the person who has distrained. The security may be by deposit of money or by bond (51 & 52 Vict. c. 43, ss. 108, 109; Forms 287, 288); and upon the security being completed, the goods will be restored to the claimant. To effect this purpose, immediately after the distress has been put in, or at the latest, before sale, the claimant must give notice of his intention to replevy to the registrar of the county court of the district in which the cattle or goods have been seized. He must also state whether the action of replevin is to be commenced in a county or in the High Court, and must name the persons whom he proposes as his sureties (see Form 235), if he intends to give a bond, or state his willingness to deposit money, if he intends to give security in that way. The registrar then gives notice to the seizor (Form 286; replevin bonds now require to be stamped, as the exemption from duty is not continued by the Stamp Act, 1891). On the day named by the registrar in the notice, the security will be completed. The security thus required by bond or deposit will be for such an amount as the registrar may deem sufficient to cover the alleged rent or damage in respect of which the distress has been made, or if the goods have been seized otherwise than under a distress the value of the goods, and the probable costs of the action of replevin (51 & 52 Vict. c. 43, ss. 135, 136).

If the plaintiff elect to sue in a county court, the condition of the bond or deposit will be to commence an action of replevin against the seizor in the county court of the above-named district within one month from the date of the security, and to prosecute such action with effect and without delay, and to make a return of the goods, if a return should be adjudged (51 & 52 Vict. c. 43, s. 136; Form 288).

If the plaintiff elect to sue in the High Court the condition will be to commence an action in the High Court within one week from the date of the security, and to prosecute such action with effect and without delay, and, unless judgment be obtained by default, to prove that he had good ground for believing that the title to some corporeal or incorporeal hereditament, the yearly rent or value of which exceeded 20*l.*, or to some toll, market, fair, or franchise was in question, or that such rent or damage or the value of the goods seized exceeded 20*l.*, and to make a return of the goods, if a return should be adjudged (see sect. 135; Form 287).

When the security has been completed, the registrar issues his warrant (see sect. 134; Form 289) to the high bailiff, directing him to replevy and deliver the goods to the claimant (called the replevisor), and the bailiff then delivers up the goods, and makes a return accordingly.

Security.]—The general provisions in regard to the giving of security in county courts have already been explained; and it is conceived that the duty and responsibility of the registrar in regard to the taking of sufficient security is the same in regard to replevins as in other cases—*i.e.*, he must exercise "proper and vigilant discretion" (see the judgments in *Young* v. *Brompton Waterworks Co.*, (1862) 1 B. & S. 675; 31 L. J. Q. B. 14), but must not be held to warrant the sufficiency of the sureties. In other words, it is believed that the registrar could only be held responsible in damages for injury sustained by the party for whose benefit the security was taken, if he performed his duty negligently, and that negligence caused the damage (the sheriff was formerly under a heavier responsibility, but later cases seem to show that he is only bound to exercise reasonable diligence; see *Hindle* v. *Blades*, (1813) 5 Taunt. 225; *Sutton* v. *Waite*, (1823) 8 Moore, 27; *Scott* v. *Waithman*, (1822) 3 Stark. 168; *Plumer* v. *Briscoe*, (1847) 11 Q. B. 46; 17 L. J. Q. B. 158; *Jeffery* v. *Bastard*, (1836) 4 A. & E. 823).

The condition to prosecute the action with effect is not satisfied if the plaintiff in replevin fails in his suit (*Tunnicliffe* v. *Wilmot*, (1847) 2 C. & K. 626; *Tummons* v. *Ogle*, (1856) 6 E. & B. 571; 25 L. J. Q. B. 403; 106 R. R. 714); he must prosecute his action "to a not unsuccessful deter-

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mination" (*Jackson* v. *Hanson*, (1841) 8 M. & W. 477, 487; 10 L. J. Ex. 396; *Perreau* v. *Bevan*, (1826) 5 B. & C. 284; 4 L. J. (O. S.) K. B. 177). The condition to prosecute without delay is satisfied if a suit is commenced and carried regularly forward, according to the ordinary practice of the court (*Morris* v. *Matthews*, (1841) 2 Q. B. 293; 11 L. J. Q. B. 57), but want of due diligence may, if the defendant in replevin is prejudiced by the delay, constitute a breach of the condition (*Gent* v. *Cutts*, (1848) 11 Q. B. 288: 17 L. J. Q. B. 55; 75 R. R. 390; *Harrison* v. *Wardle*, (1833) 5 B. & Ad. 146). Where a replevisor had permitted two years to elapse without taking any steps in the replevin suit, it was held that the bond was forfeited, and that the obligee might recover, although he had not signed judgment of *non pros.* (*Axford* v. *Perrett*, (1828) 4 Bing. 586; 6 L. J. (O. S.) C. P. 116). If the plaintiff in replevin be hindered from prosecuting the suit with effect by the default of the defendant in replevin, the court will prevent the latter from proceeding on the bond (*Evans* v. *Bowen*, (1850) 19 L. J. Q. B. 8).

Proceedings in Replevin.]—After the security has been completed and the goods replevied, the replevisor must proceed with his action of replevin either in a county or the High Court, according to the condition of the security.

Plaint and Summons.]—The plaint must be entered in the court holden for the district wherein the goods were seized (51 & 52 Vict. c. 43, s. 133; and see *ante*, s. 35, as to the service of the summons). No other cause of action may be joined in the same summons (Order XXXIV. r. 1).

Particulars.]—On entering the plaint, the plaintiff must in the ordinary manner deliver particulars (see Order VI. r. 1) specifying and describing the cattle, or the several goods and chattels taken and the distress or taking of which he complains (Order XXXIV. r. 2).

Payment into Court.]—It is believed that the plaintiff, in replevin, may pay money into court in satisfaction in accordance with the practice in the High Court. The ordinary practice in the county court applies (51 & 52 Vict. c. 43, s. 164; Order IX. r. 21).

Hearing.]—Actions of replevin in cases of rent in arrear or damage feasance are tried like other actions, in a summary way (Order XXXIV. r. 3). Either party may demand a jury, as in other cases (Order XXII. r. 3).

Title in Question.]—If the defendant takes no steps, under the provisions mentioned below, to remove the plaint into the High Court, the judge has jurisdiction to try the action, although the title to hereditaments of greater yearly rent or value than 50*l.* may be in question (*R.* v. *Raines*, (1853) 11 E. & B. 855; 22 L. J. Q. B. 223; 93 R. R. 442; *Fordham* v. *Akers*, (1864) 4 B. & S. 578; 33 L. J. Q. B. 67; 129 R. R. 860).

Defendant's Evidence.]—The defendant, or avowant, as he is commonly called, may show that the goods were not seized within the district of the court. He may also justify the seizure of the goods, by showing that they were properly distrained for rent or otherwise. In the case of distress for rent, he must show a demise at a fixed rent (*Hayward* v. *Haswell*, (1837) 6 A. & E. 265; 6 L. J. K. B. 116; *Knight* v. *Benett*, (1826) 3 Bing. 361; 4 L. J. C. P. 95; 28 R. R. 643); the amount of rent in arrear; and the value of the goods distrained (*Sheape* v. *Culpeper*, (1669) 1 Lev. 255). If the defendant be only bailiff, and his authority is denied, he must prove it; a recognition of his acts by the landlord will suffice, even if made after action (*Whitehead* v. *Taylor*, (1839) 10 A. & E. 210; 50 R. R. 385).

Where the defendant has taken the distress damage feasant, the same evidence is necessary as in trespass to real property.

Plaintiff's Evidence.]—The plaintiff may deny the tenancy, or that he holds at any rent certain (*Regnart* v. *Porter*, (1831) 7 Bing. 45; 9 L. J. C. P. 168; 33 R. R. 537), or show that he was holding over after notice

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to quit from the landlord (*Jenner* v. *Clegg*, (1832) 1 Moo. & R. 213; 42 R. R. 778). He may prove that the defendant's title expired before the rent became due (*Downs* v. *Cooper*, (1841) 2 Q. B. 256; 11 L. J. Q. B. 2; 57 R. R. 669); or that he has been evicted by his landlord or a third person claiming by title paramount (*Hopcraft* v. *Keys*, (1833) 9 Bing. 613; 35 R. R. 644); or that there is no rent in arrear; or that defendant's title has been barred by the Statute of Limitations (*Owen* v. *De Beauvoir*, (1847) 16 M. & W. 547; 82 R. R. 612); or that he has paid rent to the landlord, or under compulsion to a superior landlord, or to a mortgagee annuitant, claiming by prior title (*Taylor* v. *Zamira*, (1816) 6 Taunt. 524; 16 R. R. 668; *Johnson* v. *Jones*, (1839) 9 A. & E. 809; 8 L. J. (N. S.) Q. B. 124; 48 R. R. 714); or a tender of the amount due for rent.

Damages.]—In replevin, the jury may assess damages as in trespass (*Smith* v. *Enright*, (1894) 63 L. J. Q. B. 220).

Judgment.]—The judgment in replevin in ordinary cases, whether for plaintiff or defendant, is in the form prescribed (Order XXXIV. r. 3; Forms 151, 290, 291).

Assessment of Value of Goods.]—Where the distress has been for rent, or for any other sum of money for which a distress may be lawfully taken, and the defendant succeeds in the action, if the defendant requires it, the judge, if the action be tried without a jury, and the jury, if the action be tried with a jury, must find the value of the goods distrained. If the value be less than the amount of rent or money in arrear, judgment must be given for the amount of such value; but if the amount of the rent or money in arrear be less than the value so found, judgment must be given for the amount of such rent or money, and it may be enforced in the same manner as any other judgment (Order XXXIV. r. 4; see Form 290).

Assessment of Damage.]—Where the distress is for damage feasant, and the defendant is entitled to judgment for a return, if the plaintiff requires it, the amount of the damage sustained by the defendant must be found, and judgment will then be given in favour of the defendant, in the alternative, either for a return, or for the amount of the damage so found (Order XXXIV. r. 5; Form 291; see Bac. Ab. "Replevin").

Other Cases.]—In all cases of replevin other than those arising out of a seizure by way of distress, when the defendant justifies and succeeds, the judgment for the defendant will be for a return of the goods with or without costs (Order XXXIV. r. 6).

One who has replevied goods distrained, and obtained judgment in an action of replevin, cannot maintain an action for damages in respect of the taking of the goods (*Gibbs* v. *Cruikshank*, (1873) L. R. 8 C. P. 454; 42 L. J. C. P. 273).

Costs.]—The judge may, by special order, order costs to be taxed under columns A, B, or C of the scales; if he makes no special order they will be taxed under column B (Order LIII. rr. 10, 11).

Certiorari.]—Any action of replevin may be removed into the High Court by writ of *certiorari*, on the application of the defendant (see the practice as to the application for a *certiorari*, *ante*, pp. 135—138). The defendant must give security to be approved of by the master of the court, for such amount not exceeding 150*l.* as he may think fit, conditioned to defend the action with effect (see *Tummons* v. *Ogle*, (1856) 6 E. & B. 571; 25 L. J. Q. B. 403; 106 R. R. 714), and, unless the replevisor discontinues or does not prosecute the action or becomes nonsuit, to prove before the High Court that the defendant had good ground for believing either that the title to some corporeal or incorporeal hereditament the yearly rent or value of which exceeded 20*l.* or to some toll, market, fair or franchise was in question, or that the rent or damage in respect of which the distress was taken or the value of the goods seized exceeded 20*l.* (51 & 52 Vict. c. 43, s. 137);

Appeal.]—An appeal is allowed in actions of replevin. The appeal lies as of right when the amount of rent or damage or value (see *Smith* v. *Enright*, (1894) 63 L. J. Q. B. 220) of the goods seized exceeds 20*l.*, and by leave of the judge in all other cases (51 & 52 Vict. c. 43, s. 120). The practice in regard to appeals is the same as in ordinary cases (see *ante*, pp. 123—133). Section 134 Notes.

135. Where a replevisor shall wish to commence proceedings in the High Court he shall, at the time of replevying, give security, to be approved of by the registrar in the last preceding section mentioned, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage, or if the goods replevied have been seized otherwise than under colour of distress, the value of the goods, and in either case the probable costs of the action in the High Court, conditioned to commence an action of replevin against the seizor in the High Court, within one week from the date thereof, and to prosecute such action with effect and without delay, and unless judgment thereon be obtained by default, to prove before the High Court that he had good ground for believing either that the title to some corporeal or incorporeal hereditament, the rent or value whereof exceeded twenty pounds by the year, or to some toll, market, fair, or franchise, was in question, or that such rent or damage, or the value of the goods seized, exceeded twenty pounds, and to make return of the goods if a return thereof shall be adjudged. Condition of security to be given in cases of replevins commenced in High Court. 19 & 20 Vict. c. 108, s. 65.

If the plaintiff fails in the action, the security is forfeited (*Tummons* v. *Ogle*, (1856) 6 E. & B. 571; 25 L. J. Q. B. 403; 106 R. R. 714).

136. If a replevisor shall wish to commence proceedings in a county court, he shall at the time of replevying give security, to be approved of by the registrar, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage in respect of which the distress shall have been made, or if the goods replevied have been seized otherwise than under colour of distress, the value of the goods, and in either case the probable costs of the action, conditioned to commence an action of replevin against the seizor in the court of the district in which the goods shall have been seized, within one month from the date of the security and to prosecute such action with effect and without delay, and to make a return of the goods if a return thereof shall be adjudged. Conditions of security to be given when replevin brought in county court. 19 & 20 Vict. c. 108, s. 66.

137. Any action of replevin brought in the court shall be removed into the High Court by writ of certiorari, if the defendant shall apply to the High Court or to a judge thereof for such writ, and shall give security, to be approved of by a master of the Supreme Court, for such amount, not exceeding one hundred and fifty pounds, as such master shall think fit, conditioned to defend such action with effect, and unless the replevisor shall discontinue Replevins shall at instance of defendant be removed into High Court by certiorari in certain cases. 19 & 20 Vict. c. 108, s. 67.

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or shall not prosecute such action, or shall become nonsuit therein, to prove before the High Court that the defendant had good ground for believing, either that the title to some corporeal or incorporeal hereditament, the rent or value whereof exceeded twenty pounds by the year, or to some toll, market, fair, or franchise, was in question, or that the rent or damage in respect of which the distress shall have been taken or the value of the goods seized exceeded twenty pounds.

Possession of small tenements may be recovered in county courts by landlords where term has expired or been determined by notice. 19 & 20 Vict. c. 108, ss. 50, 51.

138. When the term and interest of the tenant of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof shall have exceeded one hundred (*a*) pounds by the year, and upon which no fine or premium shall have been duly paid, shall have expired, or shall have been determined either by the landlord or the tenant by notice to quit, and such tenant, or any person holding or claiming by, through, or under him, shall neglect or refuse to deliver up possession accordingly, the landlord may enter a plaint, at his option, either against such tenant, or against such person so neglecting or refusing, in the court of the district in which the premises lie, for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing; and if the defendant shall not at the time named in the summons, show good cause to the contrary, then, on proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises, and of the holding, and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of the service of the summons, if the defendant shall not appear thereto, the judge may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or on or before such day as the judge shall think fit to name; and if such order be not obeyed, the registrar, whether such order can be proved to have been served or not, shall, at the instance of the plaintiff, issue a warrant authorising and requiring the bailiff of the court to give possession of such premises to the plaintiff. In any such plaint against a tenant, the plaintiff may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, so as the same shall not exceed one hundred (*a*) pounds.

See now "Emergency Legislation," especially Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. V., c. 97), and rules thereunder, *post*, p. 980, as amended by Courts (Emergency Powers) Act, 1917 (7 & 8 Geo. 5, c. 25), *post*, p. 958.

NOTE.—(*a*) The powers given by the statute to the county court on this

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head do not oust the jurisdiction given by 1 & 2 Vict. c. 74, under which Act magistrates possess similar powers, in cases where the rent does not exceed 20*l.*

The jurisdiction of the county courts in proceedings for the recovery of small tenements is of a two-fold character. It extends to cases where a tenant holds over after the legal determination of his tenancy; and also to those cases where a landlord has by law a right to re-enter and obtain possession on the ground of non-payment of rent. These proceedings which are governed by sects. 138 and 139 of the Act, are now known as actions for the recovery of possession as distinguished from actions of ejectment under sect. 59 (Order V. r. 3). Proceedings should be taken for recovery of possession wherever practicable, for where an action of ejectment is brought, and in the opinion of the judge an action should have been brought for the recovery of possession, the plaintiff is not entitled to any further relief or any further costs than he would have been in an action for the recovery of possession (Order V. r. 3).

Generally speaking, the practice in these cases is similar to the ordinary practice. The essential points of difference will be gathered from the following remarks.

On Determination of Tenancy.]—When the term and interest of the tenant of any corporeal hereditament where *neither* the value of the premises, *nor* the rent payable in respect of the tenancy shall have exceeded 100*l.* by the year, and on which no fine or premium has been paid, has expired, or been duly determined by notice to quit; and the tenant, or any person holding or claiming by, through, or under him, neglects or refuses to deliver up possession of the premises, the landlord may, at his option, enter a plaint for their recovery, either against the tenant or the person so neglecting or refusing (51 & 52 Vict. c. 43, s. 138; 3 Edw. VII. c. 42, s. 3; the former section re-enacts the 19 & 20 Vict. c. 108, s. 50, which replaced the 9 & 10 Vict. c. 95, s. 122, and amended it so as to exclude the jurisdiction where the yearly *value* of the premises exceeded 50*l.*; *Fearon* v. *Norvall* (2), (1848) 5 D. & L. 445; 18 L. J. Q. B. 9; *Harrington* v. *Ramsay*, (1853) 2 E. & B. 669; 22 L. J. Q. B. 460).

The fact of the pendency of an action of ejectment is not a bar to the plaintiff's proceeding in the county court under this section (*Bissill* v. *Williamson*, (1861) 7 H. & N. 391; 31 L. J. Ex. 131; 126 R. R. 477).

Mesne Profits.]—In the plaint under the above section, the plaintiff may also add a claim for rent or mesne profits, or for both, down to the day appointed for the hearing, or to any preceding day named in the plaint, so that the aggregate amount does not exceed 100*l.* (51 & 52 Vict. c. 43, s. 138; 3 Edw. VII. c. 42, s. 3). Where an order for possession has been made under this section against the tenant and his sub-tenant, and the sub-tenant has given up possession, the order of the county court is not in a subsequent action for mesne profits against the sub-tenant by the original landlord conclusive evidence of liability (*Campbell* v. *Loader*, (1864) 3 H. & C. 520; 34 L. J. Ex. 50; 140 R. R. 589; and see *Hodson* v. *Walker*, *post*, p. 170).

Where Title is in Question.]—These provisions do not overrule the provisions already explained (*ante*, p. 30) by which the court is prevented from entertaining a question of title, if either the yearly rent or value of the premises exceeds 100*l.* (51 & 52 Vict. c. 43, ss. 56, 60; 3 Edw. VII. c. 42, s. 3; and see *ante*, p. 30). The judge, however, may decide, in the case of leaseholds or freeholds, questions of title as to whether the landlord has a lawful right to the possession; that is, such questions as arise from a dispute as to whether the lease was determined or the like; but he may not decide questions as to whether the claimant has title as landlord if the limit of value or rent be exceeded (*Kerkin* v. *Kerkin*, (1854) 3 E. & B. 399; *Pearson* v. *Glazebrook*, (1868) L. R. 3 Ex. 27; 37 L. J. Ex. 15; 97 R. R. 553).

A *bonâ fide* claim of ownership by an alleged tenant will raise a question

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of title which will put an end to the jurisdiction, if the yearly rent or value exceed 100*l.* (*Pearson* v. *Glazebrook*, *supra*). The assertion by the defendant, an alleged tenant, that he has given up possession to a third party, who made a *bonâ fide* claim, will not necessarily put an end to the jurisdiction. It must be proved also and decided that he gave up possession, by compulsion; because if he gave it up voluntarily, he would be estopped from setting up the third person's title against his landlord's, and the court would have jurisdiction (*Emery* v. *Barnett*, (1858) 4 C. B. N. S. 423; 27 L. J. C. P. 216; 114 R. R. 793).

B. held, as tenant to C., two farms, C. being lessee of the one and owner in fee of the other. C. died, and A. proved a will under which he was devisee of all C.'s real estate, and also made executor. A. gave B. notice to quit. B. *bonâ fide* disputed the validity of the will: held, that title to the leasehold was not in question, as probate of the will was conclusive as to title of A.; but that title to the freehold did come in question (*Kerkin* v. *Kerkin*, *supra*).

Landlord and Tenant.]—The landlord, within the meaning of the Act, is the person entitled to the immediate reversion of the lands, or in the case of joint tenancy, coparcenary, or tenancy in common, one of the persons entitled to such reversion (51 & 52 Vict. c. 43, s. 186).

The action only lies where the ordinary relation of landlord and tenant exists; therefore where the plaintiff claimed as mortgagee to recover possession from a person who had entered into occupation subsequently to the mortgage, and had not become tenant to him, it was held that the court had no jurisdiction (*Jones* v. *Owen*, (1848) 5 D. & L. 669; 18 L. J. Q. B. 8; 79 R. R. 888; and see *Marwood* v. *Waters*, (1854) 13 C. B. 820; 93 R. R. 749). So where the defendant had been let into possession under an agreement to purchase, one of the terms being that the rent should be deducted from the purchase-money, and it appeared that he had paid a sum which, together with a set-off, equalled the amount of the purchase-money, it was held that the county court had no jurisdiction (*Banks* v. *Rebbeck*, (1851) 2 L. M. & P. 452; 20 L. J. Q. B. 476; 86 R. R. 905).

A defendant was entitled to 500*l.* and interest, charged on Whiteacre, which belonged to A.; and it was orally agreed that the defendant should rent Blackacre from A., and should deduct the interest on the 500*l.* from the rent. Afterwards A. conveyed the reversion of Blackacre to the plaintiff: held, that the defendant was an ordinary tenant of Blackacre (*Jones* v. *Thomas*, (1861) 4 L. T. 210; 127 R. R. 915).

Rent or Value.]—A defendant entered into a written agreement to take premises at a rent of 20*s.* a week; during the tenancy an oral agreement was made that the rent should be 16*s.* a week, and the defendant for several weeks paid the reduced amount, and on one occasion submitted to a distress: held, that there was no fresh demise, and that the original rent continued to be the rent payable for the premises (*Crowley* v. *Vitty*, (1852) 7 Ex. 319; 21 L. J. Ex. 135; 86 R. R. 664; and see further as to rent and value, *ante*, p. 33).

Due Determination of Tenancy.]—The question whether the tenancy has been duly determined by notice to quit is one upon which the decision of the county court judge is conclusive between the parties (*Fearon* v. *Norvall* (1), (1848) 17 L. J. Q. B. 161; 5 D. & L. 431; 79 R. R. 865); but the section only applies to cases where a tenancy has been determined by ordinary notice to quit, and not to cases where there is a power of re-entry after notice for non-payment of rent or breach of covenant, and the notice to quit relied on is a notice to the tenant to leave the premises in consequence of a forfeiture (*Friend* v. *Shaw*, (1888) 20 Q. B. D. 374; 57 L. J. Q. B. 225). The words of the section under which this decision was given have been altered by the omission of the word "legal" in the phrase "legal notice to quit." It is doubtful, therefore, whether the decision is now law.

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Plaintiff's Evidence at the Trial.]—If the landlord's title has accrued previous to the letting of the premises, the plaintiff need only prove as follows:—

Proof of Holding.]—First, the tenancy or holding; if it be by lease, the lease, or a counterpart, must be produced, or an admission of its terms by the defendant (*Howard* v. *Smith*, (1841) 3 Scott, N. R. 574; 10 L. J. C. P. 245; 60 R. R. 506) must be proved. A demise from year to year may be proved by the payment and receipt of yearly rent (*Doe* v. *Horn*, (1838) 3 M. & W. 333; 7 L. J. Ex. 98; *Bishop* v. *Howard*, (1823) 2 B. & C. 100; 1 L. J. K. B. 243; 26 R. R. 291). Where the defendant has been let into possession under a lease void by the Statute of Frauds, payment and receipt of rent is evidence of a tenancy from year to year (*Doe* v. *Bell*, (1793) 5 T. R. 471; *Doe* v. *Amey*, (1840) 12 A. & E. 476). A general letting, without agreement as to the term, creates only a tenancy at will (*Richardson* v. *Langridge*, (1811) 4 Taunt. 128; 13 R. R. 570); which by the receipt of rent is converted into a tenancy from year to year. If the rent is reserved as a yearly rent, though received at shorter periods, it is a yearly tenancy (*R.* v. *Herstmonceaux*, (1827) 7 B. & C. 551; 6 L. J. (O. S.) M. C. 35); if determinable at three months' notice, it is a quarterly tenancy (*Kemp* v. *Derrett*, (1814) 3 Camp. 510; 14 R. R. 828). Since the Judicature Acts a person occupying under an executory agreement for a lease not under seal is to be treated in every court as holding on the terms of the agreement (*Walsh* v. *Lonsdale* (C. A.), (1883) 21 Ch. D. 9; 52 L. J. Ch. 2; *Furness* v. *Bond*, W. N. (1888) 78; 4 T. L. R. 457; but see *Foster* v. *Reeves* (C. A.), (1892) 2 Q. B. 255; 61 L. J. Q. B. 713). As to position of assignees of agreement for a lease not under seal, who have neither privity of contract, or privity of estate with the lessors, see *Purchase* v. *Lichfield Brewery Co.*, (1915) 1 K. B. 184; 84 L. J. K. B. 742.

Determination.]—Secondly, the plaintiff must prove determination of the tenancy, with the time or manner thereof; as, if it be an estate at will, the death of the lessee, demand of possession, or other determination of the will on either side; if it be a holding for a time certain, the expiration of that time; and in cases of holding for a time certain, a disclaimer, surrender or forfeiture by the tenant, or that the tenancy has been determined by notice.

If the holding be from year to year, a mere denial by the tenant that he holds of his landlord, or other verbal repudiation, is sufficient to entitle the landlord to treat the tenancy as determined (*Doe* v. *Stanion*, (1836) 1 M. & W. 695; 5 L. J. (N. S.) Ex. 253; 46 R. R. 464). In the case of a definite term, it cannot be forfeited by mere words, some other *act* on the part of the tenant inconsistent with the existence of the relationship, must be proved (*Doe* v. *Wells*, (1839) 10 A. & E. 427; 8 L. J. (N. S.) Q. B. 265; 50 R. R. 473).

A surrender may be proved either by deed or by act of law, as where the tenant has been party to some act which would not be valid if his lease still existed, as the acceptance of a new lease (*Lyon* v. *Reed*, (1844) 13 M. & W. 285; 13 L. J. Ex. 377; 67 R. R. 593), or authorizing the landlord to let to another (*Nickells* v. *Atherstone*, (1847) 10 Q. B. 944; 16 L. J. Q. B. 371; 74 R. R. 556).

A notice to quit may, in the absence of agreement, be by parol (*Doe* v. *Crick*, (1805) 5 Esp. 196; 8 R. R. 848) or in writing; but it must refer to some distinct time. If the tenancy is yearly, it must, in the absence of any special agreement, have been given six months, or, in the case of an agricultural holding, a year before the end of the year (*Right* v. *Darby*, (1786) 1 T. R. 159; 46 & 47 Vict. c. 61, s. 33; see as to the construction of this section, *Barlow* v. *Teal* (C. A.), (1885) 15 Q. B. D. 501; 54 L. J. Q. B. 564); or, where six months are sufficient, where the rent is payable on the usual feast-days, on one feast-day, to quit on the next but one (*Roe* v. *Doe*, (1830) 6 Bing. 574). A notice to quit "at the earliest possible moment lawful" but accompanied by a statement that the notice will be withdrawn

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"if business improves" is a good notice (*May* v. *Borup*, (1915) 1 K. B. 830; 84 L. J. K. B. 823). If the holding be for less than a year, the notice must follow the period, as a month's notice for a monthly, or a week's for a weekly, letting. A tenancy is taken to commence from the time of the tenant's entry (*Kemp* v. *Derrett*, (1814) 3 Camp. 510; 14 R. R. 828), unless there is evidence *contra* (*Doe* v. *Johnson*, (1806) 6 Esp. 10; 9 R. R. 800). Where a tenant, who has entered under a lease, holds over and pays rent, notice to quit must be given in accordance with its terms (*Doe* v. *Lines*, (1848) 11 Q. B. 402; 17 L. J. Q. B. 108; 75 R. R. 428). When a tenant, whose term ends in the broken part of a year, holds over and pays rent, the notice to quit must correspond with the commencement of the holding over, not to the time of his original entry. Where a defendant disclaims, and on demand of possession refuses to give up the premises, claiming the property as his own, no notice to quit is necessary (*Doe d. Lansdell* v. *Gower*, (1851) 17 Q. B. 589; 21 L. J. Q. B. 57; 85 R. R. 581).

The notice may be given by the landlord or his agent. One of several joint tenants may give notice for himself and other joint tenants (*Doe* v. *Summersett*, (1830) 1 B. & Ad. 135; 8 L. J. K. B. 369; 35 R. R. 250); and if an agent gives notice in the name of several joint tenants, it will inure for all although he have but the authority of one (*Doe* v. *Hughes*, (1840) 7 M. & W. 139; 10 L. J. Ex. 185; 56 R. R. 669).

Where Title has Accrued since Letting.]—Should the title of the landlord have accrued since the letting of the premises, the plaintiff must prove, in addition to the above facts, the right by which he claims possession (51 & 52 Vict. c. 43, s. 138); not that his title can come in issue, but because otherwise his character as landlord would not appear. This right may be evidenced by length of possession (*Doe* v. *Cooke*, (1831) 7 Bing. 346; 9 L. J. C. P. 118; 33 R. R. 503), by title, by act of law, as that of heir, or if it be a term of years, administrator, or by will or conveyance.

Title Expiring before Trial.]—Where the title of the plaintiff appears to have existed as alleged in the summons at the time of the entry of the plaint, but to have expired before the return day, the plaintiff will be entitled to judgment according to the fact that he was so entitled, and for his costs of the action, unless the judge otherwise orders (Order XXIII. r. 16).

Defendant's Evidence.]—If the tenant *bonâ fide* disputes his landlord's title, and it really comes in question, or the yearly value or rent exceeds 100*l.*, the jurisdiction of the county court ceases, unless both parties agree to give it jurisdiction (*ante*, p. 43); therefore no defence which involves that need here be noticed. The same remark applies also to any other evidence which would exclude the jurisdiction, as showing that the rent is above 100*l.* a year. A tenant may, however, disprove the fact of tenancy, or deny that it has been ended; he may also contradict any facts which tend to prove a disclaimer, surrender or forfeiture, or may show that the forfeiture has been waived; as where the lease is voidable only and not void, by proving that the landlord has received rent, or has since otherwise recognised the tenancy (*Arnsby* v. *Woodward*, (1827) 6 B. & C. 519, 5 L. J. (O. S.) K. B. 199). This, however, is only evidence of a waiver, and the receipt of rent after a forfeiture which accrued due before it, or after the landlord has by some unequivocal act elected to determine the tenancy, will not revive it (*Jones* v. *Carter*, (1846) 15 M. & W. 718; 71 R. R. 800).

The defendant may deny either the fact or the sufficiency of the notice to quit (*Fearon* v. *Norvall*, (1848) 5 D. & L. 439; 17 L. J. Q. B. 161; 79 R. R. 865); as that it was bad in form, or was not given to the proper person; or he may show that it has been waived subsequently by the landlord's accepting rent after the expiration of the notice (*Goodright* v. *Cordwent*, (1795) 6 T. R. 219; 3 R. R. 161).

The pendency of an action of ejectment in the High Court is no answer to a plaint in a county court, by which it is sought to recover possession of

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the same premises (*Bissill* v. *Williamson*, (1861) 7 H. & N. 391; 31 L. J. Ex. 131; 126 R. R. 477; see, however, Order XXII. r. 11).

Order at the Trial.]—If the tenant or occupier on service of the summons does not appear at the time and place appointed, and show good cause to the contrary, the landlord may give to the court proof of the neglect or refusal to deliver up possession of the premises and of the yearly value and rent thereof, and of the holding and of the expiration or other determination of the tenancy, with the time or manner thereof, and of the title of the landlord, if such title has accrued since the letting of the premises, and of the service of the summons, if defendant has not appeared, and the judge may order that possession be given by the defendant to the plaintiff, either forthwith, or on or before such day as the judge shall name (51 & 52 Vict. c. 43, s. 138; Form 250). The fact of the tenant appearing and showing cause does not oust the jurisdiction of the court to order possession: it is for the court to determine whether the cause shown is sufficient or not (*Fearon* v. *Norvall* (1), (1848) 5 D. & L. 439; 17 L. J. Q. B. 161; and see *per* Patteson, J., 18 L. J. Q. B. 9, 10). If the order be not obeyed, the registrar, whether service of the order can be proved or not, must at the instance of the plaintiff issue a warrant (Form 251) authorising and requiring the high bailiff to give possession to the plaintiff (51 & 52 Vict. c. 43, s. 138).

Possession of small tenements may be recovered in the court by landlord for non-payment of rent.

19 & 20 Vict c. 108, s. 52.

139. When the rent of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof exceeds one hundred (*a*) pounds by the year, shall for one half-year be in arrear, and the landlord shall have right by law (*b*) to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the court of the district in which the premises lie, for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry; and if the tenant shall, five clear days before the return day of such summons, pay into court all the rent in arrear and the costs, the action shall cease; but if he shall not make such payment, and shall not at the time named in the summons show good cause why the premises should not be recovered, then, on proof of the yearly value and rent of the premises, and of the fact that one half-year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the judge may order possession of the premises mentioned in the plaint to be given by the defendant to the plaintiff on or before such day, not being less than four weeks from the day of hearing, as the judge shall think fit to name, unless within that period all the rent in arrear and the costs are paid into court, and if such order be not obeyed, and such rent and costs are not so paid, the registrar shall, whether such order can be proved to have been served or not, at the instance of the plaintiff, issue a warrant authorising

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and requiring the bailiff of the court to give possession of such premises to the plaintiff, and the plaintiff shall, from the time of the execution of such warrant, hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him, shall, so long as the order of the court remains unreversed, be barred from all relief.

NOTE.—(*a*) Increased from 50*l.* (see sect. 3 of County Courts Act of 1903).

NOTE.—(*b*) Before commencing any action for the recovery of tenements under this or the previous section, consider carefully the effect on the rights thereby given of the Emergency Legislation, especially the Courts (Emergency Powers) Acts, 1914—1916 and 1917, and the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1916, *post*, p. 980.

For Non-Payment of Rent.]—If the rent of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect of them exceeds 100*l.* a year, is one half-year in arrear, and the landlord has by law a right to re-enter for the non-payment, he may, without any formal demand or re-entry, enter a plaint in the county court, and a summons will issue to the tenant. Service of such summons will stand in lieu of a demand and re-entry.

If the tenant, five clear days before the return day, pays into court all the rent in arrear, and the costs, the action will abate, but if he does not make such payment, and does not on the return day show good cause why the premises should not be recovered, then on proof of the yearly value and rent, and of the fact that one half-year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of service of the summons, if the defendant does not appear—the judge may order (Form 250) that possession of the premises be given by the defendant to the plaintiff, on or before such day, not being less than four weeks from the trial, as the judge may name, unless within that period all the rent in arrear and the costs be paid into court (51 & 52 Vict. c. 43, s. 139; 3 Edw. 7, c. 42, s. 3). In order to prove that "no sufficient distress was then to be found on the premises," so as to entitle the landlord to maintain an action for the recovery of possession, it is not necessary that a distress for the half-year's rent shall have been actually levied on the premises; the fact of no sufficient distress may be proved *aliunde* (*Rickett* v. *Green*, (1910) 1 K. B. 253; 79 L. J. K. B. 193).

Enforcing Order.]—If such last order be not obeyed, and the rent and costs be not so paid, the registrar, whether service of the order can be proved or not, will, at the instance of the plaintiff, issue a warrant (Form 251) authorising and requiring the bailiff to give possession of the premises to the plaintiff. The plaintiff will from the time of the execution of such warrant, hold the premises discharged from the tenancy; and the defendant and all persons claiming by, through, or under him, will, so long as the order remains unreversed, be barred from all relief (51 & 52 Vict. c. 43, s. 139).

Plaintiff's Evidence.]—The plaintiff must prove the yearly value and rent of the premises, that one half-year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrears. He must also prove his power to re-enter, and that the rent is still in arrear. He need not, however, prove any demand or re-entry, as the statute provides that the service of the summons shall stand in lieu of these. If the plaintiff's title has accrued since the letting of the premises, he must prove it. If the defendant does

not appear, service of the summons must be proved (51 & 52 Vict. c. 43, s. 139). Section 139 Notes.

Defendant's Evidence.]—The defendant may disprove the fact that the rent was in arrear, or he may show that there was sufficient distress on the premises (see sect. 139).

Proceedings Common to both Sections 138 and 139.]—The plaint must be brought in the district in which the tenements are situate, and the summons must be in the prescribed form (see sect. 138; Forms 247, 248).

The summons may be served like ordinary summonses. If, however, the defendant cannot be found, and his place of dwelling is not known, or admission to it cannot be obtained for serving the summons, service may be effected by posting a copy on some conspicuous part of the premises sought to be recovered (51 & 52 Vict. c. 43, s. 141).

Where a summons is served on or comes to the knowledge of a sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of a part of the premises sought to be recovered, he must forthwith give notice thereof to his immediate landlord under penalty of forfeiting to such landlord three years' rack-rent of the premises held by such sub-tenant, to be recovered whatever the amount by action in the court from which the summons issued; and the landlord, on the receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question (see sect. 140).

Practice.]—The provisions of Order IX. r. 7, as to confession of the plaintiff's title and of his right to possession, apply to this action as well as to an action of ejectment, as do those of Order X. r. 4, as to allowing a defendant not named in the summons to appear and defend, and of Order X. r. 5, as to limiting defence to a part of the property (see *post*, p. 444); but the following differences in practice must be observed: the affidavit of the applicant for leave to appear and defend required by rule 4 need only be filed in cases where neither rent nor value exceeds 50*l.* five (instead of twelve) clear days before the return day, and in cases under the extended jurisdiction up to 100*l.* ten (instead of twenty) clear days before that day; the registrar's notice (Form 254) to the plaintiff of the leave to appear must in the former class of case be given three (instead of ten) clear days, and in the latter class of case eight (instead of eighteen) clear days, before that day (Order X. r. 4; Order XXIIA. r. 11); the defendant's notice limiting his defence must in the former class of case be filed five (instead of twelve) clear days, and in the latter class ten (instead of twenty) clear days at least, before the return day (Form 255), and the copy of it is to be sent by the registrar to the plaintiff in the former class of case three (instead of ten), and in the latter eight (instead of eighteen), clear days at least before it (Order X. r. 5; Order XXIIA. r. 11).

Jury.]—Either party may require the trial to be by jury, on giving notice in the ordinary way (Order XXII. r. 3).

Costs.]—The costs of a plaintiff will be taxed on the scale applicable to the rent or value of the premises on which court fees are assessed, plus the amount of any rent or mesne profits *recovered*; the costs of a defendant on that applicable to such rent or value plus the rent or mesne profits *claimed* (Order LIII. r. 13).

Possession Warrant.]—The warrant bears date the day next after the last day named by the judge in his order for possession to be given, and continues in force for three calendar months from its date, but no order for delivery of possession need be drawn up or served (51 & 52 Vict. c. 43, s. 143). The warrant justifies the bailiff in entering on the premises with such assistants as he deems necessary, and in giving possession accordingly (51 & 52 Vict. c. 43, s. 142).

The warrant cannot be issued or executed when the lands are situated without the jurisdiction of the court, although both parties reside within

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it (*Ellis* v. *Peachey*, (1849) 18 L. J. Q. B. 137; 5 D. & L. 675). The order for possession does not affect the rights of third persons; so trespass may be maintained against the person obtaining the warrant of possession, and on whose behalf it is executed, by one whose rights are injuriously affected thereby: *quære*, whether the rights of the person against whom the order is obtained are affected thereby (*Hodson* v. *Walker*, (1871) L. R. 7 Ex. 55; 41 L. J. Ex. 51).

When Executed.]—The entry must not be made at any time except between the hours of nine in the morning and four in the afternoon, s. 142, *post*, p. 171.

Protection of Officers.]—The judge, registrar, bailiff, or other person executing the warrant, or affixing the summons, are protected from any action or prosecution for so doing, on account of the person suing out of the same not having lawful right to the possession of the premises (see sect. 144); the party, however, who sues out the warrant is not so protected, except against mere irregularities (see sect. 145; *Hodson* v. *Walker*, *supra*, (1871) L. R. 7 Ex. 55).

Effect of Irregularity.]—Where the landlord at the time in applying for the warrant had lawful right to possession, neither he nor his agent may be deemed a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under authority of the Act; but the party aggrieved may bring an action, in which he must allege special damage, and may recover full compensation, with costs of action. If special damage be not proved, the defendant will be entitled to a verdict; if proved, but assessed by the jury at not more than 5*s*., the plaintiff will recover no more costs than damages, unless the judge certifies that in his opinion full costs ought to be allowed (see *post*, sect. 145).

Appeal.]—Where the yearly rent or value of the premises exceeds 20*l*., or in other cases, by leave of the judge, either party may appeal on the same grounds and subject to the same conditions as in other cases (51 & 52 Vict. c. 43, s. 120).

This procedure is applicable to the recovery of possession of a house by a local authority under the provisions of the Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44, s. 5, sub-s. 5; see Part V.).

Sub-tenant served with summons to recover possession must give notice to his immediate landlord, who may come in and defend. 19 & 20 Vict. c. 108, s. 53.

140. Where any summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of a part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord, under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered, whatever the amount thereof, by such landlord, by action in the court from which such summons shall have issued, and such landlord, on the receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question.

In plaints to recover possession of premises, how sum-

141. A summons for the recovery of a tenement may be served like ordinary summonses to appear to plaints in the court, and if the defendant cannot be found, and his place of dwelling shall either not be known, or admission thereto cannot be obtained for

serving any such summons, a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant.

Section 141. monses may be served. 19 & 20 Vict. c. 108, s. 54.

142. Any warrant to a bailiff to give possession of a tenement shall justify the bailiff named therein in entering upon the premises named therein, with such assistants as he shall deem necessary, and in giving possession accordingly; but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

Warrants to high bailiffs sufficient to justify them for entering on premises. 19 & 20 Vict. c. 108, s. 55.

143. Every such warrant shall, on whatever day it may be issued, bear date on the day next after the last day named by the judge in his order for the delivery of possession of the premises in question, and shall continue in force for three months from such date and no longer, but no order for delivery of possession need be drawn up or served.

Such warrants to be in force for three months from the day named for delivering possession. 19 & 20 Vict. c. 108, s. 66.

144. It shall not be lawful to bring any action or prosecution against the judge or against the registrar of the court by whom such warrant as aforesaid shall have been issued, or against any bailiff or other person by whom such warrant may be executed or summons affixed, for issuing such warrant, or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

Judges, registrars, bailiffs, or other officers not liable to actions on account of proceedings taken. 9 & 10 Vict. c. 95, s. 124.

145. Where the landlord at the time of applying for such warrant as aforesaid had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act, but the party aggrieved may, if he think fit, bring an action for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage with costs of the action: Provided that if the special damage so laid be not proved, the defendant shall be entitled to a verdict, and that if proved, but assessed at any sum not exceeding five shillings, the plaintiff shall recover no more costs than damages, unless the judge before whom the trial shall have been held shall certify that in his opinion full costs ought to be allowed.

Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity. 9 & 10 Vict. c. 95, s. 125.

PART VII.

EXECUTION; COMMITMENT.

Section 146.

Court may award execution against goods.

9 & 10 Vict. c. 95, s. 94. 19 & 20 Vict. c. 108, s. 46. 28 & 29 Vict. c. 99, s. 8.

146. Whenever the court shall have given or made a judgment or order for the payment of money, the amount may be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such judgment or order shall be given or made; and the registrar, at the request of the party prosecuting such judgment or order, shall issue under the seal of the court a warrant of execution in the nature of a writ of *fieri facias* to the high bailiff of the court, who, by such warrant, shall be empowered to levy, or cause to be levied, by distress and sale of the goods and chattels wheresoever they may be found within the district of the court, whether within liberties or without, such sum of money as shall be so ordered, and also the costs of the execution; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant. The precise time when an application shall be made to a registrar to issue a warrant against the goods of a party shall be entered by him in the execution book and on the warrant; and when more than one such warrant shall be delivered to the high bailiff to be executed, he shall execute them in the order of the times so entered.

Execution on Judgment or Order for Payment of Money.]—When a judgment has been obtained for debt or damages, or an order for the payment of money has been made, the amount is recoverable, in case of default, by execution against the goods (see sect. 146; Order XXV. r. 1).

Oral Examination.]—The party entitled to enforce the judgment or order, may also apply to the court for an order for the oral examination of the debtor, or in case the debtor be a corporation, or any of its officers, as to whether the debtor has any and what property or means of satisfying the judgment or order. And an order may be made for the attendance and examination of the debtor, or of any other person, and for the production of any books or documents (Order XXV. r. 71 (1)). The examination may be taken, if necessary, as prescribed by Order XVIII. r. 18. The order may be made for the examination of a married woman as to her separate estate (*Aylesford* v. *G. W. Rail. Co.*, (1892) 2 Q. B. 626).

Orders.]—Every order of the court in any action or matter may be enforced against all persons bound by it in the same manner as a judgment to the same effect (Order XXV. r. 2).

When Warrant may Issue.]—A person requiring a warrant of execution to be issued must produce the plaint note or summons issued in the action, or a duplicate, and furnish a præcipe containing the number of the plaint, and the full names and address of or otherwise sufficiently identifying every person against whom the warrant is to be issued (Order XXV. r. 7). Where execution is to be issued against a person under a description different from that given in the judgment, both descriptions are to be entered on the warrant (Order XXV. r. 7).

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Where judgment is given for more than 20*l.* and costs and directs payment forthwith or within 14 clear days and costs to be taxed and paid forthwith or within 14 clear days after taxation, on default separate warrants may issue for the amount ordered to be paid and for the costs; but no second warrant (which can only be for costs) may be issued until the expiration of eight days from the issue of the first warrant (Order XXV. r. 9).

Execution may not issue after the expiration of twelve years from the date of the original judgment, unless there has been a part payment, or payment of interest, or an acknowledgment in writing given. If there has been such payment or acknowledgment, execution may not issue after twelve years from the date of such payment or acknowledgment, or if more than one, from the last (37 & 38 Vict. c. 57, s. 8; *Hebblethwaite* v. *Peever*, (1892) 1 Q. B. 124; *Jay* v. *Johnstone* (C. A.), (1893) 1 Q. B. 189; 62 L. J. Q. B. 128).

When Payment by Instalments.]—Where a defendant has made default in payment of the whole amount awarded by the judgment or order or of an instalment thereof, execution may issue against his goods, without leave, for the whole amount of the judgment or order and costs then remaining unsatisfied, or in case of an order for payment by instalments for such portion thereof as the court shall order, either at the time of making the original order or at any subsequent time (Order XXV. r. 8).

When an order has been made to pay by instalments, execution cannot issue until default is made in payment of some instalment; execution or successive executions, under the seal of the court, may then issue for the whole sum and costs remaining unpaid, or for such portion as the court orders either when it makes the original order or subsequently (see sect. 149).

For Costs.]—It is doubtful whether under the statutory provisions requiring payment of all moneys under judgments into court (see sect. 105) a judgment creditor who receives the amount of a judgment debt out of court can obtain execution for his costs, as he might have done formerly (*Reg.* v. *C. C. of Surrey*, (1853) 21 L. J. Q. B. 310; *S. C. nom. R.* v. *Fletcher*, 2 E. & B. 279; 21 L. J. Q. B. 310; 95 R. R. 544).

There is power, but no obligation to issue the warrant on any day on which the offices need not be open (Order LIV. r. 19; Order I. rr. 3, 5).

Judgment for Married Woman.]—When a married woman, sued only in her own name, obtains judgment on the ground of coverture, and is awarded costs, she may enforce payment in her own name (Order XXV. r. 4).

Cross Judgments.]—Where there are cross judgments between the parties, execution must be taken out by that party only who has obtained judgment for the larger sum, for as much as remains after deducting the smaller sum, and satisfaction for the remainder must be entered, as well as satisfaction for the smaller sum. If the sums are equal, satisfaction must be entered on both judgments (see sect. 150). These provisions apply where there are cross judgments in separate actions as well as to cross judgments on claim and counterclaim in the same action (*Ward* v. *Haddrill*, (1904) 1 K. B. 399; 73 L. J. K. B. 277).

Partners.]—Where a judgment or order is against a firm execution may issue (1) against any property of the partnership; (2) against any property of any person who has admitted before the court in the particular proceedings that he was a partner at the time of the accruing of the cause of action, or who has been adjudged to be liable as a partner; (3) against any person who has been individually served with the summons as a partner or a person sought to be made liable and has failed to appear at the trial. If the judgment creditor claims to be entitled to issue execution against any other person as a member of the firm, he must apply for leave as explained below (Order XXV. r. 11). It seems that, instead of applying for leave, the creditor might bring an action on the judgment (*Clark* v. *Cullen*, (1882) 9 Q. B. D. 355).

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It must be remembered that, except as against any property of the partnership, a judgment against a firm will not render liable, release, or otherwise affect any member thereof who was out of England and Wales when the summons was issued, unless he has been made a party under Order VII. r. 41, or has been served within England or Wales after the summons in the action was issued (Order XXV. r. 11). If leave to enter a plaint under this rule is required under sect. 74 of the Act, the court may grant it without requiring an affidavit under Order V. r. 13; in that case the order must state that leave is so granted, and a copy of the order must be annexed to the summons and served therewith (Order XXV. r. 11).

Execution by Post.]—Where leave to issue execution is not required, it may be issued by post. Where the party desiring to issue execution does not reside or carry on business within the district of the court, he or his solicitor (if the latter has no office within the district) may transmit to the registrar by prepaid post (a) the plaint note or summons, or a duplicate; (b) a præcipe; (c) a money order for the fees payable upon the issue of the warrant; and (d) a stamped addressed envelope. The party may ask for and obtain from the registrar information to enable him to ascertain whether execution may be issued. The registrar may require the personal attendance at his office of the party or his solicitor where it is sought to issue execution or to obtain information in more than twenty actions at the same time (Order XXV. r. 10B).

Execution may not issue against partnership property unless the judgment is against the firm. The court may, however, on the application of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require (53 & 54 Vict. c. 39, s. 23).

The application by a separate judgment creditor of a partner should be made to the court on notice. The notice must be served on the judgment debtor and such of his partners as are in England or Wales. If the partnership is a cost-book company it must be served on the judgment debtor and the purser of the company. All orders made on the application must be similarly served (Order XXV. r. 12).

The other partners will be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase it (53 & 54 Vict. c. 39, s. 23).

The application by a partner should be made to the court on notice. The notice must be served on the judgment creditor and on the judgment debtor, and on such of the partners as do not concur in the application and are in England or Wales. If the partnership is a cost-book company the notice must be served on the judgment creditor and judgment debtor and on the purser of the company. All orders made on the application must be similarly served (Order XXV. r. 13).

Leave to issue Execution.]—It is required in the following cases: (1) where no payment into court has been made for twenty-four months (Order XXV. r. 10); when (2) a party claims to issue execution, under a judgment against a firm, against a person as partner who has neither admitted that he is a partner, nor been adjudged to be one, nor been served with the summons (Order XXV. r. 11); when (3) there has been a change after judgment, by death, assignment, or otherwise, in the parties entitled or liable to execution; (4) where a husband is entitled or liable to proceedings upon a judgment or order against his wife; (5) where a party is entitled to

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execution against any of the shareholders of a joint-stock company upon a judgment against such company, or against a public officer or other person representing such company (Order XXV. r. 14; see Forms 158, 160); (6) where a judgment summons has been issued or an order of commitment has been made and is outstanding (Order XXV. r. 10A).

1. In the first of the above cases leave is obtained on application to the court, without notice to the debtor, and the leave must be expressed on the warrant (Order XXV. r. 10). 2. In the second two clear days' notice of intention to apply to the court must be given to the individual against whom execution is claimed. If he does not dispute liability, leave may be given by the court, but if liability be disputed the court may order the liability to be determined in an action to be commenced by plaint and summons in the ordinary way (Order XXV. r. 11). 3, 4 and 5. In these cases application for leave must be made to the court on affidavit, and the court, if satisfied that the party is entitled, may give the leave, or may order any issue or question necessary to determine the liability to be tried in an action, commenced by plaint and summons in the ordinary way, and may impose terms as to costs and otherwise (Order XXV. r. 14; Forms 158, 160). The order for leave must, in these cases, if *ex parte*, be drawn up and served, by post or otherwise, on the persons to be affected, and when the order is for leave, proceedings will not issue for six clear days at least after service (Order XXV. r. 15). Several actions or persons may be joined in one application, and one order only need be made on such application; in serving notice of any such order such part only as affects the person served need be set out (Order XXV. r. 16; Forms 159, 161). Service may be made by or upon the solicitor of a person who acts by solicitor (Order XXIII. r. 6).

If leave to enter a plaint under this rule is required under sect. 74 of the Act, the court may grant it without requiring an affidavit under Order V. r. 13; in that case the order must state that leave is so granted, and a copy of the order must be annexed to the summons and served therewith (Order XXV. r. 14).

Warrant of Execution.]—The registrar, at the request of the party prosecuting the order, must prepare and issue forthwith under the seal of the court a warrant of execution to the high bailiff (see sect. 146; Order II. r. 4; Forms 162—165), together with a notice (Form 162) to be left with the debtor (Order XXV. r. 17; sect. 155). In the event of the high bailiff being himself the judgment debtor, the warrant may be issued to a bailiff specially appointed to execute it (*Bellamy* v. *Hoyle*, (1874) L. R. 10 Ex. 220; 44 L. J. Ex. 169).

The warrant bears date of the day on which it is issued, and, if unexecuted, continues in force for one year only from and exclusive of that date; but it may, at any time before its expiration and by leave of the court, be renewed by the party issuing it for one year from the date of renewal, and so on from time to time during the continuance of the renewed warrant. The fact of renewal must be indorsed on the warrant according to Form 163A, and a renewed warrant has effect and is entitled to priority according to the time of the application to the registrar for the original issue (Order XXV. r. 6A; Form 163A). Fees payable on the renewal may be allowed as costs of the execution; if allowed, the amount and the fact of the allowance are to be entered on the warrant (Order XXV. r. 6B). The precise time when the warrant is applied for must be entered by the registrar in the warrant-book and on the warrant (see sect. 146). He must insert in or indorse on it the amount to be levied, and the fees for the execution of the warrant, distinguishing the amount adjudged to be paid and remaining due and the amount of the fee for issuing and executing the warrant (Order XXV. r. 17; sect. 155).

Warrants of execution may be issued concurrently in one or more districts; but the costs of more than one warrant will not be allowed against the execution debtor unless by order of the court (Order XXV. r. 18).

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The fee must be paid into court prior to the issue of the warrant. For the amount of fee payable, see item 21 of the fees order.

The warrant empowers the high bailiff to levy the judgment debt and costs by distress and sale of the goods and chattels of the debtor within the district of the court (see sect. 146). He does this with the aid of his bailiffs (see sect. 35). All constables and peace officers within their several jurisdictions must aid them in the execution of the warrants (see sect. 146).

The high bailiff or bailiff must execute the warrant as soon as possible, enter it in the proper book, and state from time to time therein what has been done under the warrant, and if the same be not executed within one calendar month from the day of the delivery to him, why it has not been executed. And the high bailiff must, at all reasonable times, give every information to a suitor, or his solicitor, as to the execution or non-execution of a warrant issued at his instance (Order II. r. 33).

Supersedeas by Payment.]—If the party against whom execution is issued before sale pays or tenders to the registrar or to the bailiff the sum indorsed on the warrant and costs, or such part as the plaintiff agrees to accept in full for debt or damages and costs, together with the fees, the execution will be superseded, and defendant's goods discharged (see sect. 155; Receipt, Form 166).

Priority of Executions.]—The bailiff should execute the writ within a reasonable time, and, if more than one warrant has been issued against the same person, he must execute them in the order of time in which they were entered by the registrar, as shown by the indorsement on the warrant (see sect. 146). As to liability of bailiff should he lose the opportunity of levying, see *ante*, p. 23.

Where a writ has issued against the goods from the High Court, and a warrant has issued against the goods of the same party from the county court, the right to the goods is to be determined by the priority of the time of the delivery of the writ to the sheriff to be executed, or of the application for the issue of the warrant from the county court; and the sheriff, on demand, is by writing signed by any clerk in the office of the under-sheriff to inform the high bailiff of the precise time of the delivery of the writ, and the bailiff is to show his warrant to the sheriff's officer; and such writing, or the indorsement on the warrant (see sect. 146), will respectively justify the high bailiff or sheriff in acting thereon (see sect. 152).

Hiring Agreements.]—As to, see *post*, p. 179.

Withdrawal of Execution by Execution Creditor.]—Where an execution creditor requests the high bailiff to withdraw from possession, unless it be in pursuance of an arrangement between the execution creditor and execution debtor communicated to the high bailiff that the latter shall be at liberty to re-enter, the execution creditor will be deemed to have abandoned the execution, and the high bailiff must return the warrant as withdrawn by order of the execution creditor, and the latter will not be entitled to require the warrant to be re-issued. But this rule does not prejudice any right of the execution creditor to apply for a fresh warrant (Order XXV. r. 18A).

How and where Executed.]—The warrant may be executed within five hundred yards of the boundary of the district of the court from which it issued by a bailiff of such court, or, by order of the judge, by the same bailiff within the district of any other court (see sect. 77). The execution may not take place on Sunday, Christmas Day, or Good Friday, or on any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving. There is power, but no obligation, to execute the warrant on any day on which the offices of the courts need not be open (Order LIV. r. 19; Order I. r. 5; the only exception to the rule prohibiting service of process or execution of a warrant on Sunday, Christmas Day, or Good Friday, is in the case of a warrant of arrest in an Admiralty action; see

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also 29 Car. 2, c. 7, s. 6). The warrant may be executed at any hour of the day or night (*Mackalley's Case*, (1612) 9 Rep. 66).

On levying, the bailiff must deliver to the debtor, or leave at the place where the levy is made, a notice (Form 162) prepared by and delivered to the bailiff by the registrar, informing the debtor of the amount for which the levy is to be made and the fees for the execution of the warrant, and that the goods will not be sold for five days, unless they are of a perishable nature, or he wishes it (Order XXV. r. 17).

The bailiff may not break open any outer door or window of the defendant's dwelling-house to execute the writ (*Semayne's Case*, (1603) 5 Rep. 91; 1 Sm. L. C. 115 (12th ed.) and notes); but he may enter through the door or any other opening which is open, although no goods of the defendant are within, if there is reasonable ground for suspecting that they are there (*Semayne's Case*, (1603) 5 Rep. 91; *Cooke* v. *Birt*, (1814) 5 Taunt. 765; 15 R. R. 652, *per* Gibbs, C.J., and Dallas, J.). He may enter the house of a third person, if the defendant's goods are within (*Semayne's Case*, *supra*), but not otherwise (*Morrish* v. *Murrey*, (1844) 13 M. & W. 52; 13 L. J. Ex. 261; 67 R. R. 505). Having once obtained peaceable possession, he may break open inner doors, closets, trunks, etc.; or if he be locked in, he may break open the outer door from the inside to get out or carry away goods; and if, having once entered, he is forcibly ejected, he may break open the door to re-enter (*Eagleton* v. *Gutteridge*, (1843) 11 M. & W. 465; 12 L. J. Ex. 357; 63 R. R. 655; followed in *Bannister* v. *Hyde* (1860), 29 L. J. Q. B. 141). If the house be that of a third person, to which the defendant has taken his goods to avoid the execution, the bailiff may, on demand and refusal, break open even the outer door (*Semayne's Case*). Outer doors of barns or outhouses, or workshops, or other buildings not being dwelling-houses or connected therewith, may be broken open (*Penton* v. *Brown*, (1665) 1 Sid. 186; *Hodder* v. *Williams*, (1895) 2 Q. B. 663; 65 L. J. Q. B. 70).

What may be Seized.]—The bailiff having entered with the warrant, and having seized the goods, should deposit them in a fit place, or put in possession a fit person, appointed by the high bailiff (see sect. 154). If he seizes part in the name of the whole it is a sufficient seizure of the whole (*Cole* v. *Davies*, (1698) 1 Lord Raym. 724). He may seize any goods or chattels of the defendant (excepting the wearing apparel and bedding (which includes a bedstead used as part of the sleeping accommodation: *Davis* v. *Harris*, (1900) 1 Q. B. 729; 69 L. J. Q. B. 232) of himself or his family, and the tools and implements of his trade to the value of 5*l.*, which are to that extent protected); also money or bank notes, whether of the Bank of England or any other bank, cheques, bills of exchange, promissory notes, bonds, specialties or securities for money (see sect. 147). Where the only article on premises of a cab driver where a distress for rent had been levied was a cab worth considerably more than 5*l.*, the cab was held to be exempt from seizure as an "implement of trade" under sect. 147 of the County Courts Act, 1888 (*Lavell* v. *Richings*, (1906) 1 K. B. 480; 75 L. J. K. B. 287). A typewriting machine lent as a sample to an agent was held not to be an "implement of trade" (*Addison* v. *Shepherd*, (1908) 2 K. B. 118; 77 L. J. K. B. 534). But this was distress. See now Distress Amendment Act, 1908, *post*; Part V. All the goods of the judgment debtor on the premises should be seized if necessary (see *Miller & Co.* v. *Solomon*, (1906) 2 K. B. 91; 75 L. J. K. B. 671).

The protection is limited to wearing apparel, bedding, tools and implements of trade to the value of 5*l.*; therefore, where wearing apparel and bedding to the value of 5*l.* were left on the premises, all the implements of trade were held liable to seizure (*Boyd, Ltd.* v. *Bilham*, (1909) 1 K. B. 14; 78 L. J. K. B. 50). Even if a piano can in any circumstances be regarded as an implement of trade, it is not exempt from distress at the instance of the Crown for default of paying income tax or house duty (*MacGregor* v. *Clamp*, (1914) 1 K. B. 288; 83 L. J K. B. 240).

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The high bailiff may hold any cheques, bills, or other securities for money, which have been seized in execution as security for the amount to be levied. The plaintiff may sue in the name of the defendant for the money secured thereby (see sect. 148).

"Money" means actual money of the defendant's, and not a mere debt to him; money, therefore, which a sheriff or bailiff has in his hands under a *fi. fa.*, issued by the defendant in another action (*Wood* v. *Wood*, (1843) 4 Q. B. 397; 12 L. J. (N. S.) Q. B. 141), or the surplus of a former execution against him, cannot be seized (*Harrison* v. *Paynter*, (1840) 6 M. & W. 387; 9 L. J. Ex. 169). It has been doubted whether money about the person of the defendant can be seized (*per* Parke, B., *Sunbolf* v. *Alford*, (1838) 3 M. & W. 248, 254; 7 L. J. (N. S.) Ch. 60; 49 R. R. 593).

As to the attachment of debts, see pp. 568—584.

As to obtaining money deposited by the judgment debtor in the post office savings bank, see *post*, p. 581.

The bailiff may seize chattel interests of the defendant in land, as leases or terms for years (Com. Dig. "Execution," C. 3), whether belonging to the defendant in his own right, or that of his wife (*per* Buller, J., *Farr* v. *Newman*, (1792) 4 T. R. 621, 638); he cannot, however, sell a mere equitable interest, as an equity of redemption, the legal estate being in the mortgagee (*Metcalf* v. *Scholey*, (1807) 2 N. R. Bos. & P. 461).

The bailiff cannot seize fixtures, as furnaces, ovens, doors, windows, hearths, chimney-pieces, etc., which go to the heir and not to the executor (Com. Dig. "Execution"; *Elwes* v. *Maw*, (1802) 3 East, 38; 6 R. R. 523; 2 Sm. L. C. 188 (12th ed.): see notes), even although the freehold belongs to the defendant (*Winn* v. *Ingilby*, (1822) 5 B. & A. 625; 24 R. R. 503). If the tenant unlawfully removes fixtures, they revert to the landlord and cannot be seized (*Farrant* v. *Thompson*, (1822) 5 B. & A. 826; 24 R. R. 571). The bailiff may seize and sell fixtures which the tenant may remove, as those fixed for the purposes of trade—as coppers, vats, etc. (*Poole's Case*, (1703) 1 Salk. 368).

Corn and other crops which are raised by the industry of man are emblements which go to the executor, and may be taken in execution; but things which yield no annual profit, or which are produced without the labour of man, are not emblements, but go to the heir, and cannot be seized (see judgment in *Evans* v. *Roberts*, (1826) 5 B. & C. 829; 4 L. J. K. B. 313; 29 R. R. 421). The sale of the produce of farms is regulated by the 56 Geo. 3, c. 50. The substance of its provisions is as follows:—

The bailiff may not sell straw, straw of crops, chaff, colder, turnips, manure, compost, ashes, or seaweed (56 Geo. 3, c. 50, s. 1), nor clover, rye, or other artificial grasses which are newly sown, and growing under a crop of standing corn (56 Geo. 3, c. 50. s. 7); nor can he sell hay, grasses (natural or artificial), tares, vetches, roots or vegetables, where, by any covenant or written agreement made for the benefit of the owner or landlord, they ought not to be taken off from the land, or ought to be used thereon, if he has received a written notice thereof before sale (56 Geo. 3, c. 50, s. 1).

The tenant or occupier must give notice to the bailiff of such covenants or agreements, and the bailiff must postpone the sale until the latest day he lawfully can appoint (56 Geo. 3, c. 50, s. 2).

The bailiff may, where no such covenant or written agreement is shown, sell such crops by written agreement, in such manner as accords with the custom of the country. In cases where a covenant or written agreement is shown, then, according to such covenant or agreement. After sale the purchasers may use all necessary barns, etc. for the purpose of consuming such crops or produce as the bailiff allots to them, and which the tenant or occupier would have been entitled to use (56 Geo. 3, c. 50, s. 3); should the landlord or owner be aggrieved by breach of such agreement, the bailiff, being indemnified by him, must permit the landlord or owner to use his name for the recovery of damages (56 Geo. 3, c. 50, s. 4).

The bailiff, before selling, must make inquiry within the parish in which

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the lands are situate, as to the name and residence of the landlord or owner (56 Geo. 3, c. 50, s. 5).

The landlord may not, where such agreement for sale has been made, distrain on corn, hay, straw, or other produce, which at the time of such sale or agreement has been severed from the soil; nor on any turnips, whether drawn or growing, nor on horses, sheep, cattle or beasts, nor on waggons, carts, or implements of husbandry, which the purchaser employs for thrashing, carrying, or consuming such produce (56 Geo. 3, c. 50, s. 6).

The Act does not extend to straw, turnips, or other articles which the tenant may remove consistently with some contract in writing (56 Geo. 3, c. 50, s. 8).

The bailiff is not liable for any breach or omission of the provisions of the Act, unless it be wilful (56 Geo. 3, c. 50, s. 9); and all persons acting under it are indemnified (56 Geo. 3, c. 50, s. 10).

The assignees of a bankrupt, etc. may not take produce, manure, etc. in any other way than the bankrupt, etc. would have been entitled to do (56 Geo. 3, c. 50, s. 11).

Whose Goods may be Seized.]—The bailiff must at his peril seize only the goods of the person named in the warrant; if he seize those of another he is liable to an action, though the goods are in the possession of, and apparently the defendant's (*Jarmain* v. *Hooper*, (1843) 6 M. & G. 827; 7 Scott, N. R. 663; 13 L. J. C. P. 63; 64 R. R. 861; *Catteral* v. *Kenyon*, (1842) 3 Q. B. 310; 11 L. J. Q. B. 260; 61 R. R. 235; as to the practice of the county courts when dealing with such cases, see *post*, p. 584). The goods of a woman cohabiting with the defendant cannot be taken, though she passes for his wife (*Glasspoole* v. *Young*, (1829) 9 B. & C. 696; 7 L. J. K. B. 305; 33 R. R. 294).

Hiring Agreements.—Goods held by the judgment debtor under a hiring agreement cannot be seized, as they are not his property whilst the agreement is in force.

The goods of a testator or intestate cannot be seized for the personal debt of the executor or administrator (*Farr* v. *Newman*, (1792) 4 T. R. 621), unless by using them he has made the goods his own (*Quick* v. *Staines*, (1798) 1 B. & P. 293; 4 R. R. 801), in which case he cannot deny that they are his property.

If judgment is obtained against an individual who has partners for his separate debt, the partnership property cannot be seized under a warrant under such judgment (53 & 54 Vict. c. 39, s. 23). The remedy in this case is described *post*, p. 538. The procedure when the judgment is against a firm is also described *post*, p. 539.

The goods of ambassadors and other ministers of foreign states and their domestics cannot be seized (7 Anne, c. 12, s. 3).

Goods which are in the custody of the law, as those which are seized under a distress or previous execution, cannot be seized (Com. Dig. "Execution," C. 4).

The rule of law being that a bailiff may only seize that which he can sell, goods in the defendant's possession, and on which he has a mere lien, cannot be seized (*Legg* v. *Evans*, (1840) 6 M. & W. 36; 9 L. J. (N. S.) Ex. 102; 55 R. R. 490). Where, however, goods are let to the defendant for a term, the bailiff may seize them, and sell the defendant's interest in them (*Legg* v. *Evans*, *supra*). Goods of the defendant pawned or leased to another may be sold, subject to the right of the bailee or lessee, but cannot be seized till the bailment or term is determined.

At common law the goods of the execution debtor were bound from the *teste* of the writ. The Statute of Frauds (29 Car. 2, c. 3, s. 15 (stats. revised)), sect. 15 (repealed by the Sale of Goods Act, 1893), altered this by providing that "no writ of *fieri facias* or other writ of execution" should bind the goods until the delivery of the writ to the "sheriff, under-sheriff, or

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coroners;" but decided cases established that as against the debtor himself, the goods, notwithstanding the statute, were still bound from the *teste* of the writ, consequently, if the defendant after the delivery of the writ to the bailiff assigned his goods, even for a valuable consideration, except it were in market overt, no property passed to the assignee, and the bailiff might still seize and sell them (*Samuel* v. *Duke*, (1838) 3 M. & W. 622; 7 L. J. Ex. 177); so if the assignment were before the delivery of the writ, if it were made for the purpose of delaying, hindering, or defrauding creditors (13 Eliz. c. 5; 29 Eliz. c. 5; *Twyne's Case*, (1602) 3 Rep. 80; 1 Sm. L. C. 1 (12th ed.): see notes).

Now by the Sale of Goods Act, 1893, s. 26 (56 & 57 Vict. c. 71), a writ of *fieri facias* or other writ of execution against goods binds the property in the goods of the execution debtor as from the time when the writ was delivered to the sheriff to be executed: and, for the better manifestation of such time, it is the duty of the sheriff, without fee, upon the receipt of any such writ to indorse upon the back thereof the hour, day, month, and year when he received the same. By the same section it is provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ, or any other writ by virtue of which the goods of the execution debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff. In the said section the term "sheriff" includes any officer charged with the enforcement of a writ of execution (56 & 57 Vict. c. 71, s. 26). In deciding the question of priority between an execution creditor and the holder of a bill of sale, the period to be regarded, at any rate where the registrar and the high bailiff are the same person, is the time when the application for the warrant of execution is made by the execution creditor; consequently an execution creditor who makes the application at an earlier hour of the same day as that on which the debtor gives a bill of sale over his goods will not be prejudiced by the warrant of execution being stamped as being delivered to the bailiff on the following day (*Murgatroyd* v. *Wright*, (1907) 2 K. B. 333; 76 L. J. K. B. 747). And where the warrant of execution is sent to a foreign court under sect. 158 of the County Courts Act, 1888, the property in the judgment debtor's goods is bound from the time at which the warrant is issued by the registrar of the foreign court to the high bailiff of that court (*Birstall Candle Co.* v. *Daniels*, (1908) 2 K. B. 254; 77 L. J. K. B. 590).

Proceeds of Execution.]—Every high bailiff levying or receiving any money by virtue of any process of the court of which he is bailiff, must forthwith enter in ink on the face of the process, at the foot or on the margin, the amount levied or received, and sign this entry, and subject to Rules 34a, 35 and 36 of Order II (see *infra*), within twenty-four hours from its receipt, except where by statute he is required to retain the same, pay over the same to the registrar of his court, who must indorse upon the process a memorandum of having received it, and return the process to the high bailiff (Order II. 234).

(Under the Bankruptcy Act, 1914, an execution creditor is not entitled to retain the benefit of his execution, as against the trustee, unless the execution is completed by sale as well as by seizure before the date of the receiving order, and before notice of a bankruptcy petition against the debtor, or of the commission of any available act of bankruptcy by him (4 & 5 Geo. 5, c. 59, s. 40. See p. 276)).

If, after seizure of the goods and before sale or the completion of the execution by the receipt or recovery of the full amount of the levy (see *Ex parte Warren* (C. A.), (1885) 15 Q. B. D. 48; 54 L. J. Q. B. 320; *Bellyse* v. *M'Ginn*, (1891) 2 Q. B. 227), any money is seised or received in part satisfaction of the execution the following provisions apply:—

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1. If before paying over the money the high bailiff receives notice of a receiving order being made against the debtor, he shall on request, after deducting the costs of the execution, pay over such money to the official receiver, in accordance with sub-section 1 of section 41 of the Bankrupcy Act, 1914 (4 & 5 Geo. V. c. 59) and send notices to the registrar and the execution creditor that he has done this (see Order II., r. 36, *infra*), Order II., r. 34 a (1).
2. If, after he has paid this money over to the registrar, he receives notice of a receiving order having been made he must give notice thereof to the registrar of his court, and also, if the warrant issued out of any other court, and the money, after deducting the costs of his execution, has been certified to the registrar of that court, pursuant to Order 28, r. 2, give a similar notice to such registrar. Order II., r. 34 a (II.).
3. In any case mentioned in paragraph II. the amount paid to the registrar, after deducting costs of execution is to be paid over on request by that registrar, or any other registrar to whom the money has been certified, to the official receiver or trustee in bankruptcy —unless it has been paid out to the execution creditor, before notice of the receiving order. Order II., r. 34 a (III.).
4. A registrar paying over money pursuant to the last paragraph shall be allowed by the treasurer of his court at the audit the money so paid: money received by one registrar and certified to any other court, must be accounted for and paid over by such registrar to the treasurer of his court. Order II., r. 34 a (IV.).

A sale before notice is not illegal even if a receiving order has been made (*Woolford's Trustee* v. *Levy* (C. A.), (1892) 1 Q. B. 772; 61 L. J. Q. B. 546). If the sale take place and the receiving order be made on the same day, it is believed that the official receiver will be entitled to the proceeds, even if the completion of the sale be earlier in point of time (so held by Chalmers, J., in *Lever* v. *Shepherd*, (1891) 90 L. T. 339, following *Wright* v. *Mills*, (1859) 4 H. & N. 488; 28 L. J. Ex. 223; 118 R. R. 566; see also *Clarke* v. *Bradlaugh* (C. A.), 1881) 8 Q. B. D. 63; 51 L. J. Q. B. 1).

Where under an execution on a judgment for a sum exceeding 20*l.*, goods are sold or money is paid to avoid sale, *aliter* to avoid seizure (*Bower* v. *Hett* (C. A.), (1895) 2 Q. B. 337; 64 L. J. Q. B. 483, 772), and the high bailiff is by the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59, s. 41 (2), required to retain the balance of the proceeds of the sale, or money, after deducting the costs for fourteen days, he must, within twenty-four hours of the sale or receipt of the money give notice to the registrar, and to the execution creditor as provided in Form 171. Order II., r. 35. Where the high bailiff withdraws from possession, or pays over to the official receiver or trustee in bankruptcy, the proceeds of the sale or the money received in consequence of a notice that a receiving order has been made against the debtor, he must within twenty-four hours of such withdrawal or payment send to the registrar, and to the execution creditor notice in accordance with Form 172, Order II. r. 36.

Where any process has been executed, satisfied, withdrawn or stopped, the high bailiff shall file such process and retain it, unless in case of a warrant of execution he is required to lodge same in court, or in case of a warrant of committal the same has been delivered to the gaoler (Order II., r. 36a). If within fourteen days notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor on it or any other petition of which the high bailiff has notice, he must pay the balance to the official receiver, or to the trustee, who may retain it as against the execution creditor (4 & 5 Geo. 5, c. 59, s. 41); see *In re Craig & Sons, Ex parte Hinchcliffe* (1916) 2 K. B. 497. In ascertaining the 20*l.* the costs of the high bailiff to the time of sale must be included (*Ex parte Sims*, (1877) 5 Ch. D. 375; 46 L. J. Bk. 103); but not the expenses of possession

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money, appraisement and sale, unless they have been actually incurred (*Willey* v. *Hucks*, (1909) 1 K. B. 760; 78 L. J. K. B. 513).

This notice to be effective ought to be served on the high bailiff or at his office, and not on the bailiff in possession (*Ex parte Warren ; Bellyse* v. *M'Ginn*), *ante*, p. 180.

An execution levied by seizure and sale is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the high bailiff acquires a good title against the trustee (4 & 5 Geo. 5, c. 59, s. 40 (3)).

Payment of Taxes and Rent, and Priority of Landlord.]—The Queen's taxes, due at the time of seizure, to the extent of one year's arrears, must be paid by the bailiff to the collector before sale or removal, except where the process is at the suit of the landlord for rent (43 & 44 Vict. c. 19, s. 88). This provision would, it is believed, also entitle the landlord to be paid in priority to taxes, in case he gave notice of his claim under the provisions mentioned in the next paragraph.

The statute 8 Anne, c. 14, s. 1, does not apply to executions under process of the county court; but the landlord of a tenement in which goods are taken in execution may claim the rent at any time within five clear days from the date of the taking, or before the removal of the goods, by delivering to the bailiff making the levy a writing signed by himself or his agent, stating the rent in arrear, and the time for which it is due. The bailiff in addition to the levy must distrain for the rent and costs, but may not, within five days next after the distress, sell any part of the goods taken unless they are of a perishable nature, or upon the request in writing of the party whose goods have been taken. The bailiff must afterwards sell enough to satisfy, first, the costs of and incident to the sale, next the claim of the landlord, not exceeding the rent of four weeks where the tenement is let by the week, the rent of two terms of payment where it is let for any other term less than a year, and the rent of one year in any other case, and lastly the amount for which the warrant issued. If any replevin is made of the goods, the bailiff must still sell enough to satisfy the costs of and incident to the sale under the execution, and the amount for which the warrant issued; and in either event, the overplus of the sale, if any, and the residue of the goods, must be returned to the defendant. The poundage of the high bailiff and broker for keeping possession, appraisement and sale under the distress, will be the same as would have been payable if the distress had been an execution of the county court, and no other fees may be demanded or taken (see sect. 160); and the high bailiff is entitled to a separate set of possession fees in respect of each proceeding, viz., under the execution and under the distress (*In re Broster*, (1897) 2 Q. B. 529; 66 L. J. Q. B. 766. Section 160 of the County Courts Act, 1888, applies only to sect. 1 of 8 Anne, c. 14, see *Lewis* v. *G. Davies*, (1914) 83 L. J. K. B. 598).

If the bailiff wrongfully seizes goods of a stranger on the defendant's premises, the landlord is not entitled to require the bailiff under this section to levy upon them for rent (*Beard* v. *Knight*, (1858) 8 E. & B. 865; 27 L. J. Q. B. 359; 112 R. R. 810; *Foulger* v. *Taylor*, (1860) 5 H. & N. 202; 29 L. J. Ex. 154; 120 R. R. 542); but if he rightfully seizes the defendant's goods on the premises of another, the landlord of the premises is so entitled (*Hughes* v. *Smallwood*, (1890) 25 Q. B. D. 306; 59 L. J. Q. B. 503). It seems extremely doubtful whether the bailiff could sell for rent if the execution creditor instructed the bailiff to withdraw, and abandoned his execution.

Sale.]—Until the sale, the goods must be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the high bailiff, and put in possession by the bailiff (see sect. 154).

Where goods are removed for deposit, the high bailiff, at or immediately after the removal, must give to the execution debtor a sufficient inventory of the goods removed; and at least twenty-four hours before the time fixed

for the sale, a notice in writing signed by the high bailiff of the time when, and the place where, such goods will be sold. The inventory and notice are to be given to the execution debtor personally or sent to him by post to his residence, if known; if not known, to him at the place from which the goods are removed (Order XXV. r. 22). Section 146 Notes.

For keeping possession the bailiff is entitled to sixpence in the pound (not exceeding 10*s.* a day) for each day, not exceeding seven, calculated on the value of the goods seized; but if the execution is paid out at the time of the levy, or within half an hour thereof, no possession fee is chargeable (Order XXV. r. 20). Where execution is levied under several warrants, and the same goods are seized to satisfy all the warrants, only one possession fee can be charged; but if different goods are seized and appropriated to each warrant, a possession fee is chargeable under each warrant, although possession is held simultaneously under all the warrants by one person only (*In re Morgan, Ex parte Board of Trade*, (1904) 1 K. B. 68; 72 L. J. K. B. 948; see *Glasbrook* v. *David*, (1905) 1 K. B. 615; 74 L. J. K. B. 492, as to sheriff's right to possession money in High Court). The sale must not take place until after the end of five days at least next following the day on which the goods were taken, unless they are of a perishable nature, or on the request in writing of the party whose goods are taken. The goods must be sold or valued by sworn brokers and appraisers appointed by the high bailiff, who are entitled out of the produce to sixpence in the pound on their value for appraisement, whether there be one broker or more, over and above stamp duty, and one shilling in the pound on the net produce of the sale for advertisements, catalogues, sale, commission and delivery of goods (see sect. 154). No appraisement may take place until the fifth day of the bailiff's having possession, unless the goods are of a perishable nature, or are sold at the request of the debtor within four days, or are removed (Order XXV. r. 21).

The judge may, in writing, authorise any bailiffs appointed by the high bailiff to act as brokers or appraisers for the purpose of selling or valuing; and bailiffs so appointed may perform all the duties, and will be entitled to the same poundage, as sworn brokers or appraisers (see sect. 159).

The bailiff must not sell more than is necessary to satisfy the execution: if he does he is liable in trover (*Stead* v. *Gascoigne*, (1818) 8 Taunt. 527); nor when he has sold sufficient, may he sell more on the supposition that by some event for which he is not answerable the amount levied may become insufficient (*Aldred* v. *Constable*, (1844) 6 Q. B. 370; 66 R. R. 421).

By the Bankruptcy Act, 1883, where the execution is for a sum exceeding 20*l.*, including legal incidental expenses, the sale must, unless the court from which the process issues otherwise orders, be made by public auction, and not by bill of sale or private contract, and must be publicly advertised on and during three days next preceding the day of sale (46 & 47 Vict. c. 52, s. 145). (Not repealed by the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), see Sched. VI.)

An application for a sale otherwise than by auction must be made to the court on notice (Form 170), stating the grounds of application. The high bailiff must deliver to any applicant a list of the names and addresses of every person at whose instance any warrant or writ of execution has been lodged with him. This list must be produced to the court on the hearing. The notice must be served on every person named in the list except the applicant, four clear days at least before the return day of the notice (Order XXV. r. 24).

If the high bailiff has notice of another execution or executions the court may not consider an application to sell privately until notice has been given to the other execution creditors (53 & 54 Vict. c. 71, s. 12; see p. 274). Every person on whom notice is served may attend the hearing and be heard. The court may order all or any part of the costs to be paid by any of the persons who attend (Order XXV. r. 24).

The high bailiff must, on the request of the execution debtor, furnish

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him with a detailed account in writing of the sale and of the application of the proceeds thereof (Order XXV. r. 23).

The following provisions apply where, after the issue of the warrant, but before sale, money is paid into the court out of which the warrant is issued, or into a foreign court to which the warrant has been sent for re-issue under sect. 158 of the County Courts Act, 1888, or to the bailiff holding the warrant (Order XXV. r. 23A (1)). If payment is made into the court in the district of which the warrant is to be executed, the fact and amount of the payment must forthwith be notified by the registrar, if he is also high bailiff, to the bailiff holding the warrant; if he is not high bailiff, the notification must be made to the high bailiff, who must as soon as may be notify the bailiff holding the warrant (Order XXV. r. 23A (2)). If payment is made into the court out of which the warrant issued (otherwise the home court) after it has been sent for re-issue to a foreign court, the notification is to be made as soon as may be after receipt by post by the registrar of the home court to the high bailiff of the foreign court, who in his turn must as soon as may be make the same notification to the bailiff holding the warrant (Order XXV. r. 23A (3)). If any payment, or notice of any payment, is received by the bailiff holding the warrant, he must forthwith indorse on the warrant the amount of the payment and sign the indorsement; if the amount is not sufficient to satisfy the amount to be levied and the costs of execution incurred before payment or notice of payment is received, the execution, unless withdrawn by the plaintiff, is to proceed only for the balance of the original amount to be levied and the costs of execution calculated on that amount, less the amount so paid (Order XXV. r. 23A (4)). Where money is paid in part satisfaction of an execution or in order to avoid a sale, but is paid into court instead of to the high bailiff, it is deemed to have been received by the high bailiff. The following provisions then apply:—

(*a*) Where, if it would have been his duty, if the money had been received by him, to pay it to the registrar of his court, the money is to be dealt with as if it had been so received and paid over, and the provisions of Order II. r. 34a, paragraphs (II.), (III.) and (IV.) shall apply: see *ante*, p. 181.

(*b*) Where, if he had received it, it would be his duty to retain it under section 41 of the Bankruptcy Act, 1914, the money shall be retained in court.

(*c*) Where the execution creditor becomes entitled to receive the amount so retained, the money in court shall be dealt with as if it had been received by the high bailiff and paid over by him to the registrar of his court.

(*d*) Where, if he had received it, it would be his duty to pay it, after deducting costs, to the official receiver or trustee in bankruptcy, he shall, after deducting the costs, pay it to the official receiver or trustee in bankruptcy. The registrar of his court shall pay the amount in court to him, and shall be allowed it by the treasurer at the audit, and if any part of such amount was paid into the home court, the registrar of such court shall account for and pay over such amount to the treasurer at such time as the treasurer shall require (Order XXV. r. 23b).

Costs.]—Costs of warrants, whether executed, unexecuted, or unproductive, will be allowed against the execution debtor, unless the judge otherwise orders (Order XXV. r. 19); but costs of an abortive execution are not to be included for the purposes of a judgment summons or of an application for a fresh order for payment under Order XXIII. r. 14. Nor is money paid into court otherwise than under execution to be attributed to payment of such costs (Order XXV. r. 56).

Return of Warrant and Payment of Money levied.]—The mode in which the high bailiff must make a return of what he has done under warrants of execution and pay over to the registrar moneys he has received thereunder

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is dealt with by Order II. rr. 33, 34, 34A, 35 and 36 (*ante*, p. 180). It should be noticed here, however, that the statement made by the bailiff to the registrar, of what has been done under the warrant, has not the same effect as the return of a writ issued from the High Court. In the latter case, when once the writ is returned by the sheriff it is exhausted, and no further levy can be made under it; but in the case of the county court warrant it remains in the hands of the bailiff, and if a portion only of the amount, for which the warrant issued, is realised by the first levy, he may at any time before the expiration of the warrant, namely, one year, or of the renewed warrant, if renewed, make further levies under the same writ until the judgment is satisfied (see Order XXV. r. 6, and *Jordan* v. *Binckes*, (1849) 13 Q. B. 757; 18 L. J. Q. B. 277; 78 R. R. 507).

Execution out of Jurisdiction of Home Court.]—A writ of execution out of an inferior court could not at common law be executed out of the jurisdiction (Com. Dig. "Execution," I. 2); but by a special provision in the Act (sect. 158), where a warrant of execution has issued against the goods and chattels of any person, or an order for his commitment has been made, and he or his goods and chattels are out of the jurisdiction of the court, the warrant of execution may be sent by the high bailiff to the registrar of any other court within the jurisdiction of which the person or his goods and chattels may then be or be believed to be, with a warrant annexed, under the hand of the high bailiff and seal of the court from which the original warrant or order issued, requiring execution of the same (Form 173. The warrant might, it is believed, be sent under those provisions for execution to the City of London Court. There are, however, express statutory provisions to that effect; 15 Vict. c. lxxvii. s. 95; *post*, p. 260). The registrar of the court to which it is sent must seal or stamp it with the seal of his court, enter it in a book (Order XXVIII. r. 1) and re-issue it to the high bailiff of his court, and thereupon the high bailiff is to act in all respects as if the original warrant of execution or order of commitment had been directed to him by his own court.

In all cases of executions issued into a foreign district, where money has been received by the bailiff of the foreign court, he must within twenty-four hours from the receiving of it pay it over to the registrar of the foreign court, and unless an interpleader summons as to such money is pending he must make a return in writing of the amount received. In the case of a levy having been made, the bailiff must state in the return the gross amount produced by such levy, the particulars of the appraiser's and broker's charges, and the fees allowed for keeping possession, and pay over to the registrar of the foreign court the amount levied, less such charges and fees; and the registrar of the foreign court must certify therein the amount paid into court, and the correctness of the said charges, and pay over such amount to the treasurer of his court, at such time as the treasurer requires; and the high bailiff must thereupon transmit such return to the high bailiff of the home court, and such latter bailiff must, within twenty-four hours from the receipt of such return, deliver the same to the registrar of his court, who must file it and thereupon pay out of any money in his hands to the plaintiff in the action the amount certified in such return to have been received by the registrar of the foreign court as the proceeds of the execution, and enter in a book the amount so certified, and the amount so paid must be allowed him by the treasurer of his court at his audit (see sect. 158; Order XXVIII. r. 2; Form 175).

If the warrant is not executed within one calendar month from the day of delivery, the high bailiff of the foreign court must make a return to the registrar of the home court within twenty-four hours, and send a copy thereof to the execution creditor, and where not executed whilst in force return the same within a like time and indorse on the warrant the reason why it could not be executed, and sign the same. He must also return the warrant, executed or not, to the home court whenever so directed by the

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registrar of the home court, and give all such information as may be required of him in regard to the warrant (Order II. r. 37; Form 174).

As to the procedure in cases of part payment after issue of the warrant of execution, see Order XXV. r. 23A, *post*, p. 542.

Execution in Scotland and Ireland.]—Under the Inferior Courts Judgment Extension Act, 1882 (45 & 46 Vict. c. 31) (see *post*, p. 264), execution may be obtained under an unsatisfied judgment for debt, damages, or costs against the goods of the judgment debtor within the jurisdiction of any sheriff's court in Scotland, or any civil bill court in Ireland (45 & 46 Vict. c. 31, ss. 4, 5), so long as the amount of the judgment does not exceed the amount for which an action for the same cause might have been brought in such court (45 & 46 Vict. c. 31, s. 9).

The Act will not apply to a judgment obtained against a person *domiciled* in Scotland or Ireland at the time of the commencement of the action, unless the whole cause of action arose, or the obligation to which the judgment related ought to have been fulfilled within the county court district, and unless personal service of the summons has been made within the district (45 & 46 Vict. c. 31, s. 10). In the interpretation of the section it is presumed that the words "whole cause of action" will receive the narrower interpretation placed upon the words "cause of action" in the repealed sect. 60 of the County Courts Act, 1846 (9 & 10 Vict. c. 95, s. 60), rather than the wider one ultimately held to be the proper interpretation of the words in the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76, s. 18; *Vaughan* v. *Weldon* (1874) L. R. 10 C. P. 47; 44 L. J. C. P. 64). In this view every material part of the cause of action must arise within the district (see *ante*, p. 74). Whether the alternative words, *or the obligation to which the judgment relates ought to have been fulfilled*, give wider facilities must remain in doubt. The obligation to pay a debt due would be literally within these words; but they are intended probably to apply to express contracts to do certain things.

In order to obtain execution under the Act, when the judgment has become final and not subject to appeal, the judgment creditor must obtain a certificate of the unsatisfied judgment in accordance with the Act and the rules of practice (see 45 & 46 Vict. c. 31, s 3; Order XLV. rr. 1, 3, 4, 5; Form 430).

The certificate will not be granted if an order has been made for payment by instalments and no instalment is in arrear, or for payment within a time which has not expired (Order XLV. r. 2).

When granted, no further proceeding can be had in the court in which the certificate is issued until the judge or registrar, on being satisfied that the execution issued under the certificate has been unproductive, shall so order (Order XLV. r. 5).

As to costs, see sect. 4 of the Act and Order XLV. rr. 6, 7.

The certificate when so obtained may be registered in any of the courts named above pursuant to the regulations of such courts (45 & 46 Vict. c. 31, ss. 4, 11); so long as the certificate be presented for registration not more than twelve months from the date of the judgment (45 & 46 Vict. c. 31, s. 4). Execution against such of the goods of the judgment debtor as are within the jurisdiction of the courts will then issue as on a judgment of such court (45 & 46 Vict. c. 31, s. 5). The courts will have the same control over the execution as over executions under any judgments of such courts (45 & 46 Vict. c. 31, s. 6). The court may cancel the registration on proof that the original judgment has been set aside or satisfied (45 & 46 Vict. c. 31, s. 7).

If instead of availing himself of the provisions of the Act the judgment creditor brings an action on the judgment, he will not be entitled to recover any costs without the order of the court in which the action is brought (45 & 46 Vict. c. 31, s. 8).

Enforcing the Judgment in the High Court.]—If the judgment is for a

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sum exceeding 20*l.*, without costs, and there are no goods or chattels which can be conveniently taken to satisfy the judgment, a judge of the High Court may, on terms, order a writ of *certiorari* to issue to remove the judgment into the High Court; and when removed it will have the same force and effect as a judgment of the High Court, but no action may be brought upon it (51 & 52 Vict. c. 43, s. 151; see *Austin* v. *Mills*, (1854) 9 Ex. 288; 23 L. J. Ex. 40; 96 R. R. 717). It is only under these circumstances that the judgment can be removed into the High Court (*Moreton* v. *Holt*, (1855) 10 Ex. 707; 24 L. J. Ex. 169). When so removed, land may be extended to satisfy the judgment. As to the effect of the registration of a Writ of Elegit on the judgment debtors' land, see *Ashburton* (*Lord*) v. *Nocton*, (1915) 1 Ch. 274; 84 L. L. Ch. 193. The judgment of a county court will be aided against the equitable estate of the debtor (*Bennett* v. *Powell*, (1855) 3 Drew. 326; 24 L. J. Ch. 736).

Aiding the Judgments of other Courts.]—By statutes relating to the City of London Court, and local courts of record, power is given to the officers of those courts, under conditions, to send process for execution to a county court (the City of London Court being now a county court (51 & 52 Vict. c. 43, ss. 84, 185, 186), and subject to the general provisions applicable to county courts, it is believed that no provision in aid of that court is necessary; the provisions of the 15 Vict. c. lxxvii. s. 94, are printed at p. 261 in case of need). New provisions have been made for aiding Scotch and Irish judgments. The whole may conveniently be noticed here.

Local Courts of Record.]—Where final judgment has been obtained in an action brought in a borough or local court of record for not more than 20*l.*, exclusive of costs; or where a rule or order of the judge has been made for payment of money, or costs, charges or expenses, not exceeding 20*l.*, the court may send a writ or precept for the recovery of the same to the registrar of any county court within the jurisdiction of which the defendant may possess any goods or chattels. The registrar must stamp or seal the writ or precept, and thereupon it must be executed by the high bailiff as if it had been issued out of the county court. The high bailiff must take all the usual and proper fees thereupon, and make a return of what he has done thereunder to the bailiff or serjeant-at-mace of the court. In all matters done under such writ or precept or in relation thereto, the high bailiff will be under the direction and control of the judge of the county court of which he is high bailiff, as if the writ or precept had issued out of the county court. The costs of more than one writ, precept, or warrant, will not be allowed against the execution debtor unless by order of the judge (the judge of the borough or other local court is probably intended, and not the judge of the county court, *sed qu.*) of the "said court" (35 & 36 Vict. c. 86, s. 6; see p. 263).

Scotch and Irish inferior Courts.]—The certificates of unsatisfied judgments for debts, damages, or costs, of the sheriffs' courts of Scotland, and the civil bill courts of Ireland, may, under the provisions of the Inferior Courts Judgment Extension Act, 1882 (45 & 46 Vict. c. 31, s. 4), be registered in county courts in the district of which the judgment debtor then has goods; and after registration execution will issue as on an ordinary judgment of the court. The provisions of the Act, as already explained in reference to the registration of county courts' judgments in Scotland and Ireland, apply equally to the cases now under consideration (*ante*, p. 186). Provision is also made by the rules for the delivery of particulars of the place where the goods of the debtor are, and for the sealing of a copy of the certificate, and for the costs (see Order XLV. rr. 8, 9, 10). A special form of warrant of execution is provided (Form 431).

Money will not be paid out of court without production of the sealed copy of the certificate, or a copy to be obtained in the prescribed manner (Order XLV. r. 11).

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It has been held in the High Court that where a certificate of a decreet of the court of session in Scotland has been registered in the High Court under the Judgments Extension Act, 1868, that court has the same jurisdiction to appoint a receiver by way of equitable execution as if the judgment had been originally obtained in the High Court (*Thompson* v. *Gill* (C. A.), (1903) 88 L. T. 714).

Suspension of Execution.]—The judge may, at any time, if satisfied that the defendant is unable from sickness or other sufficient cause to pay, suspend or stay any judgment, order, or execution for such time and on such terms as he thinks fit, and so from time to time, until it is proved that the temporary cause of disability has ceased (51 & 52 Vict. c. 43, s. 153). Mere inability to pay owing to want of means is not a sufficient cause (*Attenborough* v. *Henschel*, (1895) 1 Q. B. 833; 64 L. J. Q. B. 255).

Interpleader on Execution.]—See sect. 157, *post*.

What goods may be taken in execution. 9 & 10 Vict. c. 95, s. 96.

147. Every bailiff or officer executing any process of execution issuing out of the court against the goods and chattels of any person may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade, to the value of five pounds, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes (whether of the bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid.

See notes to sect. 146.

Securities seized to be held by high bailiff. 9 & 10 Vict. c. 95, s. 97.

148. The high bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been seized or taken under the last preceding section, as a security for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised, for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived.

Execution after default in instalment may issue for whole sum. 9 & 10 Vict. c. 95, s. 95.

149. If the court shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the court shall order, either at the time of making the original order or at any subsequent time.

150. If there shall be cross judgments between the parties, execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum; and if both sums shall be equal satisfaction shall be entered upon both judgments.

Section 150. Cross judgments. 9 & 10 Vict. c. 95, s. 93.

These provisions apply where there are cross judgments in separate actions as well as to cross judgments on claim and counterclaim in the same action (*Ward* v. *Haddrill*, (1904) 1 K. B. 399; 73 L. J. K. B. 277).

151. If a judge of the High Court shall be satisfied that a party against whom judgment for an amount exceeding twenty pounds, exclusive of costs, has been obtained in a county court, has no goods or chattels which can be conveniently taken to satisfy such judgment, he may, if he shall think fit, and on such terms as to costs as he may direct, order a writ of *certiorari* to issue to remove the judgment of the county court into the High Court, and when removed it shall have the same force and effect, and the same proceedings may be had thereon, as in the case of a judgment of the High Court; but no action shall be brought upon such judgment.

Judgment may be removed into the High Court if there are no goods to be taken under it. 19 & 20 Vict. c. 108, s. 49.

See *ante*, p. 186.

It is only under these circumstances that the judgment can be removed into the High Court (*Moreton* v. *Holt*, (1855) 10 Ex. 707; 24 L. J. Ex. 169).

When so removed land may be extended to satisfy the judgment (*Bennett* v. *Powell*, (1855) 3 Drew. 326; 24 L. J. Ch. 736).

152. When a writ against the goods of a party has issued from the High Court, and a warrant against the goods of the same party has issued from a county court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the sheriff to be executed, or of the application to the registrar for the issue of the warrant to be executed; and the sheriff, on demand, shall, by writing signed by any clerk in the office of the under-sheriff, inform the high bailiff of the precise time of such delivery of the writ, and the bailiff, on demand, shall show his warrant to any sheriff's officer, and such writing purporting to be so signed, and the endorsement on the warrant, shall respectively be sufficient justification to any high bailiff or sheriff acting thereon.

Priority of executions issuing out of High Court and county court. 19 & 20 Vict. c. 108, s. 47.

153. If it shall at any time appear to the satisfaction of the judge that the defendant in any action or matter is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, it shall be lawful for the judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such

Power to judge to suspend execution or order discharge in certain cases. 9 & 10 Vict. c. 95, s. 105.

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action or matter for such time and on such terms as the judge shall think fit, and so from time to time until it shall appear that such cause of inability has ceased, or to order the discharge of any debtor confined in prison by order of a court, who, on account of sickness, insanity, or other sufficient cause, ought, in the opinion of the judge, to be discharged.

Mere inability to pay owing to want of means is not a sufficient cause (*Attenborough* v. *Henschel*, (1895) 1 Q. B. 833; 64 L. J. Q. B. 255).

Except as above, and the provisions in sect. 93 as to staying execution pending an application for a new trial, the County Courts Act contains no express power to stay proceedings. A stay of proceedings may, however, be ordered under R. S. C., Order LIX. r. 14, pending an appeal.

Regulating the sale of goods taken in execution.

9 & 10 Vict. c. 95, s. 106.

154. No sale of any goods which shall be taken in execution shall be made until after the end of the five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and until such sale the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the high bailiff to be put in possession by the bailiff; and it shall be lawful for the high bailiff from time to time, as he shall think proper, to appoint such and so many persons for keeping possession, and so many sworn brokers and appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this Act as shall appear to him to be necessary, and to direct security to be taken from each of them, for such sum and in such manner as he shall think fit, for the faithful performance of their duties without injury or oppression, and the judge or high bailiff may dismiss any person, broker, or appraiser so appointed; and no goods taken in execution under this Act shall be sold for the purpose of satisfying the warrant of execution except by one of the brokers or appraisers so appointed, and the brokers or appraisers so appointed shall be entitled to have, out of the produce of the goods so distrained or sold, sixpence in the pound on the value of the goods for the appraisement thereof, whether by one broker or more, over and above the stamp duty, and for advertisements, catalogues, sale and commission, and delivery of goods one shilling in the pound on the net produce of the sale.

Where goods are removed for deposit, the high bailiff, at or immediately after the removal, must give to the execution debtor a sufficient inventory of the goods removed; and at least twenty-four hours before the time fixed for the sale, a notice in writing signed by the high bailiff of the time when, and the place where, such goods will be sold. The inventory and notice are to be given to the execution debtor personally, or sent to him by post to his residence, if known; if not known, to him at the place from which the goods are removed (see Order XXV. r. 22).

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Execution to be superseded on payment of debt and costs.
9 & 10 Vict. c. 95, s. 109.

155. In or upon every warrant of execution issued against the goods and chattels of any person whomsoever, the registrar of the court shall cause to be inserted or indorsed the sum of money and costs adjudged and the fees for the execution of such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the registrar of the court out of which such warrant of execution has issued, or to the bailiff holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees inserted or indorsed as aforesaid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

For form of receipt, see Form 166.

Claimant of goods taken in execution must deposit their values or pay costs of keeping possession, otherwise goods shall be sold.
19 & 20 Vict. c. 108, s. 72.

156. Where any claim shall be made to or in respect of any goods taken in execution under the process of the court, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, such value to be affixed by appraisement in case of dispute, to be by such bailiff paid into court, to abide the decision of the judge upon such claim, or the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods until such decision can be obtained, or may give to the bailiff in the prescribed manner security for the value of the goods claimed, and in default of the claimant so doing, the bailiff shall sell such goods as if no such claim had been made, and shall pay into court the proceeds of such sale to abide the decision of the judge.

High bailiff may interplead where claims as to goods taken in execution are made.
30 & 31 Vict. c. 142, s. 31.

157. If any claim shall be made to or in respect of any goods or chattels taken in execution, or in respect of the proceeds or value thereof, by any person, it shall be lawful for the registrar upon application of the high bailiff, as well before as after any action brought against him, to issue a summons calling before the court as well the party issuing such process as the party making such claim, and the judge shall adjudicate upon such claim, and make such order between the parties in respect thereof and of the costs of the proceedings, as he shall think fit, and shall also adjudicate between such parties, or either of them, and the high bailiff, with respect to any damage, or claim of or to damages, arising or capable of arising out of the execution of such process by the high bailiff, and make such order in respect thereof, and of the costs of the proceedings, as to him shall seem fit; and such orders shall be enforced in like manner as any order in any action brought in such court, and shall be final and conclusive as between the

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parties, and as between them or either of them and the high bailiff, unless the decision of the court shall be in either case appealed from; and upon the issue of the summons any action which shall have been brought in any court in respect of such claim, or of any damage arising out of the execution of such process, shall be stayed.

Interpleader on Execution.]—When any claim is made by any person to or in respect of any goods or chattels taken in execution, or their proceeds or value, the high bailiff, by means of the following provisions, may, whether any action has been brought against him or not, relieve himself from the claim by applying to the registrar for an interpleader summons (see sect. 157; Order XXVII. rr. 1, 3, 4).

Where a claim, which must be in writing, is made, the high bailiff must forthwith send notice to the execution creditor (Form 203A), and to the claimant, requiring him to make deposit or give security in accordance with sect. 156 (Form 205); if the execution creditor admits the title of the claimant to the goods or chattels, and gives notice (Form 204A) to the high bailiff of such admission within four days after receipt of the high bailiff's notice, or if within the same time he requests the high bailiff to withdraw from possession, he will only be liable to the high bailiff for any fees for possession or expenses incurred by him prior to the receipt of such notice; and the judge may order the payment of such fees or expenses, on application in writing intituled in the matter of the execution, of which three clear days' notice in writing must be given by the high bailiff to the execution creditor (Order XXVII. r. 1. This rule enables the judge to order payment of the fees and expenses which *Thomas* v. *Peck*, (1888) 20 Q. B. D. 727; 57 L. J. Q. B. 497, decided he had power to award. Where the execution creditor does not in due time admit the title of the claimant, and the claimant persists in his claim, the high bailiff must apply for an interpleader summons (Order XXVII. r. 3).

Where any claim is made, the claimant may deposit with the bailiff either the amount of the value of the goods claimed (such value to be fixed by appraisement in case of dispute (this does not mean a dispute between the bailiff and the claimant, but between parties interested, *e.g.*, the claimant and the execution creditor: *Miller & Co.* v. *Solomon*, (1906) 2 K. B. 91; 75 L. J. K. B. 671)), to be by the bailiff paid into court, to abide the decision of the judge upon the claim, or the sum which the bailiff is allowed to charge as costs for keeping possession of the goods until the decision can be obtained, or may give security for the value of the goods; and in default of the claimant so doing, the bailiff must sell the goods as if no claim had been made, and pay into court the proceeds to abide the decision (see sect. 156); the bailiff so selling gives the purchaser a good title to the goods, although they were the property of the claimant at the time of the seizure (*Goodlock* v. *Cousins* (C. A.), (1897) 1 Q. B. 558; 66 L. J. Q. B. 360). But the purchaser will only acquire a good title to goods not the property of the execution debtor where a claim is made to them under sect. 156 and they are sold under that section; where the bailiff sells goods to which no claim has been made, but which subsequently turn out not to have been the property of the execution debtor at the time of the seizure or sale, the purchaser acquires no title to them as against the true owner (*Crane* v. *Ormerod*, (1903) 2 K. B. 37; 72 L. J. K. B. 507). In the latter case, if the true owner has the right to retake possession of the goods at the date of their being sold, the sale is an act of conversion, in respect of which he can obtain damages against the high sheriff (*Jelks* v. *Hayward*, (1905) 2 K. B. 460; 74 L. J. K. B. 717). The bailiff will be entitled to sell without applying for an interpleader summons under sect. 157, and will not be responsible in damages, if the goods be sold for less than their real value,

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although the claimant may establish his title to them (*Cramer* v. *Matthews*, (1881) 7 Q. B. D. 425; S. C., *Davies* v. *Wise*, 50 L. J. Q. B. 651). The bailiff may, nevertheless, if no deposit has been made or security given, delay the sale until the claim has been adjudicated upon (Order XXVII. r. 7). When the bailiff pays into court the sum of money deposited with him by the claimant, he must be deemed to have taken it on the assumption that it represented the value of the goods, and he has therefore no right to remain in possession, or to possession fees, after the date of the deposit (*Newsum, Sons & Co.* v. *James*, (1909) 2 K. B. 384; 78 L. J. K. B. 761). Where a creditor, who has assigned a debt together with all securities for the same, subsequently recovers judgment against his debtor in the county court, and the goods of the judgment debtor are taken in execution, the assignee of the debt cannot claim the proceeds of sale under sects. 156 and 157 of the Act (*Plant* v. *Collins*, (1912) 2 K. B. 459; 81 L. J. K. B. 868; (C. A.), (1913) 1 K. B. 242; 82 L. J. K. B. 467).

The claimant may, at any time before the return-day of the summons, file notice that he withdraws his claim, at the same time giving notice of withdrawal to the execution creditor, and the execution creditor, if he has not admitted the claim as above mentioned, may at any time before the return-day file an admission of the title of the claimant, and give notice (Form 204A) to him of such admission; the goods and chattels seized or the proceeds of their sale, or the money paid into court (as the case may be), will be dealt with as if the claim had not been made or the execution had been withdrawn; in either case the claimant or execution creditor (as the case may be) will be liable to be ordered to pay such costs, fees, charges, and expenses as the judge may think just (Order XXVII. r. 3). The high bailiff can get protection where the execution creditor abandons before interpleader; the application must be made in writing, and three clear days' notice in writing given to the claimant, who may attend the hearing (Order XXVII. r. 2).

Security for Costs when Claimant out of the Jurisdiction.]—When the claimant does not reside in England or Wales, either the execution creditor or the high bailiff may apply to the court on notice in writing for an order for security for costs. If the order is made, and security not given within the time limited, the claimant is debarred from appearing in support of his claim, unless the judge otherwise orders. An undertaking by the claimant's solicitor to be responsible for the costs is sufficient (Order XXVII, r. 3A).

Summons.]—Upon the application of the high bailiff, the registrar must issue a summons, without fee or leave of the judge, calling before the court the party who issued the process under which the goods were seized, and also the claimant (51 & 52 Vict. c. 43, s. 157; Order XXVII. r. 11; Forms 206—210). The summons must be issued from, and the execution creditor and claimant summoned to, the court of the district in which the levy was made (Order XXVII. rr. 11, 12). It must be served like an ordinary summons, except that if a party acts by solicitor service must be made on him. The claimant is deemed to be the plaintiff, and the execution creditor the defendant, but where the claimant has not made deposit or given security under sect. 156 (*supra*), the time of service may, if the high bailiff so desires, by leave of the judge or registrar, be such as will obtain a speedy decision of the claim (Order XXVII. rr. 4, 11).

The bailiff is not required by the mere fact of the issue of the summons to withdraw from possession (*Ex parte Summers*, (1852) 18 Jur. 522).

Upon the issue of the summons any action which has been brought in any court in respect of the claim or of any damage arising out of the execution of the process must be stayed (see sect. 157); but these provisions apply only as between the execution creditor, the claimant, and the high bailiff, or one of them. So an action brought against a person who has purchased goods from the high bailiff cannot be stayed (*Hills* v. *Renny* (C. A.), (1880) 5 Ex. D. 313; 49 L. J. Ex. 710).

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Particulars.]—The claimant, five clear days at least before the return-day, must deliver to the high bailiff, or leave at the office of the registrar, two copies of the particulars of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or, in case of a claim for rent, of the amount thereof, and for what period and in respect of what premises it is claimed to be due; and the name, description, and address of the claimant must also be fully set forth in the particulars; and any money paid into court under the execution must be retained by the registrar until the claim is adjudicated on. The high bailiff must forthwith send one of the copies of the particulars by post to the execution creditor or his solicitor. By consent an interpleader claim may be tried, although this rule has not been complied with (Order XXVII. r. 5; Forms 211, 212; see as to an infant claimant, Order V. r. 16). The particulars ought to state how and by what right the claimant asserts his title; and where a notice stated only that the goods were the property of the claimant, but omitted to state any grounds of claim, it was held insufficient (*R.* v. *Chilton*, (1850) 15 Q. B. 220; S. C., *Ex parte Tanner*, 19 L. J. Q. B. 318; 81 R. R. 564). Where, however, the particulars stated that the goods were assigned to the claimant by an indenture (giving the date and the parties), but without specifying them in a schedule, it was held sufficient (*R.* v. *Richards*, (1851) 2 L. M. & P. 263; 20 L. J. Q. B. 351; 86 R. R. 898). It is not necessary that the claim should specify the goods or set them forth in the schedule (*Heslop* v. *M'George*, (1851) 18 L. T. O. S. 109). The court was equally divided as to whether particulars describing the goods, etc., seized, as "the goods and money seized by virtue of the warrant," were sufficient or not (*Richardson* v. *Wright*, (1875) L. R. 10 Ex. 367; 44 L. J. Ex. 230). Where the address of the claimant was stated as "Elizabeth Street," instead of "Terrace, Islington," it was held that, not being calculated to mislead, it was sufficient (*Ex parte M'Fee*, (1854) 9 Ex. 261; 23 L. J. Ex. 57; 96 R. R. 700).

In all cases the judge is bound to adjudicate at some time upon a claim, although the particulars delivered by the claimant are insufficient, or have not been delivered in time. In such a case the judge should amend the particulars, or, if the particulars have not been delivered in time, order a new summons to issue, so that he may decide the case on the merits (*Beswick* v. *Boffey*, (1855) 9 Ex. 315; 23 L. J. Ex. 89; *R.* v. *Stapylton*, (1851) 2 L. M. & P. 603; 21 L. J. Q. B. 8; *Fraser* v. *Fothergill*, (1854) 14 C. B. 298; 23 L. J. C. P. 53). Still the insufficiency justifies the judge in refusing to hear it in its then form (*R.* v. *Chilton*, *supra*).

Where a judge of a county court, upon an interpleader summons, erroneously decides against a claimant, on the ground that the notice of claim is insufficient, the high court may direct him to hear and adjudicate upon the claim (*Churchward* v. *Coleman*, (1866) L. R. 2 Q. B. 18; 36 L. J. Q. B. 57).

So the high court may in such a case, by writ of prohibition, prohibit him from proceeding on the original plaint until the interpleader has been determined (*Ex parte M'Fee*, (1854) 9 Ex. 261; 23 L. J. Ex. 57; 96 R. R. 700).

Claim for Damages.] — Where the claimant claims damages from the execution creditor or the high bailiff for or in respect of the seizure, he must state in his particulars the amount he claims for damages, and the grounds upon which he claims them (Order XXVII. r. 8 (1)). If he has not claimed damages before the issue of the interpleader summons, but claims them in his particulars of claim, he may be ordered to pay the costs of any adjournment necessary to enable the execution creditor or high bailiff to prepare his defence to the claim so made (Order XXVII. r. 8 (2)).

Where the execution creditor claims damages against a high bailiff, he must deliver to him, five clear days at least before the return-day, a notice of the claim, stating the amount and grounds thereof; he may apply to the judge at the hearing of the interpleader summons to adjudicate upon his

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claim, which, for the purpose of fees and costs, will be deemed to be a claim in an interpleader (Order XXVII. r. 9. For orders, see Forms 223—225; and warrant of execution, Form 221).

Though the seizure was made in good faith and there was no misconduct, the high bailiff may be liable in damages (*London, Chatham, and Dover Rail. Co.* v. *Cable*, (1899) 80 L. T. 119).

Either the high bailiff or the execution creditor may pay money into court in satisfaction, as if an action had been brought, and the high bailiff may pay money into court in satisfaction of a claim made against him by an execution creditor (Order XXVII. r. 10).

Money in Court.]—Money in court under the execution must be retained until the claim is adjudicated upon (Order XXVII. r. 5), when the court should order to whom it is to be paid (Forms 213, 214).

Hearing and Order.]—The hearing in cases of interpleader is the same as in ordinary actions, the claimant being considered as plaintiff, and the execution creditor as defendant (Order XXVII. r. 4); at the instance of either party, a jury may be summoned as in other cases (Order XXII. r. 3).

If there is no jury, the judge must adjudicate upon the claim, and make such order between the parties, and as to the costs, as to him seems fit. He must also adjudicate between the execution creditor and the claimant, or either of them, and the high bailiff, with respect to any damage or claim of or to damages, arising or capable of arising out of the execution of the process by the high bailiff, and make such order in respect thereof and of the costs of the proceedings as to him seems fit; and subject to the right of appeal mentioned below, the order will be final and conclusive between the execution creditor, the claimant, and the high bailiff (51 & 52 Vict. c. 43, s. 157; Forms 213—221, 223—225). The order must contain directions as to how any money paid into court in the proceeding is to be disposed of. A minute of the order is entered in the minute book, but the order need not be drawn up, unless required by one of the parties or ordered by the court; if drawn up, it must be in accordance with the prescribed form (Order XXVII. r. 14). And, as between the execution creditor, the claimant, and the high bailiff, the order will not only dispose of claims actually brought forward, but will also bar claims which might have been brought forward and adjudicated upon (*Death* v. *Harrison*, (1871) L. R. 6 Ex. 15; 40 L. J. Ex. 26; *Hills* v. *Renny*, (1880) 5 Ex. D. 313; 49 L. J. Ex. 710), whether they exceed 50*l.* or not, the judge's jurisdiction as to them being unlimited (*Smith* v. *Benskin*, (1893) 94 L. T. (Journal) 285).

Where the execution creditor is successful, he will be entitled to the whole sum deposited by the claimant with the bailiff and paid into court by the latter, although some of the goods seized may admittedly be the property of another and subsequent claimant (*Wells* v. *Hughes*, (1907) 2 K. B. 845; 76 L. J. K. B. 1125).

In *Flude* v. *Goldberg*, (1916) 85 L. J. K. B. 219, it was decided that a claimant who claimed the goods as his absolute property but only satisfied the jury that they belonged to a partnership of which he was a member was not entitled to succeed against the execution creditor (*a*).

(*a*) Decision of Divisional Court reported (1915) 2 K. B. 157; 84 L. J. K. B. 511, reversed, but see now *Peake* v. *Carter*, (1916) 1 K. B. 652; 85 L. J. K. B. 761, where *Flude* v. *Goldberg* was explained as a case depending upon the particular issues insisted upon by the parties at the trial, and the absence of any amendment of the particulars of demand. The decision in *Peake* v. *Carter* was that the rule upon the trial of an interpleader issue is, that where a claimant claims under a title which he fails to prove, he is not thereby precluded from relying on the title in fact found to exist.

Goods were claimed by a claimant who paid their value (25*l.*) into Court. In an interpleader the judge found for the execution creditor and the 25*l.* was paid to him. He levied on the same goods again for a balance. The claimant again claimed and paid 25*l.* The judge again found

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for the execution creditor. Held on appeal that the execution creditor was estopped from denying that the goods were the property of the claimant (*Haddow* v. *Morton* (C. A.), (1894) 1 Q. B. 565; 63 L. J. Q. B. 431).

But by payment into court a claimant acquires no absolute property in the goods, and if they are again seized by a different creditor must again pay the full value into court as the condition of an interpleader issue (*Kotchie* v. *Golden Sovereigns, Ltd.*, (1898) 2 Q. B. 164; 67 L. J. Q. B. 722).

Costs of Bailiff.] — The judge must also adjudicate upon any claim of the high bailiff for the fees, and he may, if he think fit, order the same, or such part thereof as he may think just, to be paid by the claimant or by the execution creditor (Order XXVII. r. 6; see *post*, p. 587, and *Goodman* v. *Blake*, (1887) 19 Q. B. D. 77; 56 L. J. Q. B. 441).

It was formerly held that if the bailiff neglected to retain his costs, he could not, after paying over the proceeds, recover them from the execution creditor (*Bloor* v. *Huston*, (1854) 15 C. B. 266; 24 L. J. C. P. 26).

The order of the judge may be enforced in the same manner as any order in an action in the court (51 & 52 Vict. c. 43, s. 157; Forms 213—221, 223—225).

To ascertain the scale upon which costs are to be taxed, the "subject matter" in an interpleader means, (1) in the case of a claimant, the value of the goods to which he establishes his claim, plus damages, if any (Order LIII. r. 15). The value of the goods is the value as found by the judge, not the amount of deposit made to avoid a sale (*Studham* v. *Stanbridge*, (1895) 1 Q. B. 870; 64 L. J. Q. B. 473), nor necessarily the sum of money which may have been ordered to be paid into court as representing the value of the goods (*Tarry* v. *Witt*, (1915) 84 L. J. K. B. 950). (2) In the case of an execution creditor, the value of the goods seized, plus the damages claimed; (3) in the case of a high bailiff, the damages claimed (Order LIII. r. 15).

Order for Sale.]—Where it appears that the claim is founded on a bill of sale, or otherwise, by way of security for a debt, the judge may order a sale of the whole or part of the goods or chattels, and may direct the proceeds of the sale to be applied in such manner and upon such terms as may be just (Order XXVII. r. 13). The order will be according to Form 212A, with such modifications as may be necessary and as the judge shall direct (Order XXVII. r. 13). The costs of the application for sale are borne as between the parties as the judge may direct (Order XXVII. r. 13). The order may be made although the execution creditor cannot contest the title of the bill of sale holder (*Miller & Co.* v. *Solomon*, (1906) 2 K. B. 91; 75 L. J. K. B. 671).

This provision is intended to prevent an execution from being defeated by a claimant under a bill of sale by way of security for a sum less than the value of the goods. It appears that there is no obligation on the bailiff to apply for an order for sale under these provisions. He may withdraw, if satisfied that the bill of sale or security is valid, and return *nulla bona* without exposing himself to an action. If he interpleads, it appears that the order for the sale may be made on the hearing of the interpleader summons (*Scarlett* v. *Hanson* (C. A.), (1884) 12 Q. B. D. 213; 53 L. J. Q. B. 62).

Where a sale is directed, a duplicate of the order is given by the registrar to the high bailiff, who must forthwith sell the goods or chattels, and after deducting the expenses pay the balance into court, and such balance will be applied by the registrar in accordance with the order (Order XXVII. r. 13). A secured claimant is not entitled to receive out of the balance any sum not included in his particulars or mentioned in the order (*Hockey* v. *Evans* (C. A.), (1887) 18 Q. B. D. 390; 56 L. J. Q. B. 253).

Appeal.]—An appeal lies on the same grounds as in other cases where the money claimed, or the value of the goods claimed, or of the proceeds thereof, exceeds 20*l.* (see sect. 120). If it does not exceed 20*l.*, there may

still be an appeal by leave of the judge (the wording of s. 120 of 51 & 52 Vict. c. 43 displaces the grounds upon which the court held in *Collis* v. *Lewis*, (1887) 20 Q. B. D. 202; 57 L. J. Q. B. 167, that no appeal would lie).

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If the goods are appraised and a deposit made in accordance with the appraisement, the appraised value is the value for the purpose of appeal (*White* v. *Milne*, (1888) 58 L. T. 225), but see *Tarry* v. *Witt*, *supra*. If the value exceeds 20*l*., an appeal lies, although the claim in the original plaint is below 20*l*. (*Vallance* v. *Nash*, (1858) 2 H. & N. 712; 27 L. J. Ex. 142; 115 R. R. 759). If the value does not exceed 20*l*., there can be no appeal, without leave, even though damages may be claimed exceeding 20*l*. (*Lumb* v. *Teal*, (1889) 22 Q. B. D. 675; 58 L. J. Q. B. 298).

The claimant or the execution creditor, or a landlord who appears on the summons (*Foulger* v. *Taylor*, (1860) 1 H. & N. 202; 29 L. J. Ex. 154; 51 & 52 Vict. c. 43, ss. 120, 186), may appeal if his rights are prejudiced.

If the court reverse the judgment and order a new trial, the order of the county court for costs will be also reversed (*Gage* v. *Collins*, (1867) L. R. 2 C. P. 381; 36 L. J. C. P. 144).

158. In all cases where a warrant of execution shall have issued against the goods and chattels of any person or an order for his commitment shall have been made, and such person, or his goods and chattels, shall be out of the jurisdiction of the court, it shall be lawful for the high bailiff of the court to send the warrant of execution or order of commitment to the registrar of any other court within the jurisdiction of which such person, or his goods and chattels, shall then be or be believed to be, with a warrant thereto annexed, under the hand of the high bailiff and seal of the court from which the original warrant or order issued, requiring execution of the same, and the registrar of the court to which the same shall be sent shall seal or stamp the same with the seal of his court and issue the same, to the high bailiff of his court; and thereupon such last-mentioned high bailiff shall be authorised and required to act in all respects as if the original warrant of execution or order of commitment had been directed to him by the court of which he is the high bailiff, and shall, within such time as shall be prescribed, return to the high bailiff of the court from which the same originally issued what he shall have done in the execution of such process, and shall, within such time as shall be prescribed, pay over all moneys received in pursuance of the warrant or order; and where any order of commitment shall have been made and the person apprehended, he shall be forthwith conveyed, in custody of the bailiff or officer apprehending him, to the prison of the court within the jurisdiction of which he shall have been apprehended, and kept therein for the time mentioned in the order of commitment, unless sooner discharged by law; and all constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such order of commitment.

How execution may be had out of the jurisdiction of the court.

9 & 10 Vict. c. 95, s. 104.

Execution out of Jurisdiction in England and Wales.]—A writ of execution out of an inferior court could not at common law be executed out of

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the jurisdiction (Com. Dig. "Execution," I. 2). By the section (*supra*), where a warrant has issued against the goods and chattels of any person, or an order for his commitment has been made, and he or his goods and chattels are out of the jurisdiction, the warrant may be sent by the high bailiff to the registrar of any other court within the jurisdiction of which the person or his goods and chattels may then be or be believed to be, with a warrant annexed, under the hand of the high bailiff and seal of the court from which the original warrant or order issued, requiring execution of the same (Form 173); and the registrar of the court to which it is sent must seal or stamp it with the seal of his court, enter it in a book (Order XXVIII. r. 1), and re-issue it to the high bailiff of his court. When the warrant is against goods, the high bailiff of the court from which it issues must annex to the notice to be left with the debtor (pursuant to Order XXV. r. 17) a notice under his hand and seal, that all payments under the warrant should be made, and all notices or claims in respect of the execution or the goods, should be given or sent to the high bailiff of the court of the district in which the levy is made, and not to the high bailiff of the court out of which the warrant originally issued. Order XXVIII. r. 1 (2); Form 173A. Thereupon the high bailiff is to act in all respects as if the original warrant of execution or order of commitment had been directed to him by his own court (sect. 158). This procedure includes City of London Court: see 15 Vict. c. lxxvii. s. 42.

Transmission of Money Levied.]—Subject to Order II., Rules 34A, 35 and 36, where by virtue of any warrant against goods sent to a foreign district any money has been received by the bailiff of the foreign court, he must within twenty-four hours from the receiving of it pay it over to the registrar of the foreign court, and unless an interpleader summons as to such money is pending he must make a return in writing of the amount received according to Form 175. In the case of a levy having been made, the bailiff must state in the return the gross amount produced by such levy, the particulars of the appraiser's and broker's charges, and the fees allowed for keeping possession, and pay over to the registrar of the foreign court the amount levied, less such charges and fees; and the registrar of the foreign court must certify therein the amount paid into court, and the correctness of the said charges, and shall account for and pay over such amount to the treasurer of his court at such time as the treasurer shall require; and the high bailiff must thereupon transmit such return to the high bailiff of the home court, as directed by sect. 158 of the Act, and such latter bailiff must, within twenty-four hours from the receipt of such return, deliver the same to the registrar of his court, who must file it and shall (subject to Order II. r. 34A) pay out of any money in his hands to the execution creditor the amount certified in such return to have been received by the registrar of the foreign court as the proceeds of the execution, and enter in a book the amount so certified according to the form in the Appendix (Appendix Part II., Form M), and the amount so paid must be allowed him at his audit (see sect. 158; Order XXVIII. r. 2; Form 175).

Where the bailiff is by the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59, s. 41 (2)) required to hold the proceeds of sale, or the money paid in order to avoid sale for fourteen days, he must proceed in accordance with Order II. r. 35 and not under Order XXVIII. r. 2 (1) until the fourteen days have expired. Order XXVIII. r. 2 (2).

Where an interpleader as to the amount received is pending, the high bailiff postpones the return required by Order XXVIII. r. 2 (1) until it is disposed of, and then shall make a return showing how the money received is to be disposed of, and the amount (if any) payable to the execution creditor, and the return is certified and the amount payable to the execution creditor dealt with as provided in Order XXVIII. r. 2 (1). Order XXVIII. r. 2 (3).

If the warrant is not executed within one calendar month from the day

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of delivery, the high bailiff of the foreign court must make a return to the registrar of the home court within twenty-four hours, and send a copy thereof to the execution creditor, and where not executed whilst in force return the same within a like time, and indorse on the warrant the reason why it could not be executed, and sign the same. He must also return the warrant, executed or not, to the home court whenever so directed by the registrar of the home court, and give all such information as may be required of him in regard to the warrant (Order II. r. 37; Form 174).

As to the procedure in cases of part payment after issue of the warrant of execution, see p. 542.

Judge may authorise bailiffs to act as brokers. 12 & 13 Vict. c. 101, s. 10.

159. It shall be lawful for the judge, by any writing under his hand, to authorise any of the bailiffs appointed by the high bailiff to act as brokers or appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this Act; and the bailiffs so authorised by the judge may, without other licence in this behalf, do and perform all the duties and shall be entitled to the poundage which sworn brokers or appraisers may do and perform and are entitled to under this Act.

When goods seized under process of the court landlord may claim certain rent in arrear. 19 & 20 Vict. c. 108, s. 75.

160. Section one of the Act of the eighth year of the reign of Queen Anne, chapter fourteen, shall not apply to goods taken in execution under the warrant of the court, but the landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy any writing signed by himself or his agent, which shall state the amount of rent claimed to be in arrear, and the time for and in respect of which such rent is due; and if such claim be made, the bailiff or officer making the levy shall, in addition thereto, distrain for the rent so claimed and the costs of such distress, and shall not within five days next after such distress sell any part of the goods taken unless they be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and the bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first, the costs of and incident to the sale, next the claim of such landlord, not exceeding the rent of four weeks where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case, and lastly, the amount for which the warrant was issued; and if any replevin be made of the goods so taken, the bailiff shall, notwithstanding, sell such portion thereof as will satisfy the costs of and incident to the sale under the execution, and the amount for which the warrant issued; and in either event the overplus of the sale, if any, and the residue of the goods, shall be returned to the defendant, and the poundage

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of the high bailiff and broker for keeping possession, appraisement, and sale under such distress shall be the same as would have been payable if the distress had been an execution of the court, and no other fees shall be demanded or taken in respect thereof.

The provisions of this section do not extend to ss. 6 and 7 of 8 Anne, c. 14, but are confined to s. 1 of that statute; therefore where the goods of a former tenant who has surrendered are taken in execution, the landlord cannot claim arrears of rent as against the execution creditor. Neither in such circumstances does sect. 160 (*supra*) apply, as this section is a substitute alone for sect. 1 of 8 Anne, c. 14, which is only applicable where the relation of landlord and tenant is a subsisting one: *Lewis* v. *Davies*, (1914) 2 K. B. 469; 83 L. J. K. B. 598.

The high bailiff is entitled to a separate set of possession fees in respect of each proceeding, viz., under the execution and under the distress (*In re Broster*, (1897) 2 Q. B. 529; 66 L. J. Q. B. 766).

If the bailiff wrongfully seizes goods of a stranger on the defendant's premises, the landlord is not entitled to require the bailiff under this section to levy upon them for rent, the bailiff can only sell for rent under this section such goods as he can sell under the execution (*Beard* v. *Knight*, (1858) 8 E. & B. 865; 27 L. J. Q. B. 359; 112 R. R. 810; *Foulger* v. *Taylor*, (1860) 5 H. & N. 202; 29 L. J. Ex. 154); but if he rightfully seizes the defendant's goods on the premises of another, the landlord of the premises is so entitled (*Hughes* v. *Smallwood*, (1890) 25 Q. B. D. 306; 59 L. J. Q. B. 503). It seems extremely doubtful whether the bailiff could sell for rent if the execution creditor instructed the bailiff to withdraw, and abandoned his execution. Although there may be goods on the premises which the landlord could distrain, they may in fact be exempt when the bailiff levies.

Mode of issuing and executing orders of commitment.

9 & 10 Vict. c. 95, s. 102.

161. Whenever any order of commitment under the Debtors Act, 1869, shall have been made, or any warrant of attachment shall have been ordered to be issued, such order or warrant, under the seal of the court, shall be directed to the high bailiff of any court, who by such order or warrant shall be empowered to take the body of the person against whom such order shall be made or warrant issued; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such order or warrant; and the governor of every prison mentioned in any such order or warrant shall be bound to receive and keep the person therein mentioned until discharged under the provisions of this Act or otherwise by due course of law.

See 32 & 33 Vict. c. 62, s. 5; Order II. r. 4. No warrant is prepared. The order is the authority under which the high bailiff acts.

The judge may refuse to make the order, or may make a fresh order for payment at a specified time or by instalments (Order XXV. r. 46 (1)). The execution of an order of commitment may be suspended by direction of the judge, notice of any such direction being given to the judgment debtor (Order XXV. r. 46 (2); Form 191A). Subject to the provisions of Order XXV. rr. 48 and 49, all payments under a fresh order or order of commitment must be paid into court (Order XXV. r. 46 (3)).

On the making of the order by the judge, the registrar makes a minute of it. The court will not grant a prohibition on the ground that the minute does not show the ground on which the order is made (*Harris* v. *Slater*, (1888) 21 Q. B. D. 359; 57 L. J. Q. B. 539).

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Execution of Order.]—The order of commitment authorises the high bailiff and his bailiffs to arrest the judgment debtor, and lodge him in gaol (Order XXV. r. 46A; see Form 187). The Sheriffs Act, 1887 (50 & 51 Vict. c. 55, s. 14), does not prevent an immediate taking to prison (*Mitchell* v. *Simpson* (C. A.), (1890) 25 Q. B. D. 183; 59 L. J. Q. B. 355). The ordinary rules as to the mode and place of execution apply (51 & 52 Vict. c. 43, s. 77; Order LIV. r. 19; Order I. r. 5; see *ante*, p. 172). All constables and other peace officers must aid in executing the order, and the governor of the prison mentioned in it must receive and keep the debtor until discharged by due course of law (sect. 161). The extreme term of imprisonment is six weeks (32 & 33 Vict. c. 62, s. 5), computed from the date of lodging in prison (*Ex parte Foulkes*, (1846) 15 M. & W. 612).

If the plaintiff directs the execution of the order against a person not named in it, he is liable in trespass (*Watley* v. *M'Connell*, (1849) 13 Q. B. 903; 19 L. J. Q. B. 162; 78 R. R. 552).

The high bailiff must make returns as in case of execution against goods, and pay over moneys and give information to suitors (see Order II. rr. 33, 34, 37).

The order must set out the particular ground of committal, in order that the person committed may know exactly what he ought to do to purge his contempt (*R.* v. *Lambeth C. C.* (2), (1887) 36 W. R. 475).

Power of committal for contempt. 9 & 10 Vict. c. 95, s. 113.

162. If any person shall wilfully insult the judge, or any juror or witness, or any registrar, bailiff, or officer of the court for the time being during his sitting or attendance in court, or in going to or returning from the court, or shall wilfully interrupt the proceedings of the court, or otherwise misbehave in court, it shall be lawful for any bailiff or officer of the court, with or without the assistance of any other person, by the order of the judge, to take such offender into custody, and detain him until the rising of the court; and the judge shall be empowered, if he shall think fit, by a warrant under his hand, and sealed with the seal of the court, to commit any such offender to any prison to which he has power to commit offenders for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding five pounds for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

See Order LII. r. 8; Forms, of order, 365; of warrant of commitment, 366; of warrant of commitment in default of payment of fine, 367.

Where a fine, or an instalment of a fine made payable by instalments, is not paid in accordance with the order, the registrar must forthwith report the matter to the judge, and act on any orders given for the enforcement of such fine (Order LII. rr. 9, 10). Payment of the fine may also be enforced in the same manner as a judgment debt, or in the same manner as money adjudged to be paid under the Summary Jurisdiction Acts (see these statutes, *post*, p. 866). Though a limited company cannot be committed for contempt of court on a return to a writ of attachment an appropriate penalty other than imprisonment may be inflicted (*Rex* v. *J. G. Hammond & Co., Ltd.*, (1914) 2 K. B. 866; 83 L. J. K. B. 1221). The section confines the power to commit for contempts committed in court and to the particular cases therein specified. The judge has no power to proceed under this section, or by virtue of his authority as a judge, against a person for contemptuous

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and insulting writing published out of court (*R.* v. *Lefroy*, (1873) L. R. 8 Q. B. 134; S. C., *Ex parte Jolliffe*, 42 L. J. Q. B. 121); nor can he commit a person for contempt in practising as a solicitor without being duly qualified (*R.* v. *Brompton C. C.* (2), (1893) 2 Q. B. 195; 62 L. J. Q. B. 604).

A county court judge could possibly exercise this authority when exercising under sect. 67 of the County Courts Act, 1888, the powers of a Chancery judge.

The judge has jurisdiction to decide conclusively whether any particular act amounts to an insult, interruption or misbehaviour, if there be any evidence on which he could reasonably hold it to be so; nor need the warrant of commitment state more than that the judge has been wilfully insulted. To say to a judge, in reference to an observation in his judgment, "that is a most unjust remark," is a wilful insult within the section (*Reg.* v. *Jordan* (C. A.), (1888) 57 L. J. Q. B. 483). The recital that the plaintiff had insulted the judge is a sufficient adjudication of the offence in the warrant of committal. It is not necessary that it should go further and describe the nature of the insults (*Levy* v. *Moylan*, (1850) 1 L. M. & P. 307; 10 C. B. 189; 19 L. J. C. P. 308; 84 R. R. 524; and see *Ex parte Pater*, (1864) 5 B. & S. 299; 33 L. J. M. C. 142; 136 R. R. 538).

Various contempts, punishable by attachment, will hereafter be mentioned, *e.g.*, under Order XVI. r. 21. The above provisions do not extend to them.

To what prisons committals may be made.

12 & 13 Vict. c. 101, ss. 1, 2, 3.

19 & 20 Vict. c. 108, s. 74.

163. If a judge orders any person to be committed to prison either for contempt or in pursuance of the Debtors Act, 1869, he shall order such person to be committed to a prison which shall from time to time, by order of one of Her Majesty's principal Secretaries of State, be allowed as a place of imprisonment for persons committed by the judge of such court: Provided that, until such order of a Secretary of State has been made, the person may be committed to any prison to which the judge now has power to commit him.

To what Prison.]—The debtor against whom an order of commitment is made, must be committed to the particular prison designated by various orders of the Home Secretary. The orders apply to all commitments whatsoever, and will be found in Appendix D, *post*, p. 893.

PART VIII.

Rules; Fees; Fines; Unclaimed Money in Court.

Rules, etc., and forms of proceedings and scale of costs to be framed by judges appointed by Lord Chancellor.

19 & 20 Vict. c. 108, ss. 5, 32.

164. The Lord Chancellor may appoint five judges and from time to time fill up any vacancies in their number, to frame rules and orders for regulating the practice of the courts and forms of proceedings therein, and scales of costs to be paid to counsel and solicitors, and from time to time to amend such rules, orders, forms, and scales; and such rules, orders, forms, and scales, or amended rules, orders, forms, and scales, certified under the hands of such judges, or any three or more of them, shall be submitted to the Lord Chancellor, who may allow or disallow, or alter the same; and the rules, orders, forms, and scales, or amended rules,

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orders, forms, and scales, so allowed or altered, subject to the concurrence of the authority for making rules of the Supreme Court, as in the Supreme Court of Judicature Act, 1884, provided, shall, from a day to be named by the Lord Chancellor, be in force in every court. Such power of making rules and orders shall extend to all matters of procedure or practice, or relating to or concerning the effect or operation in law of any procedure or practice, in any case within the cognizance of county courts, as to which rules of the Supreme Court have been or might lawfully be made for cases within the cognizance of the High Court of Justice. The rules, orders, forms, and scales of costs in force at the commencement of this Act shall continue to be in force unless and until otherwise provided. In any case not expressly by this Act or in pursuance thereof provided for the general principles of practice in the High Court of Justice may be adopted and applied to actions and matters.

28 & 29 Vict. c. 99, ss. 16, 17.

30 & 31 Vict. c. 142, ss. 15, 27.

38 & 39 Vict. c. 50, s. 8.

44 & 45 Vict. c. 68, s. 27.

9 & 10 Vict. c. 95, s. 78.

Rules of Practice.]—This power extends to the making of rules to carry into effect the County Courts Act, 1903.

The rules and forms at present in force are framed under this section. They supersede all other rules.

Rules must not be ultra vires.]—It seems that rules of practice must not be inconsistent with or repugnant to the provisions of the Act of Parliament under which they are framed. The rules made under the 12 & 13 Vict. c. 101, s. 12, were to have the same force and effect as if enacted by Parliament, but it was nevertheless held that a rule providing that seven days' notice should be given of an intended application for a new trial did not take away the discretion which the 9 & 10 Vict. c. 95, s. 89, gave the judge to grant a new trial, and that he might grant it though the rule had not been complied with (*In re Carter*, (1855) 4 E. & B. 696; 24 L. J. Q. B. 141; 99 R. R. 699). So a rule under the 19 & 20 Vict. c. 108, s. 32, which provided that an appeal case should be presented for signature at the first court held after twelve clear days from the date of the judgment, was held not to take away the appellant's right to have the case signed at a later day (*Hacking* v. *Lee*, (1860) 2 E. & E. 906; 29 L. J. Q. B. 204). In *Irving* v. *Askew* ((1870) L. R. 5 Q. B. 208, 211; 39 L. J. Q. B. 118), Hannen, J., delivering the judgment of the court, said: "If the rule were really repugnant to the provisions of the Act of Parliament, I should think that the rule, though made under the powers of the Act, would not override its enactments." So a rule similar to Order II. r. 1, of the present rules was doubted by the judges, and an opinion expressed that it was *ultra vires* (*Wetherfield* v. *Nelson*, (1869) L. R. 4 C. P. 571; 38 L. J. C. P. 220; see also an example of an invalid rule of quarter sessions, *R.* v. *Pawlett*, (1873) L. R. 8 Q. B. 491; 42 L. J. M. C. 157. See *A.-G.* v. *Sillem*, (1864) 10 H. L. C. 704; 33 L. J. Ex. 92, 209; 138 R. R. 382).

Forms.]—All proceedings and documents must be in form similar to the prescribed forms, where they are applicable; and in cases where the forms are not applicable or no forms are provided, parties must frame the proceedings or documents, using as guides those contained in the Appendix to the Rules (Order LIV. r. 22). By a recent rule provision is made for the printing and supply by the Treasury of forms which are marked as "not to be printed," but which experience has shown to be in common use (Order LIV. r. 22A).

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Practice.]—No practice may prevail in any court which is inconsistent with the rules, nor may any matter be added to or taken from any form in the Appendix, whereby any obligation is imposed upon any suitor or any officer of the court to which he is not liable under statute or the rules or otherwise by law (Order LIV. r. 23). In many cases the rules leave the determination of particular matters in the discretion of the judge, and he is not permitted to prescribe for his own guidance, or that of the officers of the court, general rules to be applied to cases as they arise, instead of exercising his discretion in the particular case. Thus, where a judge made a general rule that solicitors' costs should not be allowed in certain cases, and refused them in a particular case in obedience to his general rule, it was held that he had not exercised his discretion, and he was ordered to hear and determine the application (*R.* v. *Marylebone C. C.*, (1890) 34 S. J. 459; see also *The Cashmere*, (1890) 15 P. D. 121; 59 L. J. P. 57).

The general practice of the court prescribed by the rules, applies to all proceedings whatsoever authorised by any existing or future Act to be commenced or taken in any county court, except and so far as such practice may be inconsistent with the provisions of any such Act or of any rules made as to the procedure under such Act (Order L. r. 36).

The last words of the section (*supra*) empower the judge to allow a pauper plaintiff to sue *in formâ pauperis*; see *Chinn* v. *Bullen*, (1849) 8 C. B. 447; 19 L. J. C. P. 42; 79 R. R. 566, decided upon similar words in 9 & 10 Vict. c. 95, s. 78. Phillimore, L.J., in *Perry* v. *London General Omnibus Co.*, (1916) 2 K. B. p. 346; also to dismiss a case as being frivolous and vexatious (*Norman* v. *Matthews*, (1916) 85 L. J. K. B. 857).

Order as to fees.

19 & 20 Vict. c. 108, s. 79. 28 & 29 Vict. c. 99, s. 13.

165. The Treasury from time to time, with the concurrence of the Lord Chancellor, may make orders as to the fees to be paid on any proceedings which are now or shall hereafter be authorised to be taken in the courts, whether any fee is now payable thereon or not: Provided always, that every such order shall be notified to both houses of Parliament within ten days from the commencement of the session next after the making thereof.

How regulated.]—The fees now taken on proceedings in the courts are regulated by an order made December 30th, 1903, as amended by an order of February 22nd, 1906. By sect. 165, the Treasury may from time to time, with the consent of the Lord Chancellor, make orders as to the fees to be paid on any proceedings which were then or should thereafter be authorised to be taken in the courts.

A fee may be charged for making a return to a *certiorari*; and, *semble*, an action will lie to recover all fees duly authorised (*Batt* v. *Price*, (1875) 1 Q. B. D. 264; 45 L. J. Q. B. 170), or they may be recovered in the same manner as a judgment debt. A table of all fees must be posted in some conspicuous place in every court house and in every registrar's office (see sect. 166).

Fees; how payable, and where to be exhibited.

19 & 20 Vict. c. 108, s. 78.

166. The fees payable on the proceedings in the courts shall, except in interpleaders, or where such fees shall be payable in respect of keeping possession, appraising or selling goods seized, be paid in the first instance by the party on whose behalf any such proceeding is to be taken before such proceeding is taken; and in default of the payment of any fees, payment thereof shall, by order of the judge, be enforced in like manner as payment of any debt adjudged by the court to be paid; and a table of all fees

shall be posted in some conspicuous place in every court house and registrar's office. Section 166.

Court Fees.]—The costs which a successful plaintiff incurs necessarily include court fees, which are always in the first instance payable by the party on whose behalf any proceeding is taken, except in interpleaders, or where fees are payable in respect of keeping possession, appraising, or selling goods seized (see sect. 166). In all cases in which costs abide the event (*i.e.*, in default of an order by the judge), or where the judge makes an order for costs generally, a successful plaintiff will be entitled to recover from the defendant, as part of his costs, the court fees which he has paid, subject, however, to this proviso, that if the plaintiff or defendant recovers less than the amount of his claim or counterclaim, so as to reduce the amount of court fees recoverable by him, he will have to pay the difference himself (Order LIII. r. 19).

167. Payment of any fine imposed by any court under the authority of this Act may be enforced upon the order of the judge, in like manner as payment of any debt adjudged by the court to be paid, or in such manner as payment of a sum adjudged to be paid on summary conviction may be enforced under the Summary Jurisdiction Acts. Fines, how to be enforced. 9 & 10 Vict. c. 95, s. 87.

Where a fine, or an instalment of a fine made payable by instalments, is not paid in accordance with the order imposing such fine, the registrar must forthwith report the matter to the judge, and act on any orders given for the enforcement of such fine (Order LII. rr. 9, 10). Forms 355, 356. Payment of the fine may also be enforced in the same manner as a judgment debt, or in the same manner as money adjudged to be paid under the Summary Jurisdiction Acts (*ante*, p. 23). See these statutes, *post*, p. 866.

168. The moneys arising from any penalties, forfeitures, and fines inflicted or authorised to be imposed by this Act, when paid and levied, shall (if not by this Act directed to be otherwise applied) be from time to time paid to the registrar of the court, and accounted for by him to the treasurer. Penalties to be paid to registrar and accounted to treasurer. 9 & 10 Vict. c. 95, s. 133.

169. The registrar of every court from time to time, as often as he shall be required so to do by the Treasury, and in such form as the Treasury shall require, shall deliver to the treasurer a full account in writing of the fees received in that court under the authority of this Act, and a like account of all fines levied by the court, and of the expenses of levying the same. Account of fees and fines. 9 & 10 Vict. c. 95, s. 41. 15 & 16 Vict. c. 54, ss. 8, 9.

170. The registrar of every court shall, once in every year, and oftener if required, on such day as shall be appointed by the Treasury, make out and send to the comptroller and auditor-general an account of all sums paid over by him to the treasurer of the court; and every such account, duly vouched by receipts given under the hand of the treasurer, shall be a voucher to charge the treasurer in his account before the said comptroller and auditor-general. Account to auditor-general. 9 & 10 Vict. c. 95, s. 46. 29 & 30 Vict. c. 14, s. 10.

Section 171.

Audit of registrar's accounts.
9 & 10 Vict. c. 95, s. 42.

171. The treasurer of every court shall from time to time audit and settle the accounts of the registrar and other officers of the court, and shall receive the balance of the various moneys which such registrar and other officers shall have received under this Act; and the registrar shall pay over to the treasurer of the court, at such times as may be directed by the Treasury, the moneys received by him as a registrar.

In *Burridge* v. *Nicholetts*, (1861) 6 H. & N. 383; 30 L. J. Ex. 145; 123 R. R. 582, it was held that where a registrar, to whom notice of the treasurer's intention to audit the books had been given, locked up his office and left at the time for closing appointed by the then 6th Rule of Practice, the treasurer was justified in breaking open the office to get at the books.

The books of the court, including the bankers' book and cash book, must be at all times open to his inspection (Order II. r. 12).

Rules as to balances.
9 & 10 Vict. c. 95, s. 44.
29 & 30 Vict. c. 14, s. 5.

172. The Treasury shall from time to time make such rules as they shall think fit for securing the balances and other sums of money in the hands of any officers of every court, and for the due accounting for and application of all such balances and other sums of money.

Suitors' money unclaimed in six years to be forfeited.
9 & 10 Vict. c. 95, s. 112.

173. The registrar of every court shall, in the month of March in each year, make out a correct list of all sums of money belonging to suitors in the court which shall have been paid into court, and which shall have remained unclaimed for five years before the first day of January then last past, specifying the names of the parties for whom or on whose account the same were so paid into court; and a copy of such list shall be put up and remain during court hours in some conspicuous part of the court house, and at all times in the registrar's office, and all sums of money which shall have been paid into any such court to the use of any suitors thereof, and which shall have remained unclaimed for the period of six years on the first day of January next after the said list shall have been put up as aforesaid, shall be accounted for by the registrar to the treasurer, and no person shall be entitled to claim any sum which shall have remained so unclaimed; but no time during which the person entitled to claim such sum shall have been an infant or feme covert, or of unsound mind, or beyond the seas, shall be taken into account in estimating the said period of six years.

PART IX.

Miscellaneous Provisions.

Section 174.

Publication of Orders in Council.

174. Any Order in Council made for the purposes of this Act shall be published in the *London Gazette*.

9 & 10 Vict. c. 95, s. 8.

175. No privilege, except as hereinafter excepted, shall be allowed to any solicitor or other person to exempt him from the jurisdiction of the court.

No privilege allowed.

9 & 10 Vict. c. 95, s. 67.

12 & 13 Vict. c. 101, s. 18.

Privilege.]—No privilege, except as stated below, is allowed to any solicitor or other person to exempt him from the jurisdiction of the court (see sect. 175; see *per* Jervis, C.J., *Borradaile* v. *Nelson*, (1854) 14 C. B. 655; 23 L. J. C. P. 159; and see *Blair* v. *Eisler*, (1888) 57 L. J. Q. B. 512; 21 Q. B. D. 185, where it was held that s. 5 of the County Courts Act, 1867, which deprived plaintiffs in actions commenced in the High Court of costs if less than £20 in contract, or £10 in tort, was recovered, applied to an action in which a solicitor was plaintiff). But a privileged person, as a Queen's priest, cannot be arrested under process issued from a county court (*Ex parte Dakins*, (1855) 16 C. B. 77; 24 L. J. C. P. 131; 100 R. R. 620).

Universities.]—The jurisdiction of the courts of the chancellors or vice chancellors of Oxford and Cambridge is not affected by the County Courts Act, and the chancellors, masters and scholars of those universities enjoy an absolute immunity from county court proceedings in cases within their privileged jurisdiction (see sect. 176).

Justices.]—Justices of the peace have, in certain cases, a power to oust the jurisdiction of the county courts, on giving notice of objection in a specified manner (11 & 12 Vict. c. 44, s. 10). See *ante*, p. 42.

Defendants.]—Where a claim in a personal action exceeds a certain sum, a defendant may generally object to the jurisdiction, and obtain the removal of the cause into the High Court (see sect. 62). In these cases the county courts have, therefore, jurisdiction, unless the defendant determines it in the proper manner.

Stannaries Court.]—This court has since January 1st, 1897, ceased to exist (59 & 60 Vict. c. 45). Jurisdiction transferred to County Courts of Cornwall, *post*, p. 2264.

Saving for universities of Oxford or Cambridge.

9 & 10 Vict. c. 95, s. 140.

176. Nothing in this Act contained shall be construed to alter or affect the rights or privileges of the chancellor, masters, and scholars of the universities of Oxford or Cambridge respectively as by law possessed, or the jurisdiction of the courts of the chancellors or vice-chancellors of the said universities as holden under the respective charters of the said universities or otherwise.

Saving for court of vice-warden of Stannaries.

9 & 10 Vict. c. 95, s. 141.

28 & 29 Vict. c. 99, s. 6.

177. Nothing in this Act contained shall be construed to affect the court of the vice-warden of the Stannaries; but this provision shall not be deemed to prevent the establishment of any court under this Act within the Stannaries, or to limit or affect the jurisdiction of any court so established under this Act: Provided that no judge shall have authority to entertain jurisdiction in any

Section 177. case to which the equitable jurisdiction of the said court of the vice-warden of the Stannaries at present extends.

See p. 207.

When treasurer's clerk to be deemed a civil servant. 29 & 30 Vict. c. 14, s. 5.

178. If the Treasury shall think fit to employ in the examination of the accounts of the courts any person whom they may think it desirable so to employ on account of knowledge acquired by him as clerk to any treasurer of a court, such clerk shall, if after one year the Treasury shall continue to employ him, be deemed a servant in the permanent civil service of the State, and be entitled to superannuation.

Townhalls used for sittings. 13 & 14 Vict. c. 61, s. 24.

179. In every town or place where there shall be a court the townhall, court house, or other public building belonging to any county, city, borough, town, or place, or vested in any public body, shall, with all necessary rooms, furniture, and fittings in any such public building, be used for the purposes of holding the court, without any charge for rent or other payment save and except the reasonable and necessary charges for lighting, warming, and cleaning, when such public building is used for the purpose of the court: Provided always, that the necessary arrangements shall be made so that the sittings of the court shall not interfere with the business of the county, city, borough, or town usually transacted in such townhall, court house, or other public building, or with any purposes for which such townhall, court house, or other public building may be used by virtue of any local act in that behalf: Provided also, that this enactment shall not apply to any city, borough, or town in which a building shall have been heretofore erected for the purposes of holding the court, and for the business connected with such court.

Process of the court to be under seal. 9 & 10 Vict. c. 95, s. 57.

180. For every court there shall be a seal of the court, and all summonses and other process issuing out of the said court shall be sealed or stamped with the seal of the court, and all such summonses and other process purporting to be so sealed shall in England be received in evidence without further proof thereof; and every person who shall forge the seal or any process of the court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said court, knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process or authority of the said court, shall be guilty of felony.

A., a creditor of J. R., sent a letter, purporting to have been signed by the clerk of a county court, demanding payment, and in default threatening proceedings in a county court; J. R.'s wife then went to A., and he told her that he had ordered the county court to send the letter. She then

paid him the amount, and he then demanded, but did not receive, 1*s.* 3*d.* for the county court expenses: it was held, on these facts, that A. was guilty of a felony under the latter part of the section (*R.* v. *Evans*, (1857) 1 Dears. & B. C. C. 236; 26 L. J. M. C. 92). So was a person who filled up a blank form of application for a summons, and signed it "W. G., registrar of the Taunton Court," and indorsed a notice on the back of it stating that execution would be issued unless the amount were immediately paid, and signed it "W. G." (*R.* v. *Richmond*, (1859) 1 Bell, C. C. 142; 28 L. J. M. C. 188). But where a notice to produce documents at the hearing of a cause in a county court was sent by post to the prosecutor, no plaint having been entered, it was held that the paper was only a notice to produce and did not purport to be a process of the court (*R.* v. *Castle*, (1857) 1 Dears. & B. C. C. 363; 27 L. J. M. C. 70). **Section 180 Notes.**

181. The expense of supplying the courts and offices with law and office books and stationery, and of postage stamps, and the disbursements of the high bailiffs, in conveying to prison persons committed by the courts, and all other expenses arising out of any jurisdiction now or hereafter conferred on such courts or any officer thereof, shall be paid by the Treasury out of any moneys to be from time to time provided by Parliament for such purposes. Incidental expense. 19 & 20 Vict. c. 108, s. 85. 50 & 51 Vict. c. 3, s. 3.

182. No action shall be brought or be maintainable in any county or other court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry which was consumed on the premises where sold or supplied, or in respect of any money or goods lent or supplied, or of any security given for, in, or towards the obtaining of any such ale, porter, beer, cider, or perry. No action for beer, etc., consumed on the premises to be brought. 30 & 31 Vict. c. 142, s. 4.

The 24 Geo. II. c. 40, s. 12, as amended by 25 & 26 Vict. c. 38, prevents the recovery of sums under 20*s.* for spirituous liquors, unless delivered at the purchaser's residence in reputed quart bottles.

183. A register of every judgment entered in the courts for the sum of ten pounds and upwards, and of every such other judgment or order as may be prescribed, shall be kept in such manner, in such place, and under such regulations as the Treasury shall appoint, and for the inspection of the said register when formed such fees shall be charged to persons desirous of inspecting the same as shall be appointed by the Treasury, and the proceeds of such fees shall be applied, in such manner as the Treasury shall appoint, in paying the expenses incurred in maintaining the said register; and the surplus of such fees, after providing for the payment of such expenses, shall be paid over to the credit of the consolidated fund. Register of judgments. 15 & 16 Vict. c. 54, s. 18. 28 & 29 Vict. c. 99, s. 15.

Persons in the country may obtain information through the registrar of the court in the district where they reside, or by writing to the registry. In these cases the fee is 1*s.* for each name. When a judgment has been satisfied, the name of the defendant may be removed from the registry on payment to the registrar of the court of 6*d.*

Section 183 Notes.

A return of every judgment entered in the City of London Court for 10*l.* or upwards has to be transmitted to the registry of County Courts judgments (Order XXXVI. r. 1), and also of Admiralty judgments and orders, and judgments and orders in actions or matters commenced under the equitable jurisdiction of the court (Order XXXVI. r. 2).

The publication of extracts from the register of judgments is privileged (*Searles* v. *Scarlett* (C. A.), (1892) 2 Q. B. 56; 61 L. J. Q. B. 573).

Acknowledgments by married women to be received by judge.

19 & 20 Vict. c. 108, s. 73.

184. Any acknowledgment to be made by any married woman of any deed under the Act of the third and fourth years of the reign of His late Majesty King William the Fourth, chapter seventy-four, may be received by a judge in the same manner as such acknowledgment may be received by a judge of the High Court.

Acknowledgments by Married Women.]—Any acknowledgment to be made by any married woman of any deed, under the Fines and Recoveries Act, may be received by a judge of a county court, in the same manner as the acknowledgment may be received by a judge of the High Court (51 & 52 Vict. c. 43, s. 184; 3 & 4 Will. 4, c. 74, s. 79); the sections of the 3 & 4 Will. IV. c. 74, relating to such acknowledgments, and still unrepealed, and also the High Court rules in reference thereto, will be found at p. 306.

Before receiving the acknowledgment, the judge must examine the married woman apart from her husband and the solicitor employed, touching her knowledge of the deed, and must ascertain whether she freely and voluntarily consents to it; and unless she does so, he must not permit her to acknowledge it; and the deed will then, so far as her execution is concerned, be void (3 & 4 Will. IV. c. 74, s. 80; and see Rule 2, p. 307). The judge must, after acknowledgment, sign a memorandum of the acknowledgment, which should have been previously indorsed on, or written at the foot or in the margin of, the deed (3 & 4 Will. IV. c. 74, s. 84; Rules 3, 5, p. 308).

When the above formalities have been performed all the legal requirements at present in operation will have been satisfied. Until the Conveyancing Act of 1882 came into operation, it was necessary, in addition, to prepare a certificate of the acknowledgment; and it, and an affidavit by the solicitor, verifying the certificate and the acknowledgment, and also containing statements of his opinion as to the age and understanding of the married woman, had to be filed at the central office of the Royal Courts of Justice. This cumbersome machinery has now disappeared, and mere acknowledgment in the mode above described suffices (see 45 & 46 Vict. c. 39, s. 7).

City of London Court.

28 & 29 Vict. c. 99, s. 4.
30 & 31 Vict. c. 142, s. 35.

185. The courts held by virtue of the London (City) Small Debts Extension Act, 1852, shall be held by the name of the City of London Court and shall be a court of record, and its decisions shall be subject to appeal in the same way and on the same conditions as the decisions of a county court are subject for the time being. The judge and officers of the City of London Court shall respectively have and exercise the like jurisdiction, power, and authority in all respects, except the power of appointing officers, as are for the time being possessed and exercised by the judge and officers respectively of a county court. The rules and orders in force for the time being for regulating the practice of and costs in the county courts, and forms of proceedings therein,

shall be in force in the said City of London Court, to the exclusion of any other rules and orders; and the same fees shall be taken for proceedings in which jurisdiction is hereby given to the court as upon similar proceedings in the county courts, and such fees shall be applied in the same manner as the fees taken under the provisions of the said London (City) Small Debts Extension Act, 1852; provided that nothing in this Act shall take away, lessen, or diminish any of the powers, rights, or privileges of the judge of the said court, or the authority of the mayor, aldermen, and commons of the city of London in common council assembled in relation to such court, or to the judge or officers thereof, or to the fees taken therein, as such powers or authority heretofore existed.

Section 185.

15 & 16 Vict. c. lxxvii.

City of London Court.]—The City of London Court is substantially a county court, and is subject to the same provisions as other county courts; nothing in the County Courts Act is, however, to take away or diminish any of the powers, rights, or privileges of the judge, or the authority of the mayor, aldermen, and commons of the city of London in council assembled in relation to such court, or to the judge or officers thereof, or to the fees taken therein, as such powers or authority previously existed (see sect. 185). The powers, rights, and privileges reserved by this proviso appear to have reference to salary, fees, and compensation only, though the meaning is obscure; and the proviso does not, at any rate, operate to exempt the judge from the provisions of the 51 & 52 Vict. c. 43, s. 131; and if he refuses to perform his duty, a rule to compel him to do so will lie under the last-mentioned section (*Blades* v. *Lawrence*, (1874) L. R. 9 Q. B. 374; 43 L. J. Q. B. 133). The power to remove the registrar is reserved to the common council, and is not vested in the Lord Chancellor, as in other cases (*Osgood* v. *Nelson*, (1871) L. R. 5 H. L. 636; 41 L. J. Q. B. 239). Sect. 47 of 51 & 52 Vict. c. 43, as to additional remuneration of officers, does not extend to the City of London Court.

Sect. 39 of the London (City) Small Debts Extension Act, 1852 (15 & 16 Vict. c. lxxvii.), is not repealed by sect. 74 of the 51 & 52 Vict. c. 43, hence the City of London Court has jurisdiction if the defendant has "employment" within the City (*Kutner* v. *Phillips*, (1891) 2 Q. B. 267; 60 L. J. Q. B. 505), and without leave of judge or registrar, where the cause of action wholly or in part arose therein (*Felton* v. *Bower*, (1900) 1 Q. B. 598; 69 L. J. Q. B. 351).

For express provisions as to the service of process from the City of London court, see 15 & 16 Vict. c. lxxvii. s. 41, at p. 260; it seems obsolete since 51 & 52 Vict. c. 43, ss. 84, 185, 186.

The City of London Court being now in effect a county court (51 & 52 Vict. c. 43, ss. 84, 185, 186), and subject to the general provisions applicable to county courts, it is believed that no provision in aid of the judgments of that court is necessary. The provisions of the 15 & 16 Vict. c. lxxvii. s. 94, are, however, printed at p. 260 in case of need.

Supplementary.

186. In construing this Act or any future Act relating to county courts, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have or include the meanings following: *See* Order LII.

Interpretation of Act.

9 & 10 Vict. c. 95, s. 142.

30 & 31 Vict. c. 142, s. 5.

"Lord Chancellor" shall include Lord Keeper or the first commissioner for the custody of the Great Seal; and

Section 186.

"Treasury" shall mean the commissioners of Her Majesty's Treasury or any two of them; and

"Treasurer" shall include any person appointed by the Treasury to supervise the persons appointed to examine the accounts of the registrars and other officers of the court; and

"Person" shall include a body corporate or politic; and

"Landlord" shall be understood to mean the person entitled to the immediate reversion of the lands, or, if the property be holden in joint tenancy, coparcenary, or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion; and

"Supreme Court" shall mean the Supreme Court of Judicature in England; and

"High Court" shall mean Her Majesty's High Court of Justice; and

"Judge" shall mean judge of county courts; and

"Registrar" shall mean registrar of a county court, or where there are joint registrars either of such registrars; and

"Bailiff" shall include high bailiff and any registrar performing the duties of high bailiff; and

"Order" shall include rule; and

"Action" shall include suit, and shall mean every proceeding in the court which may be commenced as prescribed by plaint; and

"Matter" shall mean every proceeding in the court which may be commenced as prescribed otherwise than by plaint; and

"Prescribed" shall mean prescribed by the county court rules for the time being; and

"Court" or "county court" shall mean and include any court held under this Act, and also the City of London Court, and shall include and mean the judge or registrar of the court.

"Return-day" shall mean the day appointed in any summons or proceeding for the appearance of the defendant, or any other day fixed for the trial or hearing of any action or matter.

"Party" shall include every person served with notice of, or attending any proceeding, although not named as a party to such proceeding.

Construction of Acts referring to county courts.

187. Any reference in any of the Supreme Court of Judicature Acts and the Statute Law Revision and Civil Procedure Act, 1883, to an inferior court shall be construed as referring to courts under this Act as well as to any other inferior court. (Rep. except as above, 52 & 53 Vict. c. 63.)

Section 188.
Repeal.

188. The Acts specified in the schedule to this Act are hereby repealed from and after the commencement of this Act.

Provided that—

(1) Any Order in Council or rule or order now in force, whether made under any enactment hereby repealed or not, shall continue in force until otherwise provided; and

(2) Any judge or officer appointed under any enactment hereby repealed shall continue and be deemed to have been duly appointed under this Act; and

(3) Any enactment or document referring to any act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment in this Act.

(4) This repeal shall not affect—

(*a*) The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed; or

(*b*) Any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed; or

(*c*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*d*) Any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed; and

(5) This repeal shall not revive any enactment, right, office, privilege, matter or thing not in force or existing at the commencement of this Act.

SCHEDULE.

Acts.	Short Title.
9 & 10 Vict. c. 95. An Act for the more easy recovery of small debts and demands in England.	"The County Courts Act, 1846."
12 & 13 Vict. c. 101. An Act to amend the Act for the more easy recovery of small debts and demands in England, and to abolish certain inferior courts of record.	"The County Courts Act, 1849."
13 & 14 Vict. c. 61. An Act to extend the Act for the more easy recovery of small debts and demands in England.	"The County Courts Act, 1850."

SCHEDULE—*continued.*

Acts.	Short Title.
15 & 16 Vict. c. 54. An Act further to facilitate and arrange proceedings in the county courts.	"The County Courts Act, 1852."
19 & 20 Vict. c. 108. An Act to amend the Acts relating to the county courts.	"The County Courts Act, 1856."
20 & 21 Vict. c. 36. An Act to supply an omission in a schedule to the Act to amend the Acts relating to the county courts.	
21 & 22 Vict. c. 74. An Act for the re-arrangement of the districts of the county courts among the judges thereof.	"The County Courts Act, 1858."
22 Vict. c. 8. An Act to repeal the thirty-second section of the Act for the more easy recovery of small debts and demands in England, and to make further provision in lieu thereof.	
25 & 26 Vict. c. 99, s. 4. An Act to amend the Bankruptcy Act, 1861.	
28 & 29 Vict. c. 99. An Act to confer on the county courts a limited jurisdiction in equity.	"The County Courts Act, 1865."
29 & 30 Vict. c. 14. An Act for the abolition of the offices of treasurer and of high bailiffs of county courts as vacancies shall occur, and to provide for the payment of future registrars of county courts.	"The County Courts Act, 1866."
30 & 31 Vict. c. 142. An Act to amend the Acts relating to the jurisdiction of the county courts.	"The County Courts Act, 1867."
38 & 39 Vict. c. 50. An Act to amend the Acts relating to the county courts.	"The County Courts Act, 1875."
45 & 46 Vict. c. 57. An Act to amend the law relating to costs and salaries in county courts.	"The County Courts (Costs and Salaries) Act, 1882."
50 & 51 Vict. c. 3. An Act to amend the Acts relating to county courts, so far as regards the payment of certain expenses connected with the county courts.	"The County Courts (Expenses) Act, 1887."

Construction of Acts and Rules.—Any reference in any Act passed since 1846 to a county court must be construed as referring to a court under the 51 & 52 Vict. c. 43, unless a contrary intention appears (52 & 53 Vict. c. 63, s. 6). Any reference to an inferior court in any of the Judicature Acts or the Statute Law Revision Act, 1883, must be construed as referring to courts under the 51 & 52 Vict. c. 43, as well as to other inferior courts (see sect. 187). The County Courts Acts of 1888 and 1903 are to be construed as one Act (3 Edw. VII. c. 42, s. 8).

Before the Act of 1888 there was an appeal in Admiralty actions, by virtue of sect. 10 of the County Courts Act, 1875, without leave, if the divisional court altered the judgment of the county court, notwithstanding the provisions of sect. 45 of the Judicature Act, 1873 (*The Lydia* (C. A.), (1888) 14 P. D. 1; 58 L. J. Adm. 37); and it has been held that although sect. 10 of the Act of 1875 is repealed by the Act of 1888, the provision in it that the repeal of the Acts repealed by it shall not revive any enactment not in force at the commencement of the Act (see sect. 188), prevents the application of sect. 45 of the Judicature Act to such appeals, and continues the right of appeal without leave (*The Dart* (C. A.), (1893) P. 33; 62 L. J. P. 32).

Unless a contrary intention appears, all words importing the masculine gender must be construed to include females, the singular to include the plural, and the plural the singular (52 & 53 Vict. c. 63, s. 1). Month means calendar month, although in the registrar's minute of the order upon a judgment summons it means a lunar month (*Saunders* v. *Swansea Finance Co.*, (1905) 21 T. L. R. 317). Land includes messuages, tenements and hereditaments, houses and buildings of any tenure. Oath and affidavit, in the case of persons allowed to affirm or declare instead of swearing, include affirmation and declaration, and swear includes, in the like case, affirm and declare (52 & 53 Vict. c. 63, s. 3).

The meaning of various particular words defined by the 51 & 52 Vict. c. 43, s. 186, will be found in that section.

The same words when used in the rules have the same meaning as in the Act, unless there is something in the subject or context repugnant to such meaning (see Order LV.).

The meaning of other particular words in the rules will be found in Order LV.

THE COUNTY COURTS ACT, 1903.

[3 Edw. VII. c. 42.]

An Act to extend the Jurisdiction of the County Courts.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the County Courts Act, 1903. Short title.

2. This Act shall come into operation on the first day of January one thousand nine hundred and five. Commencement of Act.

3. The portions of the fifty-sixth, fifty-seventh, fifty-eighth, fifty-ninth, sixtieth, eighty-first, ninety-sixth, one hundred and sixteenth, one hundred and thirty-eighth, and one hundred and thirty-ninth sections of the County Courts Act, 1888, containing the words "fifty pounds" are hereby repealed, and in lieu thereof there shall be substituted the words "one hundred pounds." Extension of jurisdiction of court. 51 & 52 Vict. c. 43.

Section 4.

Juries.

4. Section one hundred and two of the County Courts Act, 1888, shall be read as if the word "eight" were substituted for the word "five."

This section increases the number of jurors to be impanelled to try a case from five to eight.

Transference of actions in which the plaintiff claims more than fifty pounds by virtue of this Act.

5. It shall be lawful for His Majesty by Order in Council to provide that the actions in which the plaintiff claims a sum exceeding fifty pounds by virtue of this Act shall be tried in any court, where His Majesty is satisfied that due provision has been made for carrying on the business of the court without interference with the ordinary jurisdiction of the court, and of which the judge of the court in which such actions may be commenced is the judge (*a*), and that the court to which such actions may be transferred for trial shall have the same jurisdiction in such actions as it would have had in case they had been commenced therein, and that the judgment of the court in which such actions are tried shall have the same effect as if the judgment therein had been the judgment of the court in which they were commenced.

NOTE.—(*a*) See Order in Council, *post*, p. 217.

Where actions are so transferred for trial under Order in Council, the special procedure prescribed by Order XXIIA. rr. 22—26 must be followed.

Registrars.

6.—(1) Where two or more districts are consolidated, notwithstanding anything in section forty-five of the County Courts Act, 1888, contained, the Lord Chancellor, with the consent of the Treasury, may make such provision for the duties of the registrar and otherwise as he may think fit.

(2) Where an order has been made as to a registrar under section forty-five of the County Courts Act, 1888, he shall account for and pay over to the Exchequer all fees whatsoever received by him after the date of such order in such manner as the Lord Chancellor, with the concurrence of the Treasury, may direct.

Rules.

7. The power to make rules of court in accordance with the one hundred and sixty-fourth section of the County Courts Act, 1888, shall extend to making rules for carrying this Act into effect.

(See these Rules contained in Order XXIIA.)

Construction.

8. This Act and the County Courts Act, 1888, shall be construed as one Act.

COUNTY COURTS ORDER IN COUNCIL, 1904.

COUNTY COURTS ACT, 1903.

[3 Edw. VII. c. 42.]

At the Court at Buckingham Palace, the 12th day of December, 1904.

Present,
The King's Most Excellent Majesty in Council.

Pursuant to section 5 of the County Courts Act, 1903, His Majesty is pleased by and with the advice of his Privy Council to order and it is hereby ordered as follows :—

1. This order may be cited as the County Courts Order in Council, 1904.

2. As respects the county court circuits mentioned in the first column of the schedule hereto, the county courts named in the second column of the schedule opposite to the names of those circuits respectively shall be the courts in which shall be tried the actions in which by virtue of this Act the plaintiff claims a sum exceeding 50*l.* commenced in the courts named in the third column of the schedule opposite to the names of those courts so respectively mentioned in the second column.

3. Every court to which actions are transferred by virtue of this order shall have the same jurisdiction in such actions as it would have had in case they had been commenced therein, and the judgment of the court in which such actions are tried shall have the same effect as if the judgment therein had been the judgment of the court in which they were commenced.

A. W. FitzRoy.

SCHEDULE (*a*).

1st Column.	2nd Column.	3rd Column.
County Court Circuits.	Courts in which Actions are to be tried.	Courts from which Actions are to be transferred for trial.
Circuit No. 1.	Newcastle-upon-Tyne.	Gateshead. Morpeth and Blyth. North Shields.

Note.—(*a*) So much of this schedule as related to Circuits 9, 23, and 32 was revoked by Order in Council, April 9th, 1908, and so much as related to Circuit 27 was revoked by Order in Council, February 11th, 1907. The schedule is printed as amended.

SCHEDULE—*continued.*

1st Column.	2nd Column.	3rd Column.
County Court Circuits.	Courts in which Actions are to be tried.	Courts from which Actions are to be transferred for trial.
Circuit No. 3.	Carlisle.	Brampton. Keswick. Penrith. Wigtown.
	Kendal.	Ambleside. Appleby. Kirkby Lonsdale.
Circuit No. 6.	Liverpool.	Ormskirk and Southport. St. Helens and Widnes.
Circuit No. 13.	Sheffield.	Glossop. Rotherham.
Circuit No 15.	Stockton-on-Tees.	Barnard Castle. Darlington. Leyburn. Northallerton. Richmond.
	York.	Easingwold. Helmsley. Thirsk. Knaresborough. Ripon. Tadcaster.
	Middlesbrough.	Stokesley and Guisborough.
Circuit No. 17. (*a*)	Great Grimsby.	Barton-on-Humber. Louth.
	Gainsborough.	Brigg and Scunthorpe.
	Boston.	Sleaford. Spalding.

NOTE.—(*a*) As amended by Order in Council, April 9th, 1908.

SCHEDULE—*continued.*

1st Column.	2nd Column.	3rd Column.
County Court Circuits.	Courts in which Actions are to be tried.	Courts from which Actions are to be transferred for trial.
Circuit No. 17 —*continued.* (*a*)	Lincoln.	Horncastle. Market Rasen and Caistor.
	Grantham.	Bourne.
Circuit No. 18.	Nottingham.	Bingham. East Retford. Mansfield. Newark. Worksop.
Circuit No. 19.	Derby.	Alfreton. Ashborne. Bakewell. Belper and Ilkeston. Buxton, Chapel-en-le-Frith and New Mills. Chesterfield. Long Eaton. Wirksworth and Matlock. Burton-on-Trent.
Circuit No. 20. (*a*)	Leicester.	Lutterworth. Market Harborough.
	Ashby-de-la-Zouch.	Market Bosworth.
	Oakham.	Uppingham.
Circuit No. 26. (*a*)	Hanley.	Burslem. Cheadle. Leek. Newcastle-under-Lyme. Stoke-upon-Trent and Longton. Tunstall.
	Stafford.	Stone. Uttoxeter.

NOTE.—(*a*) As amended by Order in Council, April 9th, 1908.

SCHEDULE—*continued.*

1st Column.	2nd Column.	3rd Column.
County Court Circuits.	Courts in which Actions are to be tried.	Courts from which Actions are to be transferred for trial.
Circuit No. 29.	Bangor.	Llangefni, Holyhead, and Menai Bridge.
	Rhyl.	Denbigh. Ruthin.
	Conway.	Llanrwst.
	Chester.	Holywell. Mold and Flint.
Circuit No. 36. (*a*)	Oxford.	Abingdon. Bicester. Thame. Witney. Woodstock.
	Northampton.	Daventry. Kettering. Wellingborough.
	Banbury.	Brackley. Buckingham.
	Warwick.	Southam.
Circuit No. 38.	Braintree.	Dunmow.
	Romford.	Grays Thurrock.
	Colchester.	Halstead. Harwich.
Circuit No. 50. (*a*)	Brighton.	Dorking. Redhill. Arundel.

NOTE.—(*a*) As amended by Order in Council, April 9th, 1908.

SCHEDULE—*continued.*

1st Column.	2nd Column.	3rd Column.
County Court Circuits.	Courts in which Actions are to be tried.	Courts from which Actions are to be transferred for trial.
Circuit No. 50 —*continued.*(*a*)	Brighton.	Chichester. East Grinstead. Hastings. Haywards Heath. Horsham. Lewes and Eastbourne. Midhurst. Petworth. Rye. Worthing.
Circuit No. 51.	Winchester.	Alton.
	Basingstoke.	Andover.
	Southampton.	Bishop's Waltham. Romsey.
Circuit No. 52. (*a*)	Bath.	Bradford and Trowbridge. Calne. Chippenham. Chipping Sodbury. Devizes. Melksham. Temple Cloud. Warminster.
	Swindon.	Faringdon. Marlborough. Wantage.
	Frome.	Westbury.
Circuit No. 53.	Exeter.	Crediton. Newton Abbot and Torquay. Okehampton. Totnes and Paignton.
	Plymouth.	Kingsbridge. East Stonehouse. Tavistock.

NOTE.—(*a*) As amended by Order in Council, April 9th, 1908.

SCHEDULE—*continued.*

1st Column.	2nd Column.	3rd Column.
County Court Circuits.	Courts in which Actions are to be tried.	Courts from which Actions are to be transferred for trial.
Circuit No. 59.	Truro.	Penzance. Helston. Redruth. St. Columb Major. Falmouth. St. Austell.
	Bodmin.	Liskeard. Camelford.
	Launceston.	Holsworthy.

THE COUNTY COURTS (BUILDINGS) ACT, 1870.

[33 & 34 VICT. c. 15.]

Short title.

1. This Act may be cited as "The County Courts (Buildings) Act, 1870."

* * * * *

Transfer of property from treasurers to commissioners.

3. All property, real and personal (other than money and securities for money, books, papers, and records), belonging to any county court of or to which the treasurer of any county court or any other person is seised, possessed, or entitled in trust for a county court, under the sections of the Acts mentioned in the schedule to this Act, shall, . . . pass to and be vested in the Commissioners of Works, for the same estate and interest, and subject to the same covenants, conditions, agreements, and liabilities, for and subject to which the same were held by the said treasurer or other person.

As to providing courts, offices, etc.

4. The Commissioners of Works, with the approval of the Treasury, shall from time to time build, purchase, hire, or otherwise provide such court-house, offices, and buildings as may be necessary for carrying on the business of any county court, and cause the same to be furnished, cleaned, lighted, and warmed,

and give such directions to the registrar of each court with regard to the hiring and dismissing of servants as shall seem fit. Section 4

For the purposes of any such purchase, "The Lands Clauses Consolidation Act, 1845," and the Acts amending the same (except so much thereof as relates to the purchase of land otherwise than by agreement), are hereby incorporated with this Act, and in construing those Acts for the purposes of this Act the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to be the Commissioners of Works.

Repealed except as above, 56 & 57 Vict. c. 54.

A building which was leased by a treasurer of a county court for the purposes of the court was held not to be rateable to the relief of the poor; since there was no beneficial occupier of it, nor were any profits derived from this occupation (*R.* v. *Overseers of Manchester*, (1854) 18 Jur. 267; 23 L. J. M. C. 48; 97 R. R. 511).

Town Halls and Public Buildings.]—A greater facility for obtaining court-houses is afforded by a provision that in every town or place where a county court is held, and no court has been already erected, the town-hall, court-house, or other public building belonging to the county, city, borough, town, or place, or vested in any public body, may, with all necessary rooms, furniture, and fittings in such public building, be used for the purposes of holding the courts, without any charge for rent or other payment except reasonable charges for lighting, warming and cleaning when the building is used for the purposes of the courts: arrangements must, however, be made, so that the sittings of the courts shall not interfere with the business of the county, etc., usually transacted in the building used, or with any purposes for which it may be used by virtue of any local act (see County Courts Act, 1888, 51 & 52 Vict. c. 43, s. 179).

COUNTY COURTS (INVESTMENT) ACT, 1900.

[63 & 64 Vict. c. 47.]

An Act to amend the Law with regard to the Investment of Money Paid into a County Court.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

1.—(1) The provisions of section seventy-one of the County Courts Act, 1888, shall extend to all money paid into a county court (whether before or after the passing of this Act) in any proceeding, and ordered by the judge to be invested for the benefit of any infant or person of unsound mind. Extension of 51 & 52 Vict. c. 43, s. 71, to all proceedings.

Section 1.

For the practice as to orders for the investment of moneys awarded to infants, etc., see Order IX. r. 24.

See also War Loan (Trustees) Act, 1915 (5 & 6 Geo. V. c. 56, s. 2), "Emergency Legislation."

61 Vict. c. 37.

(2) Nothing in this Act shall affect the provisions of the Workmen's Compensation Act, 1897, with regard to the investment of money agreed or ordered to be invested under that Act in the name of the registrar.

For the provisions of the Workmen's Compensation Act, 1906, as to the investment of money, see Schedule I. pars. 5, 10, 11 and 12, and Rules 60, 61, 62, 63.

Short title.

2. This Act may be cited as the County Courts (Investment) Act, 1900.

CHAPTER II.

ACTS FURTHER EXTENDING, CONTROLLING, OR AFFECTING THE POWERS AND PROCEDURE OF THE COURT.

1. *The Judicature Acts*, 1873, 1875, 1884 . . . 225
2. *R. S. C., O.* 54, *R.* 1A, *O.* 58, *R.* 20, *O.* 59, *Rr.* 4, 7 *to* 18 229
3. *The Perjury Act*, 1911 . . . 232
4. *The Stamp Act*, 1891 . . . 233
5. *The Chancery Relief Act*, 1852 233
6. *The Wages Attachment Abolition Act*, 1870 . . . 235
7. *The Debtors Act*, 1869. . 235
8. *The Money-Lenders Act*, 1900 253
9. *The Money-Lenders Act*, 1911 258
10. *Order L., Rule* 33 . . . 258

THE JUDICATURE ACT, 1873.

[36 & 37 Vict. c. 66.]

* * * * *

Final determination of matters in controversy.

24.—(7) The High Court of Justice and the Court of Appeal respectively in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

A mere licence, which would have been revocable in law as not being coupled with a grant, but which could have been enforced in equity, is now enforceable at law (*Hurst* v. *Picture Theatres, Ltd.*, (1914) 83 L. J. K. B. 1837, overruling *Wood* v. *Ledbitter*, 13 M. & W. 838; 67 R. R. 831).

Injunction and receivers.

25.—(8) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the court shall think just; and if an injunction is asked, either

Section 25.

before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

See *Morgan* v. *Hart*, (1914) 2 K. B. 183; 83 L. J. K. B. 782.

* * * * *

Appeals from inferior court to be determined by divisional courts.

45. All appeals from petty or quarter sessions, from a county court, or from any other inferior court, which might before the passing of this Act have been brought to any court or judge whose jurisdiction is by this Act transferred to the High Court of Justice, may be heard and determined by divisional courts of the said High Court of Justice, consisting respectively of such of the judges thereof as may from time to time be assigned for that purpose, pursuant to rules of court, or (subject to rules of court) as may be so assigned according to arrangements made for the purpose by the judges of the said High Court. The determination of such appeals respectively by such divisional courts shall be final unless special leave to appeal from the same to the court of appeal shall be given by the divisional court by which any such appeal from an inferior court shall have been heard.

* * * * *

Powers of inferior courts having equity and admiralty jurisdiction.

89. (*a*) Every inferior court which now has, or which may after the passing of this Act have jurisdiction in equity, or at law and in equity, and in admiralty respectively, shall, as regards all causes of action within its jurisdiction, for the time being, have power to grant, and shall grant in any proceeding before such court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counterclaim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

NOTE.—(*a*) This section has rendered it unnecessary to rely any longer on the provisions of the Common Law Procedure Acts, 1854 and 1860, extended to county courts by Orders in Council dated respectively November 18th, 1867, May 18th, 1870, and August 14th, 1879.

As to the equitable doctrine of "time when or when not the essence of a contract," see *Stickney* v. *Keeble*, (1915) A. C. 386; 84 L. J. Ch. 259.

Counterclaims in inferior

90. Where in any proceeding before any such inferior court any defence or counterclaim of the defendant involves matter beyond

the jurisdiction of the court, such defence or counterclaim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counterclaim: provided always, that in such case it shall be lawful for the High Court, or any division or judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior court to the High Court, or to any division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer of the inferior court, to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein. Section 90. courts, and transfers therefrom.

91. The several rules of law enacted and declared by this Act shall be in force and receive effect in all courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognisable by such courts. Rules of law to apply to inferior courts.

THE JUDICATURE ACT, 1875.

[38 & 39 Vict. c. 77. August 11, 1875.]

10. (*a*) In the administration by the court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding-up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding-up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act. Amendment of 36 & 37 Vict. c. 66, s. 25, as to rules of law upon certain points.

Note.—(*a*) Amended, 56 & 57 Vict. c. 54.

THE JUDICATURE ACT, 1884.

[47 & 48 Vict. c. 61. October 24, 1884.]

* * * * *

Power to transfer interpleader proceedings to county court.

17. If it shall appear to the court or a judge that any proceeding now pending or hereafter commenced in the High Court of Justice by way of interpleader, in which the amount or value of the matter in dispute does not exceed the sum of 500*l.* (being the limit of the equitable jurisdiction given to county courts by the County Courts Act, 1865), (*a*) may be more conveniently tried and determined in a county court, the court or judge may at any time order the transfer thereof to any county court in which an action or proceeding might have been brought by any one or more of the parties to such interpleader against the others or other of them, if there had been a trust to be executed concerning the matter in question; and every such order shall have the same effect as if it had been for the transfer of a suit or proceeding under sect. 8 of the County Courts Act, 1867; and the county court shall have jurisdiction and authority to proceed therein, as may be prescribed by any county court rules for the time being in force.

Note.—(*a*) Now County Courts Act, 1888 (51 & 52 Vict. c. 43).

For practice rules with regard to remitted interpleader proceedings, see Order XXXIII.

Jurisdiction of inferior courts in counter-claims.

18. The jurisdiction of an inferior court in cases of counterclaim under sects. 89 and 90 of the Supreme Court of Judicature Act, 1873, shall not be excluded by reason—(1) that any such counterclaim involves matter not within the local jurisdiction of such inferior court, but within the jurisdiction of any other inferior court in England; or (2) that, where the counterclaim involves more than one cause of action, as to each of which the defendant might have maintained a separate action, each such cause of action being within the jurisdiction of the court, the aggregate amount of the counterclaim exceeds the jurisdiction of the court; or (3) that the counterclaim is for an amount of money exceeding the jurisdiction of the court, provided that the plaintiff does not object in writing, within such time as may be prescribed by any rules, to the court giving relief exceeding that which the court would have had jurisdiction to administer prior to the commencement of this Act. In any case where the counterclaim involves matter beyond the jurisdiction of the court, notwithstanding the provisions of this section, the court may, on such terms (if any) as the court may think just, either adjourn the hearing of the case or stay execution on the judgment, for

such time as may be necessary to enable any party to apply to remove the proceedings into the High Court of Justice or to enable the defendant to prosecute in a court of competent jurisdiction an action for the purpose of establishing his counterclaim; and in default of any such application being made, or action brought, the court shall, after the expiration of the time limited, have jurisdiction to hear and determine the whole matter in controversy, to the same extent as if all parties had consented thereto. Section 18.

* * * * *

23. The power to make rules conferred by sect. 17 of the Supreme Court of Judicature Act, 1875, and enactments amending the same, shall be deemed to include the power to make rules for regulating the procedure on appeals from inferior courts to the High Court. Power to make rules.

RULES OF THE SUPREME COURT.

Appeals—Workmen's Compensation Act, 1906, and Agricultural Holdings Act, 1908.

ORDER LIV. Rule 1a.

3. *An application for the appointment of a new arbitrator, under paragraph 7 of the second schedule to the Workmen's Compensation Act, 1897, shall be made by summons.*

Obsolete. See Workmen's Compensation Act, 1906, Sched. II. (8).

ORDER LVIII. Rule 20.

The following provisions shall apply to appeals to the Court of Appeal from decisions of judges of the county courts on questions of law under the Workmen's Compensation Act, 1897, and appeals under the Agricultural Holdings Act, 1900 (*a*):—

(*a*) Every such appeal shall be by notice of motion in accordance with Order LIX. Rule 10; and such notice of motion shall be served and the appeal set down under Order LVIII. Rule 8, within the time limited by Order LIX. Rule 12.

Note.—(*a*) Now, 1908.

The time for giving the notice of motion runs from the date of the signing of the award, and not from the date on which the decision of the tribunal was pronounced (*Clayton* v. *Jones' Sewing Machine Co.*, (1908) W. N. 253).

(*b*) It shall be the duty of the party appealing to apply to the judge of the county court for a signed copy of the note made by him of any question of law raised before him, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision on the question or matter submitted to him, and to furnish such copy for

Rule 3.

the use of the Court of Appeal : and such copy shall be used and received at the hearing of the appeal. If such notes are not produced the Court of Appeal shall have power to hear and determine the appeal upon any other evidence or statement of what occurred before the judge of the county court which the Court of Appeal may deem sufficient.

Security for Costs of Appeal.]—It has been held, under the Act of 1897, that the ordinary rule of practice of the Court of Appeal as to ordering security for the costs of an appeal is applicable to appeals under the Workmen's Compensation Act (*Hall* v. *Snowden, Hubbard & Co.*, (1889) 1 Q. B. 593 ; 68 L. J. Q. B. 363) ; if the county court judge invite an appeal, *e.g.*, by staying execution pending an appeal, the case may be treated as exceptional (*Hubball* v. *Everitt & Sons*, (1900) 16 T. L. R. 168), although in a proper case security will still be ordered (*Shea* v. *Drolenvaux*, (1903) 88 L. T. 679). Application for security ought first to be made to the appellant before it is made to the court (*Stanland* v. *North Eastern Steel Co.*, (1906) 23 T. L. R. 1). A workman may appear *in formâ pauperis* as respondent to an appeal upon filing the usual affidavit, without the addition of a case and opinion of counsel.

(*c*) Order LIX. Rules 14 and 16, shall apply to any such appeal, with the substitution of the Court of Appeal for the High Court.

(*d*) Subject to the foregoing provisions, the rules for the time being in force with respect to appeals from the High Court to the Court of Appeal shall, so far as practicable, apply to and govern appeals under the said Act to the Court of Appeal.

ORDER LIX.

Appeals from County Courts.

Appeals from inferior Courts.

4. Every judge of the High Court of Justice for the time being shall be a judge to hear and determine appeals from inferior courts, under section 45 of the principal Act. All such appeals (except Probate and Admiralty appeals from inferior courts, and from justices, which shall be to a divisional court of the Probate, Divorce and Admiralty Division) shall be entered in one list by the officers of the Crown Office Department of the Central Office, and shall be heard by such divisional court of the Queen's Bench Division as the Lord Chief Justice of England shall from time to time direct.

7. On any motion by way of appeal from an inferior court, the court to which any such appeal may be brought shall have power to draw all inferences of fact which might have been drawn in the court below, and to give any judgment and make any order which ought to have been made. No such motion shall succeed on the ground merely of misdirection or improper reception or rejection of evidence, unless in the opinion of the court, substantial

wrong or miscarriage has been thereby occasioned in the court below. Rule 7.

8. On any motion by way of appeal from an inferior court, the court to which any such appeal may be brought shall have power, if the notes of the judge of such inferior court are not produced, to hear and determine such appeal upon any other evidence or statement of what occurred before such judge which the court may deem sufficient.

8A. *Every application for a prohibition to a county court other than an application by the Attorney-General shall be brought by notice of motion served on the parties to the proceedings in the county court, or such of them as may not be applicants for the prohibition.*

(Repealed by Cr. Off. Rules, 1906, r. 1.)

9. The following rules of this order shall apply to appeals to the Queen's Bench Division from county courts and other inferior courts of record of civil jurisdiction in all proceedings other than proceedings in bankruptcy.

10. Every such appeal shall be by notice of motion, and no rule nisi or order to show cause shall be necessary. The notice of motion shall state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion shall be an eight days' notice, and shall be served on every party directly affected by the appeal entered.

11. Every appeal shall be entered at the Crown Office Department of the Central Office, and the entry shall be made by lodging a copy of the notice.

12. The notice of motion shall be served and the appeal entered within twenty-one days from the date of the judgment, order, or finding complained of; such period shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given.

Rule 13 is superseded by 51 & 52 Vict. c. 43, s. 121.

14. The appeal shall not operate as a stay of proceedings under the decision appealed from unless the inferior court shall so order, or unless within ten days after the decision a deposit shall be made of or security given to the satisfaction of such inferior court for a sum to be fixed by the said court, not exceeding the amount of the money or the value of the property affected by the judgment, order, or finding appealed from.

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15. Every appeal from an inferior court shall be entered in the proper list for hearing on such days as the Lord Chief Justice of England may direct, and shall come on to be heard in its order, unless the High Court shall otherwise direct.

16. The High Court shall have power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order, on such terms as the court shall think just, to insure the determination on the merits of the real questions in controversy between the parties.

17. Subject to these rules, the rules for the time being in force with respect to appeals from the High Court to the Court of Appeal shall, so far as practicable, apply to and govern appeals from county courts and other inferior courts of record of civil jurisdiction to the High Court.

18. Appeals from inferior courts shall in the construction of Order LIX. include every appeal, motion, or application to set aside or vary any verdict or judgment in or of any county court, or for a new trial in action in the High Court remitted to such county court for trial or otherwise.

THE PERJURY ACT, 1911.

[1 & 2 Geo. V. c. 6.]

Power to direct a prosecution for perjury.

9.—(1) Where any of the following authorities, namely, a judge of, or person presiding in, a court of record (*a*), or a petty sessional court, or any justice of the peace sitting in special sessions, or any sheriff or his lawful deputy before whom a writ of inquiry or a writ of trial is executed, is of opinion that any person has, in the course of a proceeding before that authority, been guilty of perjury, the authority may order the prosecution of that person for such perjury, in case there shall appear to be reasonable cause for such prosecution, and may commit him, or admit him to bail, to take his trial at the proper court, and may require any person to enter into a recognizance to prosecute or give evidence against the person whose prosecution is so ordered, and may give the person so bound to prosecute a certificate of the making of the order for the prosecution, for which certificate no charge shall be made.

(2) An order made or a certificate given under this section shall not be given in evidence for the purpose or in the course of any trial of a prosecution resulting therefrom.

Note (*a*).—County Courts are courts of record.

THE STAMP ACT, 1891.

[54 & 55 Vict. c. 39.]

14.—(1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in any part of the United Kingdom . . . notice shall be taken by the judge . . . of any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the court whose duty it is to read the instrument . . . of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds. Terms upon which instruments not duly stamped may be received in evidence.

(2) The officer . . . receiving the duty and penalty shall give a receipt for the same and make an entry in a book kept for that purpose of the payment and of the amount thereof, and shall communicate to the commissioners the name or title of the proceeding in which, and of the party from whom, he received the duty and penalty, and the date and description of the instrument, and shall pay over to such person as the commissioners may appoint the money received by him for the duty and penalty. The officer of the court to account for duties and penalties.

(3) On production to the commissioners of any instrument in respect of which any duty or penalty has been paid, together with the receipt, the payment of the duty and penalty shall be denoted on the instrument.

Unstamped Document.]—Where an unstamped or insufficiently stamped document is tendered in evidence, the judge should notice the defect. If the document may be legally stamped after execution, upon the receipt of the registrar for the unpaid duty, the penalty, and a further sum of 1*l.* being produced, it may be admitted, but otherwise if it cannot be legally stamped after execution. No appeal lies from the ruling of a county court judge holding that the stamp on a document is sufficient (*Mander* v. *Ridgway*, (1898) 1 Q. B. 501; 67 L. J. Q. B. 335); nor from the admission of an unstamped document without exacting a penalty (*Lowe* v. *Dorling*, (1905) 2 K. B. 501; 74 L. J. K. B. 794; (C. A.), (1906) 2 K. B. 772; 75 L. J. K. B. 1019). The penalty, or part thereof, is sometimes remitted upon petition to the proper authority.

THE CHANCERY RELIEF ACT, 1852.

[15 & 16 Vict. c. 87.]

42. Whereas by the Act of the session holden in the eighth and ninth years of the reign of her present Majesty, chapter fifteen, a certain duty of excise is imposed upon every licence to be taken Persons may sell by auction under an order of

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the Court of Chancery without being liable to duty imposed by 8 & 9 Vict. c. 15.

out by every person exercising or carrying on the trade or business of an auctioneer in any part of the United Kingdom; and it is thereby enacted, that every person who exercises or carries on the business of an auctioneer, or who acts in such capacity at any sale or roup, and every person who sells or offers for sale any goods or chattels, lands, tenements or hereditaments, or any interest therein, at any sale or roup where any person or persons become the purchaser of the same by competition, and being the highest bidder, or by any other mode of sale by competition, shall, except as hereinafter mentioned, be deemed to carry on the trade or business of an auctioneer, and shall be required to take out such licence as thereby directed; and that every person who carries on the trade or business of an auctioneer as aforesaid, without taking out such licence shall, except as therein after mentioned, forfeit one hundred pounds: and whereas doubts have arisen whether any sale or sales by way of auction can now be made under any order or decree of the Court of Chancery before any officer of the said court, or the persons by such officer in that behalf appointed, without rendering such officer or other person liable to take out such licence as by the said last-mentioned Act is directed to be taken out by all persons acting as auctioneers; and it is expedient that such doubts should be removed: Be it therefore enacted, that it shall be lawful for any master in ordinary of the Court of Chancery, and for the chief clerk of any such master, and for every other person appointed in that behalf by any such master, to sell any goods or chattels, lands, tenements or hereditaments, or any interests therein, under any decree or order of the said court, by auction, or by any other mode of sale by competition, without any licence as an auctioneer, and without being liable to the duty imposed by the said last-mentioned Act, or any other Act or Acts now in force.

Sale of Personal Property.]—Where an order directs any personal property to be sold, it must be sold under the superintendence of the high bailiff, by public auction, unless the court otherwise directs (Order XXIII. r. 23; Form 305).

Where any personal property is directed to be sold by auction, detained, or preserved, the high bailiff must, if the court so direct, superintend such sale, detention, or preservation; and where property is to be sold by private contract, he must carry out the directions of the court in respect of such sale. This rule does not of course apply to a sale of goods in an ordinary execution under sect. 146 of the Act (Order II. r. 38).

THE WAGES ATTACHMENT ABOLITION ACT, 1870.

[33 & 34 Vict. c. 30.]

No order of attachment of wages after passing of Act.

1. No order for the attachment of the wages of any servant, labourer, or workman shall be made by the judge of any court of record or inferior court.

The wages of servants, labourers or workmen cannot be attached (see *Jones* v. *Thompson*, (1858) 27 L. J. Q. B. 234; *Dresser* v. *Jones*, (1859) 28 L. J. C. P. 281). This will not prevent the attachment of the quarterly salary of a secretary to a company (*Gordon* v. *Jennings*, (1882) 9 Q. B. D. 45; 51 L. J. Q. B. 417), nor of a superannuation allowance (*Booth* v. *Trail*, (1880) 12 Q. B. D. 8; 53 L. J. Q. B. 24), nor of a pension (*Willcock* v. *Terrell* (C. A.), (1878) 3 Ex. D. 323). By the Merchant Shipping Act, 1894, seamen's wages, whether due or accruing, cannot be attached (57 & 58 Vict. c. 60, s. 163).

THE DEBTORS ACT, 1869.

[32 & 33 Vict. c. 62. August 9, 1869.]

Abolition of Imprisonment for Debt.

Abolition of imprisonment for debt, with exceptions.

4. With the exceptions hereinafter mentioned, no person shall, . . . be arrested or imprisoned for making default in payment of a sum of money (*a*).

Note.—(*a*) Amended, 56 & 57 Vict. c. 54.

There shall be excepted from the operation of the above enactment:

1. Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract:
2. Default in payment of any sum recoverable summarily before a justice or justices of the peace:
3. Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control.
4. Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order.
5. Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorized to make an order:

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6. Default in payment of sums in respect of the payment of which orders are in this Act authorized to be made:

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year; and, secondly, that nothing in this section shall alter the effect of any judgment or order of any court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money.

[The above section has been amended, as follows, by the Debtors Act, 1878 (41 & 42 Vict. c. 54):—

Court or judge to have discretion in cases within exceptions 3 and 4 in 32 & 33 Vict. c. 62, s. 4, and 35 & 36 Vict. c. 57, s. 5, respectively.

1. *In any case coming within the exceptions numbered* 3 *and* 4 *in the fourth section of the Debtors Act*, 1869, *and in the fifth section of the Debtors Act* (*Ireland*), 1872, *respectively, or within either of those exceptions, any court or judge, making the order for payment, or having jurisdiction in the action or proceeding in which the order for payment is made, may inquire into the case, and* (*subject to the provisoes contained in the said sections respectively*) *may grant or refuse, either absolutely or upon terms, any application for a writ of attachment, or other process or order of arrest or imprisonment, and any application to stay the operation of any such writ, process, or order, or for discharge from arrest or imprisonment thereunder*].

Non-payment of Money.]—Where the order or judgment is for payment of money, the court may, in the cases to be presently mentioned, attach the person making default, and commit him to prison for a period not exceeding a year. The creditor may, however, pursue his ordinary remedies if he pleases, and is not bound to apply for an attachment (Order XXV. r. 1; *Sykes* v. *Dyson*, (1870) L. R. 9 Eq. 228; 39 L. J. Ch. 288; see *Drewitt* v. *Edwards*, (1877) 26 W. R. 122). A member of Parliament is not privileged from attachment under this head (*Re Gent*, (1889) 40 Ch. D. 190; 58 L. J. Ch. 162).

The cases referred to are (1) default by a trustee or person acting in a fiduciary capacity and ordered to pay any sum in his possession or control; (2) default by a solicitor in payment of costs, when ordered to pay them for misconduct as a solicitor, or in payment of any sum of money when ordered to pay the same in his character of an officer of the court making the order.

The power to attach in cases under sect. 4 is not limited, as it is under sect. 5, to those cases in which means to pay are proved: the attachment has a double object—to enforce payment, and to punish (*In re Smith* (C. A.), (1893) 2 Ch. 1; 62 L. J. Ch. 336; *Crowther* v. *Elgood* (C. A.), (1887) 34 Ch. D. 691; 56 L. J. Ch. 416). The judge must inquire into the facts and exercise a judicial discretion in granting or refusing the attachment (41 & 42 Vict. c. 54, s. 1). Mere default in payment will not necessarily subject the defaulter to attachment (*Aylesford* v. *Poulett*, (1892) 2 Ch. 60; 61 L. J. Ch. 406; *Holroyde* v. *Garnett*, (1882) 20 Ch. D. 532; 51 L. J. Ch. 663); misconduct, dishonesty and fraud are the main grounds which justify an attachment when means to pay are absent (*In re Smith* (C. A.), (1893) 2 Ch. 1; 62 L. J. Ch. 336; *Crowther* v. *Elgood* (C. A.), (1887) 34 Ch. D. 691; 56 L. J. Ch. 416).

The first class of cases above referred to includes that of a son, who after the death of his father, failed to pay, under the order of a court, moneys received by him in his father's life as manager of his father's estate (*Marris* v. *Ingram*, (1879) 13 Ch. D. 338; 49 L. J. Ch. 123); also of an auctioneer

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who receives the proceeds of property entrusted to him for sale (*Crowther* v *Elgood, supra*); also that of a borrower of money who in an action by the lender submits to an order that he shall thereafter hold the money lent on certain trusts (*Preston* v. *Etherington* (C. A.), (1887) 37 Ch. D. 104; 57 L. J. Ch. 176); also that of a London agent who receives money on behalf of a country solicitor (*Litchfield* v. *Jones*, (1888) 36 Ch. D. 530; 57 L. J. Ch. 100); also that of a receiver who receives money in his capacity of receiver (*Re Gent*, (1889) 40 Ch. D. 190; 58 L. J. Ch. 162). A judgment creditor who, in interpleader proceedings, gives an undertaking to make good any deficiency on the sale of goods seized under an execution cannot be attached under sect. 4 (*Buckley* v. *Crawford*, (1893) 1 Q. B. 105; 62 L. J. Q. B. 87), nor can a partner who receives partnership money, and fails to pay it to a receiver, under an order of the court (*Piddocke* v. *Burt*, (1894) 1 Ch. 343; 63 L. J. Ch. 246).

Corporations.]—A judgment or order against a corporation wilfully disobeyed may, by leave of the judge, be enforced against the directors or other officers (Order XXV. r. 3).

Saving of power of committal for small debts.

5. Subject to the provisions hereinafter mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court: Provided—

1. That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions; that is to say,—
   (*a*) Be exercised only by a judge or his deputy, and by an order made in open court and showing on its face the ground on which it is issued.
   (*b*) [*Be exercised only as respects a judgment of a superior court of law or equity, when such judgment does not exceed fifty pounds, exclusive of costs.*]

Repealed by sect. 169 (1) of the Bankruptcy Act, 1883.

   (*c*) Be exercised only as respects a judgment of a county court by a county court judge or his deputy.
2. That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

   Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.

Section 5. Any jurisdiction given by this section to the superior courts may be exercised by a judge sitting in chambers, or otherwise, in the prescribed manner.

For the purposes of this section any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order.

Persons committed under this section by a superior court may be committed to the prison in which they would have been confined if arrested on a writ of *capias ad satisfaciendum*, and every order of committal by any superior court shall, subject to the prescribed rules, be issued, obeyed and executed in the like manner as such writ.

This section, as far as it relates to any county court, shall be deemed to be substituted for sections ninety-eight and ninety-nine of the County Courts Act, 1846, and that Act and the Acts amending the same shall be construed accordingly, and shall extend to orders made by the county court with respect to sums due in pursuance of any order or judgment of any court other than a county court.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned together with the prescribed costs (if any).

Jurisdiction to commit under Debtors Act.]—By sect. 5 of the Debtors Act, 1869, the court has power to commit to prison for a period not exceeding six weeks any judgment debtor who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that, or of any other competent court, whether superior or inferior. The jurisdiction to commit is unlimited as to amount in all cases in which application is made to the court in which the debtor is or resides (46 & 47 Vict. c. 52, s. 103. Sect. 5, sub-s. 1 (*b*) of the Debtors Act, 1869, is repealed by sect. 169 (1) of the Bankruptcy Act, 1883. The section does not make it clear whether the jurisdiction is in the court in which the debtor was or resided at the date of the application or at the date of the hearing; see Appendix B.), and it remains to be seen whether any proceeding for committal can be taken on a High Court judgment in any other case. As regards judgments of county courts, this section of the Debtors Act enables the court in which judgment was obtained to commit whether the debtor does or does not dwell or carry on business within the district at the date of the judgment summons, but it prescribes no limit as to amount, and it appears to be unlimited.

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Order for payment by instalments.]—The court may, instead of committing, make an order for payment by instalments, and may from time to time rescind or vary such order. (An application for an order to pay by instalments ought now to be made under Order XXIII. r. 14; Order XXV. r. 55; see *post*, p. 561.) But the county court cannot rescind or vary an order for payment by instalments made by a judge of the High Court on a judgment of the latter (*Washer* v. *Elliott*, (1876) 1 C. P. D. 169; 45 L. J. C. P. 144; *Re Ives*, (1886) 16 Q. B. D. 665; 55 L. J. Q. B. 246).

After obtaining in a county court an order for payment by instalments upon a judgment of the High Court, the creditor cannot, so long as that order is in force, issue execution upon his judgment in the High Court (*Jones* v. *Jenner*, (1856) 25 L. J. Ex. 319; 105 R. R. 353; *Montgomery* v. *De Bulmes*, (1898) 2 Q. B. 420; 67 L. J. Q. B. 768), and it may be that he can only obtain the assistance of the High Court in the manner already described (*ante*, p. 187).

Receiving Order.]—Instead of committing, the court may, if it has jurisdiction in bankruptcy, make a receiving order. See Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 107 (*post*, p. 279).

Administration Order.]—Instead of committing the court, if it appears that the total liabilities of the judgment debtor do not exceed £50, may make an administration order under s. 122 of the Act (Bankruptcy Act, 1883, not repealed by Bankruptcy Act, 1914), *post*, p. 268. See Bankruptcy Rules, 1886, r. 358, *post*, p. 281, not repealed by Bankruptcy Rules of 1914. See Bankruptcy (Administration Order) Rules, 1902, as amended by rules dated April 4, 1914, *post*, p. 283.

Means to pay.]—The jurisdiction to commit can only be exercised where it is proved that the debtor has or has had since the date of the order or judgment the means to pay the sum as to which he is in default. (In *Ex parte Fryer* (C. A.), (1886) 17 Q. B. D. 718; 55 L. J. Q. B. 478, it is said that the power to commit for a particular sum in default arises if it be shown that the debtor has had means to pay *part* of it only; but as the court itself made an order for payment by instalments only, it is clear that it did not consider that the power ought to be exercised under such circumstances.) An order to pay by instalments may be made without proof of means (*Dillon* v. *Cunningham*, (1873) L. R. 8 Ex. 23; 42 L. J. Ex. 11). On failure to pay any instalment, a committal may be applied for, and proof of means will then be requisite.

An order for the payment of costs merely is within this enactment (*Hewitson* v. *Sherwin*, (1870) L. R. 10 Eq. 53), as is an order of the Probate and Divorce Division for payment of alimony; but a commitment can be made only in respect of arrears (*Linton* v. *Linton* (C. A.), (1885) 15 Q. B. D. 239; 54 L. J. Q. B. 529).

Married Women.]—Married women are subject to the Debtors Act, and may be committed on a judgment obtained against them personally, and not made enforceable against separate estate, in respect of contracts made before marriage, or of torts committed during marriage (*Dillon* v. *Cunningham*, (1873) L. R. 8 Ex. 23; 42 L. J. Ex. 11; *Scott* v. *Morley* (C. A.), (1887) 20 Q. B. D. 120; 57 L. J. Q. B. 43). Nevertheless in such cases proof of means to pay will be necessary, and if the woman's only property be separate property which she is restrained from anticipating, no part of the income of which has accrued due since the judgment, no order can be made (*Meager* v. *Pellew* (C. A.), (1885) 14 Q. B. D. 973). If the judgment be drawn up, and limited as enforceable against her separate estate only no order under the Debtors Act can be made (*Draycott* v. *Harrison* (C. A.), (1886) 17 Q. B. D. 147).

A married woman is not subject to the Debtors Act in respect of contracts made during marriage for breach of which her separate property is made liable by the Married Women's Property Act, 1882 (*Scott* v. *Morley* (C. A.), (1887) 20 Q. B. D. 120).

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Soldiers.]—Under the proviso to sect. 144 of the Army Act, 1881 (44 & 45 Vict. c. 58, s. 144), a judgment creditor cannot have execution against the person of a soldier of the regular forces unless the debt exceeds £30 without costs. This does not apply to officers.

Seamen.]—Under sect. 97 of the Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), no petty officer or seaman, non-commissioned officer or marine belonging to any of Her Majesty's ships can be arrested for any debt contracted after he entered the service of the Crown.

Judgment summons, when and how issued.]—A judgment creditor who desires to have this jurisdiction exercised against his debtor must proceed by judgment summons, for which he must apply to the registrar (Order XXV. r. 25 (1); Forms 178, 181), filing a præcipe in the proper form (Order XXV. r. 25 (2); Form 176). The præcipe must state the full names and address of, or otherwise identify, every person against whom the judgment summons is to be issued, and where the judgment summons is to be issued against a person under a description different from that given in the judgment, both descriptions must be inserted in the judgment summons and in the order of commitment (if any) made upon it (Order XXV. r. 25 (2); Form 176). A judgment summons may issue against all or any one or more of joint defendants (Order XXV. r. 25 (3)). On a county court judgment a summons may issue from the court in which the judgment was obtained, if leave is granted, though the debtor does not reside or carry on business within its district (Order XXV. r. 26 (2)), or it may issue from the court in which the debtor is or resides (46 & 47 Vict. c. 52, s. 103, sub-s. 4).

A judgment summons may be issued by post, but only where leave to issue a judgment summons or payment of or an undertaking to pay travelling expenses for the debtor's attendance is not required. The plaintiff or his solicitor (if the latter has no office within the district) must transmit to the registrar (*a*) the plaint note or summons, or a duplicate; (*b*) a præcipe in accordance with Order XXV. r. 25 (2); (*c*) in cases within Order XXV. rr. 27, 29, 30, the affidavit and copy, certified copy, or office copy and affidavit, required by those rules respectively; (*d*) a money order for the fees payable on issue of the judgment summons; and (*e*) a stamped addressed envelope. The registrar must, on written request, forward to the party or his solicitor information to enable him to ascertain whether a judgment summons may be issued, and personal attendance of the party or his solicitor may be required by the registrar where judgment summonses are desired, or information is asked for, in more than twenty actions at the same time. The districts of the Metropolitan courts are considered *inter se* as one district for this purpose (Order XXV. r. 30A).

When obtained without leave.]—When applied for in the court in which judgment has been obtained, no leave will be required if the debtor then resides or carries on business or is employed in the district of that court (Order XXV. r. 26 (1)). So if the judgment be in one of the metropolitan courts, and the debtor reside or carry on business in the district of another of such courts, the summons will be issued if applied for in the court in which judgment was obtained, in the same manner, without leave (Order XXV. r. 26 (2); 51 & 52 Vict. c. 43, s. 84).

It appears that the summons may issue without leave, no matter where the judgment has been obtained, so long as the debtor resides or carries on business or is employed in the district of the court in which the summons is applied for at the date of the application (Order XXV. r. 26 (1)).

When leave required.]—Leave is required if the application be made to the court in which judgment was obtained, and the debtor does not (except in the metropolitan courts above mentioned) then reside or carry on business or is not employed in the district of the court (Order XXV. r. 26 (2)). The application for leave must be made to the judge upon affidavit (Form 177); that affidavit must strictly follow the form, and is insufficient unless it states

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where a business is being carried on by the debtor, circumstances showing that the business was profitable, also whether the debtor is unmarried or a married man with children (*McIntosh* v. *Simpkins* (C. A.), (1901) 1 K. B. 487; 70 L. J. K. B. 268), and the debtor cannot waive the objection to the sufficiency of the affidavit (*Alderson* v. *Palliser* (C. A.), (1901) 2 K. B. 833; 70 L. J. K. B. 935). Leave must not be granted unless the judge is satisfied that the evidence before him, if uncontradicted, would justify a commitment. If the leave be granted a copy of the affidavit must be lodged with the registrar and annexed to the summons and served with it (Order XXV. r. 26 (2); Forms 177, 178, 179). No affidavit or leave is required if the person requiring the judgment summons deposits or undertakes to pay or tender a sum reasonably sufficient to cover the travelling expenses of the debtor in attending the court, the amount to be fixed by the registrar. Where the summons is to be served by a bailiff, the money will be deposited with the registrar to be paid or tendered to the judgment debtor with the summons; when it is to be otherwise served, an undertaking in writing must be given to pay or tender the amount to the judgment debtor with the summons (Order XXV. r. 26 (3); Form 178A).

Leave is also required where no payment has been made under the judgment for four months, unless the delay in applying has been occasioned by an abortive attempt to levy the goods. An affidavit must be filed stating the facts mentioned in the rule, and if they do not satisfy the registrar that the debtor might be thereon committed, he must refuse to issue the summons and refer the applicant to the judge. The judge may make such order as he may think right. If the registrar considers the facts sufficient he may grant leave. No affidavit under this rule is necessary where a deposit has been made or an undertaking given in respect of travelling expenses (Order XXV. r. 28).

A minute of any leave granted by the judge in any of the cases above mentioned ought, it is believed, to be taken by the registrar and duly recorded (51 & 52 Vict. c. 43, s. 28). No notice to the debtor of the application for leave is necessary. No order will be drawn up or served unless it is so ordered (Order XXIII. r. 5).

Change of plaintiff after judgment.]—Where the interest of the plaintiff has passed either by death, assignment or otherwise to another person after judgment, and such other person wishes to enforce the judgment by judgment summons, he must apply to the judge or registrar, on affidavit, pursuant to Order XXV. r. 14 for leave to issue the judgment summons (*East End Building Society* v. *Slack*, (1891) 60 L. J. Q. B. 359). The title of the action ought, it is believed, to be altered in accordance with the fact.

Judgments against firms, etc.]—If the original judgment has been obtained against a firm, or against a person who is carrying on business in a name other than his own, in such name, the plaintiff may proceed by judgment summons (Form 184) against each or any of the individuals whom he alleges to be liable, on filing an affidavit in the prescribed form (Order XXV. r. 27; Forms 182, 183) and serving a copy thereof with the judgment summons. Even where one of two or more persons jointly and severally liable has, subject to suspension, been committed, the plaintiff may so proceed against the other person or persons liable on the judgment (*Rex* v. *Birmingham C. C. Judge*, (1902) 2 K. B. 283; 71 L. J. K. B. 881). The forms must be strictly followed; thus, par. 2 of Forms 182 and 183 requiring a statement of the plaintiff's sources of information and belief (*Lumley* v. *Osborne*, (1901) 1 K. B. 532; 70 L. J. K. B. 416), and par. 4 of Form 183 of facts showing that the business is profitable (*McIntosh* v. *Simpkins*, (1901) 1 K. B. 487; 70 L. J. K. B. 268), are essential parts of the forms. As against each individual a separate affidavit should be made and filed, and a separate summons issued (note to Form 184). If the individual said to be liable is within the jurisdiction no leave is required; but if he neither

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resides nor carries on business within the jurisdiction, the leave of the judge must be obtained, in accordance with Order XXV. r. 26 (2) mentioned above (unless the provision as to travelling expenses is complied with), and a special form of affidavit must be made (Form 183). A copy of the affidavit must, in any case, be annexed to the summons and served with it (Order XXV. r. 27; Form 184).

Where the summons is applied for to a county court other than that in which the judgment or order was obtained, the applicant must obtain from the registrar of the court in which the judgment or order was obtained a certified copy of the judgment or order (Form 155), and file it with his application; the copy must state the date on which the last payment into court (if any) was made, or if no payment has been made, the date of default. The issue of such judgment summons is subject to the provisions, as the case may be, of Rules 27 and 28 of Order XXV. (Order XXV. r. 29; see also Order XXIII. r. 10). The registrar issuing the copy must make a minute of it, and no execution or summons on the judgment or order may then issue from his court, nor may any fresh order for payment by instalments be made unless it be shown that no order has been made in any other court upon such copy. The bailiff issuing the certified copy must lodge in court any warrant of execution, judgment summons or order of commitment issued by the court upon the judgment or order, and no such warrant, summons or order may be re-issued unless it be shown, as above, that no order has been made in any other court upon such copy (Order XXV. r. 39).

If the summons is applied for on a judgment or order of any competent court other than a county court the applicant must obtain from such other court an office copy of the judgment or order, and file it, together with an affidavit (Form 180) of the sum then due, with the registrar of the court of the district in which the debtor resides or carries on business or is employed, and the registrar will thereupon issue a judgment summons, the issue of which will be subject to the provisions of Rule 27 of Order XXV., *ante*, in cases to which that rule applies (Order XXV. r. 30). Where more persons than one are liable under the judgment or order, the office copy may be filed with the registrar of the court of the district in which any one of such persons resides or carries on business or is employed. A judgment summons must not be issued in that court against a person who does not reside or carry on business or who is not employed in the district unless the leave of the judge is obtained in accordance with Order XXV. r. 26, or the proviso to that rule is complied with (Order XXV. r. 30 (2)).

Where a judgment summons is heard in a county court on a judgment or order of any competent court other than a county court, a memorandum of the result of the hearing must be sent by the registrar to the registrar or other proper officer of the court in which the judgment or order was obtained. If on such hearing an order of commitment or an order altering the terms of the judgment or order is made, then until such order is discharged, all payments, whether under the order of commitment or under the new order, must be made into, and execution or other process for enforcing either the order of commitment or the new order may be issued by, the court making the order of commitment or the new order. The office copy of the judgment or order filed in the court pursuant to Order XXV. r. 30, is deemed to be a judgment or order of the court in which the judgment summons is heard; and if the judgment creditor subsequently desires to apply for a judgment summons to another court pursuant to Order XXV. r. 29, he must obtain from the registrar of the court in which the order of commitment or new order was made a copy, certified by the registrar to be a correct copy, of the office copy of the judgment or order filed in that court pursuant to Order XXV. r. 30, and a certified copy of the order made on the hearing of the judgment summons, containing the particulars required by Order XXV. r. 29, according to Form 155 in the Appendix, and must file the same with his application (Order XXV. r. 40A).

A judgment summons will not issue on the judgment of an Irish court,

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even if duly registered under the Judgments Extension Act, 1868 (*Johnston* v. *Watson* (C. A.), (1893) 1 Q. B. 21; 62 L. J. Q. B. 85).

Every judgment summons must be in the prescribed form, and be issued not less than ten clear days before the day on which the judgment debtor is required to appear, except in the case about to be mentioned (Order XXV. r. 31 (1); Forms 178, 181, 184). Where the person applying for the judgment summons states to the registrar that the judgment debtor is about to remove from his residence or place of business, or is keeping out of the way to avoid service, then the judgment summons may be issued and served at any time before the hearing. But the court cannot act upon such a summons in the absence of the judgment debtor, unless at the hearing the judge is satisfied, by evidence on oath, that at the time of the application for the summons the debtor was about to remove from his dwelling or place of business, or was keeping out of the way to avoid service (Order XXV. r. 32).

The amount for which a judgment summons may issue should not include any amount, remaining due on the judgment, for non-payment of which the defendant has already been imprisoned (Order XXV. r. 55); nor should it include costs incurred in endeavouring to enforce a judgment or order by way of execution against goods and not recovered under such execution (Order XXV. r. 56).

When and how served.]—The summons must be served personally (Order XXV. r. 25 (1)), not less than five clear days before the day on which the party is required to appear (Order XXV. r. 31 (1); Forms 178A, 181, 184), unless service is made under the provisions just mentioned. It may be served in accordance with the provisions of Order VII. r. 33, as to the service of default summonses, the words "on the filing of the præcipe" being substituted for "on the entry of the plaint under Order V. r. 9." If served otherwise than by the bailiff, an affidavit of service must be lodged with the registrar before the return-day (Order XXV. r. 31 (2); Form 185). A judgment summons is deemed to be a summons to a witness within sect. 111 of the Act of 1888, and where at the time of service payment or tender of payment of his expenses is made to the judgment debtor, a notice according to the prescribed form is to be printed at the foot of or annexed to the summons (Order XXV. r. 31 (3A); Forms 124, 178B). Although personal service of the judgment summons is required, it is not necessary that the order of the court for payment shall be served personally on the judgment debtor (*Haydon* v. *Haydon*, (1911) 2 K. B. 191; 80 L. J. K. B. 672).

If a summons requiring service in the home district has not been served, the high bailiff must give notice to the plaintiff forthwith (Order II. r. 24; Form 30). If a summons requires service in a foreign district, the high bailiff of the foreign court must, three clear days at least before the return-day, transmit the copy summons to the registrar of the home court duly indorsed and signed by the bailiff (who must name the court of which he is bailiff), and also the summons itself when not served (Order II. r. 28; as to the penalty for non-observance of this rule, see Order II. r. 29).

Where service has not been made in due time a successive summons may be issued at any time within three months without fee, and it may be served by any person the court may direct. If this latter summons is not served in due time no further summons is to issue without payment of a fee. When not served by bailiff, an affidavit of service (Form 185), by the person who actually effected it must be lodged with the registrar before the return-day (Order XXV. r. 33).

On the issue of the summons by the court in which the judgment or order was obtained, the bailiff is to lodge in court any warrant against the goods issued in the action, whether executed or not; if not fully executed, any such warrant may be re-issued by leave of the judge (Order XXV. r. 38). Where a judgment summons or order of commitment is outstanding, a warrant of execution may not be issued in the same action without the leave of the judge (Order XXV. r. 10A).

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Hearing.]—The order must be made in open court by the judge or his deputy. When the judge sits in a room apart from the court it is not open court, even if he hears other cases there and the public and reporters are admitted (32 & 33 Vict. c. 62, s. 5; *Kenyon* v. *Eastwood*, (1888) 57 L. J. Q. B. 455). If the debtor does not appear on the return-day, an order to commit may be made against him if proof of means be given (*Davies* v. *Fletcher*, (1853) 2 E. & B. 271; 22 L. J. Q. B. 429; 95 R. R. 538). If he appears, he may be examined upon oath touching the means he has, or since the date of the judgment has had, of paying the debt; and witnesses may also be examined on oath to prove the means of the debtor. Witnesses may be summoned in the same way as in the case of ordinary plaints, and the expenses of any person examined by the judge, whether summoned or not, may be allowed by the judge. If the judgment debtor does not appear at the hearing, or pays into court the amount in payment of which he is in default, expenses paid to him with the judgment summons or with a summons to appear as a witness may be allowed if the judge so directs, as expenses of a witness; if he does appear, such expenses may, if the judge directs, be allowed as expenses of a witness in any case in which the costs of witnesses may be allowed under the rules (see Order XXV. r. 35). The name of every witness who has been examined as to the means of the debtor must be entered in a book, and whenever an order of commitment has been made there must also be entered in the column "order" of the said book a note or minute showing whether such order has been made on account of the past or the present ability of the debtor to obey the order of the court (Order XXV. r. 36).

It is utterly immaterial how the debtor obtains, or has obtained, the means to pay, whether by gift, charity, or otherwise. Mere proof of an allowance of 5*l.* per week did not, however, satisfy the Court of Appeal that a debtor had had means to pay a judgment debt (*Ex parte Koster* (C. A.), (1885) 14 Q. B. D. 597; 54 L. J. Q. B. 389). Nor was the same court satisfied as to the existence of means where a debtor was living with his wife in a quiet way on her separate estate (*Chard* v. *Jervis* (C. A.), (1882) 9 Q. B. D. 178; 51 L. J. Q. B. 442); but where the establishment was a large one, and horses, carriages, and men-servants were kept, it was held that a committal was right, although the debtor swore that the whole was kept up by his wife out of her separate property (*Harper* v. *Scrimgeour*, (1879) 5 C. P. D. 366. In *Dunn* v. *Rigby*, (1871) 15 S. J. 492, Judge Pitt-Taylor held that refusal to produce her marriage settlement was evidence of means against a married woman). *Sed quære.*

Where a judgment creditor at whose instance a judgment summons is issued, or the judgment debtor, does not reside within the district of the court in which the summons is to be heard, he may forward to the registrar of the court from which the summons issued an affidavit setting forth any facts which he may wish to be before the court prior to any order being made on the summons. The judge may, if he think fit, on the hearing of the judgment summons, admit the affidavit as the evidence of the person by whom the same is made. Notice of this rule must be printed at the foot of, or annexed to, every judgment summons issued pursuant to leave granted under Order XXV. r. 26 (Order XXV. r. 37; Form 179).

If the judgment debtor appears on the return-day, but the creditor does not, the judge may award costs to the former (Order XXV. r. 52).

By leave of the judge the hearing of the summons may be adjourned from time to time (Order XXV. r. 34). As to married women, see *ante*, p. 239.

As to the effect of bankruptcy, etc., see *post*, pp. 248—249.

Where the special form of judgment summons (Form 184), hereinbefore mentioned, has been issued under a judgment against a firm or a person carrying on business in a name other than his own, in such other name (*ante*, p. 241), if the person summoned does not appear and deny it, he will be deemed to admit his liability as a partner in or sole member of the firm, or as the person carrying on business under such other name, to pay the debt.

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But if he does appear and deny his liability the judge may decide the question on the evidence before him, or order it to be determined in an action to be commenced by plaint and summons in the ordinary way. Where the person neither resides nor carries on business within the district the summons can only be issued by leave of the judge under Order XXV. r. 26, unless a sum to cover his travelling expenses is deposited, or an undertaking given to pay or tender them (Order XXV. r. 26 (3)).

Order.]—If the judge is satisfied by the evidence adduced before him that the debtor either then has, or since the date of the order or judgment has had, the means to pay the sum (*ante*, p. 239) in respect of which the commitment is applied for, and that he has refused or neglected or refuses or neglects to pay it, he may make an order committing the debtor to prison for any term not exceeding six weeks (32 & 33 Vict. c. 62, s. 5; 51 & 52 Vict. c. 43, s. 161; Order II. r. 4; no warrant is prepared. The order is the authority under which the high bailiff acts).

If he is of opinion that an order of commitment ought not to be made, the judge may refuse to make it, or may make a fresh order for payment at a specified time or by instalments (Order XXV. r. 46 (1)). The execution of an order of commitment may be suspended by direction of the judge, notice of any such direction being given to the judgment debtor (Order XXV. r. 46 (2); Form 191A). Subject to the provisions of Order XXV. rr. 48 and 49, all payments under a fresh order or order of commitment must be paid into court (Order XXV. r. 46 (3)).

On the making of the order by the judge, the registrar makes a minute of it in the minute-book, and the court will not grant a prohibition to restrain further proceedings merely on the ground that the minute does not show the ground on which the order of commitment is made (*Harris* v. *Slater*, (1888) 21 Q. B. D. 359; 57 L. J. Q. B. 539).

As already explained, the court may, if it sees fit, direct the amount due to be paid by instalments (*ante*, p. 239); but it cannot add to an order to pay by instalments, which it makes instead of committing, a direction that in default of payment the debtor do stand committed; it may, however, make an order of commitment, and direct that it shall not issue for a certain time, or at all, if the debtor pays the debt by certain instalments (*R.* v. *Brompton C. C.* (C. A.), (1887) 18 Q. B. D. 213; 56 L. J. Q. B. 49. This judgment was reversed on the facts in the House of Lords, but the decision of the Lords confirms the propositions above stated (*Stonor* v. *Fowle*, (1888) 13 App. Cas. 20; 57 L. J. Q. B. 387)).

Where there is a judgment or order for payment by instalments, and an order of commitment is made in respect of the non-payment of an instalment before the whole have become due, then, if the judge orders the execution of the order of commitment to be suspended to enable the debtor to pay the amount in respect of which it is made, he may also order that the judgment or order for payment by instalments shall also be suspended as long as the execution of the order of commitment is suspended or for any less period. If he makes such last-mentioned order, he may at any subsequent time order that the suspension of the judgment or order for payment of instalments shall cease; and if the plaintiff withdraws or abandons the order of commitment, the suspension of the judgment or order for payment of instalments will thereupon cease (Order XXV. r. 47).

Where in lieu of an order of commitment a fresh order is made for payment of the amount due or for payment by instalments under Order XXIII. r. 14, there is to be included in the amount payable otherwise than by way of judgment summons the amount in respect of which an order of commitment has been made and the debtor has been imprisoned, but so that the debtor shall not be liable to be imprisoned a second time for non-payment of the last-mentioned amount. On any subsequent judgment summons in default of payment of an instalment the amount in respect of which the debtor has been imprisoned is to be deducted on the face of the summons

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from the amount payable under the order, but in calculating for the purposes of the summons the amount in respect of which the debtor has made default, the instalments payable under the order are to be attributed in the first instance to the discharge of the amount payable under the order other than the amount in respect of which the debtor has been imprisoned, and the summons may be issued for the full amount of the instalments in arrear if that amount does not exceed the balance remaining payable under the order after deducting the amount in respect of which the debtor has been imprisoned, or if the instalments in arrear exceed such balance, then for the amount of such balance (Order XXV. r. 55).

If the summons is heard in a different court from that in which the order or judgment was obtained, a memorandum of the result of the hearing must be sent by the registrar of the former to the registrar of the latter court, and entered by the last-named registrar on the minute of the judgment or order (Order XXV. r. 40 (1)). If on the hearing an order of commitment or an order altering the terms of the judgment or order is made, the proceedings are thereby transferred to the court making such order ; and all payments, whether under the order of commitment or under the original judgment or order, are to be made into the court making the order of commitment or new order, and execution or other process for enforcing either the order of commitment or the original judgment or order or the new order, must be issued by the same court (Order XXV. r. 40 (2) ; Form 186). In any such case the certified copy of the judgment or order filed in the court pursuant to Order XXV. r. 29, is for all purposes deemed to be a judgment or order of the court in which the judgment summons is heard ; and if the judgment creditor subsequently desires to apply for a judgment summons to another court pursuant to that rule, he must obtain from the registrar of the court in which the order of commitment or new order was made a copy, certified by the registrar to be a correct copy, of the certified copy of the judgment or order filed in that court pursuant to that rule, and a certified copy of the order made on the hearing of the judgment summons, containing the particulars required by the said rule, according to Form 155 in the Appendix, and must file the same with his application (Order XXV. r. 40 (3)). If no order is made on the hearing, the judgment or order remains in the court in which it was obtained, and the certified copy is returned to that court; subsequent payments thereunder, and subsequent proceedings for its enforcement, may be taken in that court (Order XXV. r. 40 (4)). If the judgment or order has been made in any other court, not being a county court, the provisions of Order XXV. r. 40A apply.

A judgment debt is now barred in twelve years, unless some payment has been made, or some acknowledgment in writing given (*Hebblethwaite* v. *Peever*, (1892) 1 Q. B. 124).

The registrar draws up the order. It will not be issued until applied for (Order II. r. 4), and the court fees paid. The order must be issued for execution to the high bailiff, under seal of the court (51 & 52 Vict. c. 43, s. 161), and must be in the prescribed form (Forms 187, 189, and 191). It must show on its face the ground on which it is issued, and, on whatever day it may be issued, must bear the date on which the order was made by the judge (Order XXV. r. 46 ; see Form 187). The order itself is the high bailiff's authority (51 & 52 Vict. c. 43, s. 161), there is no warrant. If unexecuted, the order remains in force for one year only from and exclusive of its date ; but this time may be extended for not more than a year by an order of the judge made either before or after the expiration of the year, and so on from time to time ; the order of extension may be made either before or after the commitment order is issued. The fact of any such order must be indorsed on the order of commitment (Order XXV. r. 46 ; see Form 187 ; and see 51 & 52 Vict. c. 43, s. 161 ; as to execution out of the jurisdiction, see *ante*, p. 243).

Fees payable on renewal of an order of commitment may be allowed as costs of the order, and, if allowed, their amount and the fact of the allowance must be entered on the order (Order XXV. r. 46B).

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Orders of commitment may issue by post. The party or his solicitor (if the latter has no office within the district) must transmit to the registrar (*a*) a præcipe containing the number of the plaint, and stating the full names and address of or otherwise sufficiently identifying every person against whom the order is to be issued; (*b*) a money order for the fees payable upon the issue of the order; and (*c*) a stamped addressed envelope. Order XXV. r. 30A, applies to the issue of orders of commitment under this rule (Order XXV. r. 47A).

Execution of Order.]—The order of commitment authorises the high bailiff and his bailiffs to arrest the judgment debtor and lodge him in gaol (Order XXV. r. 46; see Form 187, and see 51 & 52 Vict. c. 43, s. 161). The Sheriffs Act, 1887 (50 & 51 Vict. c. 55, s. 14), does not prevent an immediate taking to prison (*Mitchell* v. *Simpson* (C. A.), (1890) 25 Q. B. D. 183; 59 L. J. Q. B. 355). The ordinary rules as to the mode and place of execution apply (51 & 52 Vict. c. 43, s. 77; Order LIV. r. 19; Order I. r. 5). All constables and other peace officers must aid in executing the order, and the governor of the prison mentioned in it must receive and keep the debtor until discharged by due course of law (51 & 52 Vict. c. 43, s. 161). The extreme term of imprisonment is six weeks (32 & 33 Vict. c. 62, s. 5), computed from the date of lodging in prison (*Ex parte Foulkes*, (1846) 15 M. & W. 612; 15 L. J. (N. S.) Ex. 300).

Care must be taken to execute the order against the right person; if the plaintiff directs its execution against a person not named in it, he is liable in trespass (*Walley* v. *M'Connell*, (1849) 13 Q. B. 903; 19 L. J. Q. B. 162; 78 R. R. 552).

The high bailiff must make returns as in case of execution against goods, and pay over moneys and give information to suitors (see Order II. rr. 33, 34, 37).

Effect of Order.]—It has been shown above that an order of commitment remains in force for a year only; and it was held under a similar provision that if the order were executed within a year from the date of it the debtor might be imprisoned for the full term for which he was committed, although it might expire at a time beyond a year from the date of the order (*Hayes* v. *Keene*, (1852) 12 C. B. 233; 21 L. J. C. P. 204; 92 R. R. 707; and see *Ex parte O'Neill*, (1850) 10 C. B. 57; 20 L. J. C. P. 69). So long as the order remains in force there is no power to make a fresh order. Where a debtor was arrested, and, after imprisonment for seven days, was discharged, on the ground of privilege, the court restrained by prohibition proceedings on a new judgment summons obtained by the creditor (*Horsnail* v. *Bruce*, (1873) L. R. 8 C. P. 378; 42 L. J. C. P. 140). As long as the order stands, an action does not lie by the judgment debtor against the high bailiff for not having served him with the judgment summons (*Turley* v. *Daw*, (1906) 94 L. T. 216).

Where a debtor has once been imprisoned, although for a period of less than six weeks, no second order of commitment can be made against him in respect of the same debt (Order XXV. r. 55). But if the order or judgment be for payment by instalments a power of committal arises on default of payment for each instalment (*Evans* v. *Wills*, (1876) 1 C. P. D. 229; 45 L. J. C. P. 420; and *Horsnail* v. *Bruce*, *supra*, *per* Bovill, C. J., and Brett, J.). If the creditor waits, however, until after the date for payment of all the instalments, the debtor can then doubtless be committed for one term only. If the order of commitment has never been executed, and by reason of lapse of time the order is inoperative, it seems that a fresh commitment may be made (*R.* v. *Stonor* (1), (1888) 57 L. J. Q. B. 510).

Imprisonment under the order does not operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned in the same manner as if there had been no imprisonment (32 & 33 Vict. c. 62, s. 5).

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A commitment has been said to be a qualified execution, and not a punishment for contempt (*Ex parte Dakins*, (1855) 16 C. B. 77; 24 L. J. C. P. 131; 100 R. R. 620; *Evans* v. *Wills*, (1876) 1 C. P. D. 229; *Re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420; see, however, *Mitchell* v. *Simpson*, (1889) 23 Q. B. D. 373; 59 L. J. Q. B. 355, *per* Charles, J.); hence, on a receiving order in bankruptcy, or an administration order being made, the creditor's remedy will be suspended (*Re Ryley, supra*). So, if the creditors accept a composition, binding on the judgment creditor, his remedy under these provisions will be suspended; but on the debtor's failure to pay the composition, the creditor will be remitted to his original position, and may obtain a commitment for the original debt or instalment (*Newell* v. *Van Praagh*, (1874) L. R. 9 C. P. 96; 43 L. J. C. P. 94).

Suspension of Order.]—Where from sickness or any other sufficient cause, which mere inability to pay owing to want of means is not (*Attenborough* v. *Henschel*, (1895) 1 Q. B. 833; 64 L. J. Q. B. 255), the debtor is unable to pay any instalments ordered, the judge may suspend the order for such time or on such terms as he may think fit. He may order the discharge of any debtor who, on account of sickness, insanity, or other sufficient cause, ought in his opinion to be discharged (51 & 52 Vict. c. 43, s. 153).

Bankruptcy Acts.]—The court, on proof that a bankruptcy petition has been presented by or against the debtor, although no receiving order or adjudication has been made, may either stay proceedings or allow them to continue on such terms as it may think just (46 & 47 Vict. c. 52, s. 10). See sect. 9 (1) of Bankruptcy Act, 1914.

Where the debtor, on the return-day, satisfies the judge that a receiving order has been made, or that he has been adjudicated bankrupt, and that the debt was provable in the bankruptcy, no order of commitment may be made (Order XXV. r. 42; see *Re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420); nor can any order be made for payment by instalments (*Re Nuthall* (C. A.), (1891) 64 L. T. 241). A copy of the *Gazette* containing the order is sufficient evidence (46 & 47 Vict. c. 52, s. 132).

Where, after the making of an order of commitment, the debtor files an affidavit in the prescribed form, stating that a receiving order has been made, or that he has been adjudicated bankrupt, and that the debt was provable in the bankruptcy, and forthwith gives notice of the filing of the affidavit to the judgment creditor, the order of commitment will not be issued, and if issued but not executed it will be recalled (Order XXV. r. 43; Form 192). Where it has been sent to another court for re-issue the registrar must give notice to the registrar of the foreign court (Order XXV. r. 43).

If he has been arrested, the debtor may file a similar affidavit in the court within the district of which he is in custody, and he must thereupon be discharged out of custody upon the certificate of the registrar, who must forthwith give notice of his discharge to the judgment creditor (Order XXV. r. 44; Forms 192, 194).

Where the debtor, on the return-day, satisfies the judge that an administration order has been made under sect. 122 of the Bankruptcy Act, 1883, and that the debt in respect of which the summons issued has been notified to the court in which the order was made, no order can be made on the judgment summons except on proof that the creditor has obtained leave to proceed from the court in which the administration order was made and in accordance with the terms (if any) imposed by the court (Order XXV. r. 45).

Where a judgment debtor after the making of an order of commitment files an affidavit in the prescribed form stating that an administration order has been made, that the debt in respect of which the order of commitment was made has been notified to the court in which the administration order was made, and that the judgment creditor has not obtained leave to proceed from that court, and annexes to the affidavit a certificate of the registrar of

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the court in which the order was made, and gives notice to the judgment creditor of the filing of the affidavit, the order of commitment will not be issued, and if issued but not executed, will be recalled. Notice of the affidavit must be given by the registrar of the court in which it is filed to the registrar of a foreign court where the order has been issued to a foreign district (Order XXV. r. 45A; Forms 192A, 193).

If the judgment debtor is arrested, he may file in the court of the district in which he is in custody a similar affidavit, and will thereupon be discharged out of custody upon the certificate of the registrar of that court, who must forthwith give notice of the discharge to the judgment creditor (Order XXV. r. 45C; Forms 192B, 193A, 194).

For the purposes of Order XXV. rr. 45, 45A, and 45B, the registrar of the court in which an administration order has been made must issue to the debtor, upon his application, a certificate in the prescribed form (Order XXV. r. 45C; Form 193A).

In cases coming within Order XXV. rr. 45A, 45B, or where proceedings under a judgment summons or order of commitment are stayed under sect. 122 of the Bankruptcy Act, 1883, or rules, any money received thereunder will be dealt with as provided by Order XXV. r. 24C, with respect to money received under an execution (Order XXV. r. 45D).

If in any such case the costs of the judgment summons or order of commitment incurred by the creditor are not allowed out of the money received the creditor will be liable for them; but they may be allowed as against the debtor and (on application) added to the debt (Order XXV. r. 45D).

Where the debt is not provable, such as alimony ordered to be paid by the Probate Division, on proof of means the order may still be made (*Kerr* v. *Kerr*, (1897) 2 Q. B. 439; 66 L. J. Q. B. 838).

Where the application for a commitment is made to a court having bankruptcy jurisdiction, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, may make a receiving order against the debtor. The debtor will then be deemed to have committed an act of bankruptcy at the time the order is made (4 & 5 Geo. 5, c. 59, s. 107, sub-s. 4; see p. 279). The creditor will have to pay the same fee and deposit as are required on a bankruptcy petition, and if he does not consent to pay them, the court may dismiss the application or adjourn it on such terms as may be just (Bankruptcy Rules, 1914, r. 357). The receiving order cannot be made if there is no evidence of means before the county court judge (*In re a Debtor, Ex parte the Debtor*, (1905) 1 K. B. 375; 74 L. J. K. B. 362; and see *In re Clark* (C. A.), (1898) 1 Q. B. 20; 66 L. J. Q. B. 875), though it has been held that the absence of means is immaterial in a case where the debtor had made an assignment of the whole of his property on the morning of the day when judgment was given against him (*R.* v. *Sussex C. C.*, (1888) 59 L. T. 32).

If the court has bankruptcy jurisdiction, but still is not the court to which a bankruptcy petition against the debtor could be properly presented, the court may make the order, but must then transfer the proceedings to the court to which a petition would be properly presented. The registrar must then transmit the proceedings and a sealed copy of the order of transfer to the registrar of the other court (Bankruptcy Rules, 1914, r. 378).

Where the application is made to a court not having bankruptcy jurisdiction, if the judge is of opinion that a receiving order should be made in lieu of a commitment, he may order the matter to be transferred to the court to which a bankruptcy petition against the debtor might be presented. The registrar must then transmit by post to the court to which the matter is transferred the proceedings in the matter, together with a copy of the order of transfer (Bankruptcy Rules, 1914, r. 377).

Notice of the order and of the subsequent proceedings must be served on the judgment debtor. The court to which the proceedings are transferred does not appear to be bound by the opinion of the court which transfers,

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but must decide on the merits (*Re Andrews*, (1885) 15 Q. B. D. 335; 54 L. J. Q. B. 572). The order of transfer suspends the operation of any commitment previously made (*Re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420).

The court may also, as before stated, make an administration order, if the total liabilities of the debtor do not exceed 50*l.*, and the court thinks that an order of commitment ought not to be made (sect. 122, Bankruptcy Act, 1883 (Bankruptcy Rules, 1886, r. 358), *post*, pp. 268, 281).

To What Prison.]—The debtor against whom an order of commitment is made must be committed to the particular prison designated by various orders of the Home Secretary (51 & 52 Vict. c. 43, s. 163). The orders apply to all commitments whatsoever, and will be found, *post*, p. 893.

Discharge from Custody.]—The debtor may, at any time before he is delivered into the custody of the gaoler, pay to the bailiff the amount indorsed on the order as that on the payment of which he may be discharged; and on receiving it the bailiff must discharge the defendant, and must within twenty-four hours pay over the money to the registrar (Order XXV. r. 48). As to payment after, see Order XXV. rr. 48A, 49; Forms 188A, 195.

The sum indorsed on the order may be paid to the registrar of the court from which the commitment order was issued, or to the gaoler in whose custody the prisoner is, or into the foreign court to which the order has been sent for execution. Where it is paid to the registrar he must sign and seal a certificate (Order XXV. r. 51; Form 195) of payment, and upon receiving such certificate, by post or otherwise, the gaoler in whose custody the prisoner is, must forthwith discharge the prisoner. And where it is paid to the gaoler, he must, upon payment with costs sufficient to pay for transmitting the amount to the registrar of the court under the order of which the prisoner was committed, by post-office order, sign a certificate of payment and discharge the prisoner, and such costs of transmission are part of the prescribed costs (32 & 33 Vict. c. 62, s. 5; Order XXV. r. 49). Upon the judgment creditor lodging with the registrar a request in writing (Form 196) that the judgment debtor may be discharged from custody, the registrar must issue a certificate (Form 197), and transmit it by post to the gaoler; and the gaoler upon receipt of it must forthwith discharge the prisoner (Order XXV. r. 50).

In order to obtain a judgment debtor's discharge by payment the above mode of proceeding must be strictly followed; for where a judgment debtor paid the debt and costs to the execution creditor, but no application was made to the court, and he was subsequently arrested by the bailiff of the court under the warrant of commitment, it was held that the arrest was legal (*Davies* v. *Fletcher*, (1853) 2 E. & B. 271; 22 L. J. Q. B. 429; 95 R. R. 538).

The procedure for discharge on filing an affidavit as to bankruptcy or administration order has already been mentioned, *ante*, p. 248 (and see Order XXV. rr. 44, 45, 45A, 45B, and 45C; Forms 192A, 192B, 193, 193A, 194). It would seem that the filing of the affidavit (Form 192) is a condition precedent to the discharge (*Re Edgcome*, (1902) 2 K. B. 403; 71 L. J. K. B. 722; see *per* Vaughan Williams, L.J.). If the certificate authorizing the discharge (Form 194) were refused by the registrar, application might possibly be made to the judge by way of appeal from the order of the registrar (Order XII. r. 11), or to the High Court, to compel the registrar to grant the certificate, or in bankruptcy (46 & 47 Vict. c. 52, s. 10), or to the High Court for a *habeas corpus* (see *Ex parte Kinning*, (1847) 16 L. J. Q. B. 257; but see *Ex parte Somers*, (1855) 24 L. J. C. P. 185; 24 L. J. Ex. 247).

There can be no doubt that an order which has the effect of discharging a debtor from his debts takes away the power to commit on a judgment summons for a debt so discharged. A prohibition would lie at any stage of the proceedings (*Copeman* v. *Rose*, (1857) 7 E. & B. 679; 26 L. J. Q. B. 51, overruling *Abley* v. *Dale*, (1851) 11 C. B. 378; 20 L. J. C. P. 233; 87

R. R. 697. An unconditional order of discharge in bankruptcy dates from the day upon which it is granted (*Ex parte Bell*, (1863) 32 L. J. Bk. 50)). **Section 5 Notes.**

Part Payment.]—The following provisions apply where after the issue o an order of commitment for non-payment of money, but before the body of the debtor is delivered into the custody of the gaoler, money is paid into the court out of which the order issued, or into a foreign court to which the order has been sent for re-issue under sect. 158 of the County Courts Act, 1888, or to the bailiff holding the order (Order XXV. r. 48A (1)). If payment is made into the court in the district of which the order is to be executed, the fact and amount of the payment is to be forthwith notified by the registrar, if he is also high bailiff, to the bailiff holding the order; if he is not high bailiff, to the high bailiff, who must as soon as may be notify the bailiff holding the order (Order XXV. r. 48A (2)). If the payment is made into the court out of which the order issued (the home court) after the order has been sent for re-issue to any foreign court, the notification is to be as soon as may be after receipt made by post by the registrar of the home court to the high bailiff of the foreign court, who in his turn must as soon as may be notify it to the bailiff holding the order (Order XXV. r. 48A (3)). If the bailiff holding the order receives any payment or notice of any payment, he must forthwith indorse on the order the amount of the payment and deduct it from the amount indorsed on the order as that on payment of which the debtor may be discharged, and must sign the indorsement; the order of commitment, unless withdrawn by the plaintiff, will thenceforth operate as an order of commitment for non-payment of the amount remaining due after such deduction (Order XXV. r. 48A (4)).

Similar rules have been made for cases where payment or part payment is made after the debtor has been lodged in gaol. After the prisoner has been delivered into the gaoler's custody, the sum indorsed on the warrant of commitment as that upon payment of which he may be discharged may be paid either into the home court or into the foreign court or to the gaoler (Order XXV. r. 49 (1)). If paid into the foreign court, the registrar must sign and seal a certificate of the payment and send it by post or otherwise to the gaoler, who upon its receipt must forthwith discharge the prisoner (Order XXV. r. 49 (2)). If payment is made into the home court after the order has been sent for re-issue to a foreign court, the registrar of the home court must forthwith notify the fact of the payment by post to the registrar, who then sends his certificate to the gaoler (Order XXV. r. 49 (3)). If payment is made to the gaoler, he must on payment of the amount indorsed on the order of commitment, together with costs sufficient to pay for transmitting the amount, transmit it forthwith by post-office order to the registrar of the court under the order of which the prisoner was committed, and must sign a certificate of the payment and discharge the prisoner; the costs of transmission are part of the prescribed costs (Order XXV. r. 49 (4)).

Where the amount paid into the foreign court is less than that indorsed upon the order of commitment as that upon payment of which the prisoner may be discharged, the fact and amount of the payment are to be notified as soon as may be after receipt by post or otherwise by the registrar to the gaoler (Order XXV. r. 49A (1), (2)). Where such a payment is made into the home court after the order has been sent for re-issue to a foreign court, the notification is to be made as soon as may be after receipt by post by the registrar of the home court to the registrar of the foreign court, who is to notify the payment by post or otherwise to the gaoler as soon as may be after receiving such notification (Order XXV. r. 49A (1), (3)). Upon payment to the gaoler of the balance, with costs sufficient to pay for transmission, the gaoler is to transmit it forthwith by post-office order to the registrar of the court under the order of which the prisoner was committed, to sign a certificate of the payment, and discharge the prisoner; the costs of transmission are to be part of the prescribed costs (Order XXV. r. 49A (4)).

Execution out of Jurisdiction.]—Where the debtor is out of the jurisdiction, the order must be sent by the high bailiff of the home court with a

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sealed warrant under his hand to the registrar of the court within the jurisdiction of which the debtor is, in the same manner as a warrant of execution against goods (51 & 52 Vict. c. 43, s. 158; Form 173). The registrar of the foreign court on receiving it must make an entry of the receipt in "The Foreign Executions Re-issued Book" (Order XXVIII. r. 1), and indorse a notice (Form 188) on the order addressed to the governor of the prison used by the court, and seal the order, and issue it to the high bailiff (Order XXV. r. 41; 51 & 52 Vict. c. 43, s. 158).

Every high bailiff must (except where by statute he is required to retain the same) pay over any monies received by him within twenty-four hours to his registrar (Order II. r. 34).

Where under an order of commitment to be executed in a foreign district money has been paid into the court of such district, the registrar shall transmit a certificate (Form 175) to the registrar of the home court of the amount so paid in, and account for and pay over the same to the treasurer of his court at such time as the treasurer may require, and the registrar of the home court shall file the certificate and thereupon pay out of any money in his hands to the judgment creditor the amount so certified to have been received by the foreign court, and shall enter in a book the amount so certified, and be allowed by the treasurer of his court the amount so paid (Order XXVIII. r. 3).

If the debtor is apprehended, he must be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison of the court within the jurisdiction of which he was apprehended, and kept therein for the time mentioned in the order of commitment, unless sooner discharged by law; and all constables and other peace officers must aid and assist within their respective districts in the execution of the order (51 & 52 Vict. c. 43, s. 158).

As to the procedure in cases of part payment after issue of order of commitment, see *ante*, p. 251.

Costs.]—Except as otherwise provided by the rules (Order XXV. rr. 53—56), all costs incurred by the plaintiff in endeavouring to procure or enforce an order or judgment will be deemed to be due in pursuance of such order or judgment under these provisions unless the judge otherwise orders, hence they will be included in the amount required to be paid by the judgment debtor.

No solicitor's costs will be allowed for attending on the hearing of a judgment summons, unless the party for whom he appears resides out of the district of the court, or unless the summons is on a judgment or order of a court other than a county court, in either of which cases the judge may allow (i.) if the amount for which the summons is issued exceeds 10*l.*, the fee specified in the scale (see Item 64) for attending in court on an interlocutory application, or (ii.) where the amount is less than 10*l.*, a fee not exceeding 5*s.* (Order XXV. r. 53).

Where the judge, instead of making an order to commit, makes a fresh order for payment of the amount remaining due and unpaid under the judgment or order, no costs for fees or witnesses will be allowed to the creditor, unless the court is satisfied that the debtor has made default, and has had since the date of the original judgment or order the means to pay the sum in payment of which he has made default. If the court is so satisfied, a minute must be made in the book prescribed (Order XXV. r. 54).

Appeal.]—The order to commit is not, it is believed, subject to appeal (see *Rackham* v. *Blowers*, (1849) 15 Jur. 758; *Ex parte Watkins*, (1886) 3 Morrell, 146; but consult *Draycott* v. *Harrison*, (1886) 17 Q. B. D. 147; 34 W. R. 546). Even if there were an appeal the High Court could not interfere if there were any evidence of means, as it would be a decision on a question of fact (*Esdaile* v. *Visser* (C. A.), (1880) 13 Ch. D. 421). If the judge makes a commitment without evidence, or misapprehending or misapplying some rule of law, the remedy by prohibition is available, as the order is then in fact without jurisdiction (*Evans* v. *Wills*, (1876) 1 C. P. D. 229; 45 L. J. C. P. 420).

MONEY-LENDERS ACTS, 1900 AND 1911.

[63 & 64 VICT. c. 51, AND 1 & 2 GEO. 5, c. 38.]

Section 1.

1.—(1) Where proceedings are taken in any court by a money-lender for the recovery of any money lent after the commencement of this Act, or the enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may re-open the transaction, and take an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by the money-lender, and if the money-lender has parted with the security may order him to indemnify the borrower or other person sued (*a*).

NOTE (*a*).—See, further, notes on pp. 921—923.

The Act does not apply to a contract for a loan made and intended to be performed abroad (*Shrichand* v. *Lacon*, (1906) 22 T. L. R. 245).

Any court in which proceedings might be taken for the recovery of money lent by a money-lender may exercise the powers given by the section (63 & 64 Vict. c. 51, s. 1 (2)).

On the above section it was decided in *Wilton* v. *Osborne*, (1901) 2 K. B. 110; 70 L. J. K. B. 507, that the words "or otherwise is such that a court of equity would give relief" were not exclusive of the words "harsh and unconscionable," and that in order to entitle the person sued to relief the transaction must be such as a court of equity would relieve against on the ground of its being harsh and unconscionable. This decision practically limited the effect of sect. 1, sub-s. 1 of the Act to cases where the debtor could theretofore have obtained relief in a court of equity (see *Nevill* v. *Snelling*, (1880) 15 Ch. Div. 679; 49 L. J. Ch. 777). But in the case of *In re a Debtor* (C. A.), (1903) 1 K. B. 705; 72 L. J. K. B. 382; and see *Ponciono* v. *Higgins*, (1904) 21 T. L. R. 11), the Court of Appeal held that a transaction might be re-opened which was harsh and unconscionable, although not one in which a court of equity would have given relief before

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the Act, and *Wilton* v. *Osborne*, (1901) 2 K. B. 110; 70 L. J. K. B. 507, was in terms overruled. Excessive interest, having regard to the risk or absence of risk, may of itself render a transaction harsh and unconscionable (*In re a Debtor, supra*; *Saunders* v. *Newbold*, (1905) 1 Ch. 260; 74 L. J. Ch. 120; (H. L.), *sub nom. Samuel* v. *Newbold*, (1906) A. C. 461; 75 L. J. Ch. 705; *Wells* v. *Allott* (C. A.), (1904) 2 K. B. 842; 73 L. J. K. B. 1023; *Part* v. *Bond*, (1905) 93 L. T. 49; (C. A.) 94 L. T. 390). But a high rate of interest is not necessarily excessive (*Carringtons* v. *Smith*, (1906) 1 K. B. 79; 75 L. J. K. B. 49). Whether the loan is secured or not is a circumstance to be taken into account (*Salaman* v. *Blair*, (1914) 111 L. T. 426).

It was held at *nisi prius* that a transaction could be re-opened where by reason of a term of the bargain understood by the money-lender but not understood by the borrower, the rate of interest is considerably increased beyond that contemplated by the borrower (*Levene* v. *Greenwood*, (1904) 20 T. L. R. 389), and the Court of Appeal has held that in proper cases closed transactions may be re-opened (*Kerman* v. *Wainewright*, (1916) 32 T. L. R. 295). See *Halsey* v. *Wolfe*, (1915) 84 L. J. Ch. 809.

The powers of the county court under sect. 1, sub-s. 1 of the Act may be exercised at any stage of the proceedings whether notice has or has not been given by the defendant of his intention to ask the court to exercise its powers, subject, where no notice has been given, to such terms as to adjournment, furnishing particulars, costs and otherwise as may be just (Order L. r. 33 (1)).

The questions whether the interest is excessive and whether the transaction is harsh or unconscionable are not questions for the jury, but are for the judge (*Abrahams* v. *Dimmock*, (1914) 2 K. B. 372; 84 L. J. K. B. 802).

Where a transaction is re-opened under the Act and an account is taken between the parties, the payments made by the borrower must be allocated first to interest, and then towards discharge of principal (*id.*).

Apart from the Act, if the contract to borrow money improperly and unduly fetters the borrower's liberty to dispose of his services, and the free dealing with his earnings and property, it may be unenforceable as being opposed to public policy (*Horwood* v. *Millar's Timber and Trading Co., Ltd.*, (1917) 1 K. B. 305; 86 L. J. K. B. 190.

(2) Any court in which proceedings might be taken for the recovery of money lent by a money-lender shall have and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section, where proceedings are taken for the recovery of money lent, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any instalment thereof, may not have arrived.

A substantive application to the court under sect. 1, sub-s. 2 of the Act must be by action commenced by plaint and summons. Particulars stating concisely the grounds on which the application is made and the relief claimed shall be filed (Order L. r. 33 (2), *post*, p. 258).

Allowances of special items of costs under Order LIII. r. 8 (1), may be made (Order LIII. r. 8 (2)).

(3) On any application relating to the admission or amount of a proof by a money-lender in any bankruptcy proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

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On a bankruptcy petition presented by a money-lender on a judgment the transaction may be re-opened, but if a debt of over 50*l.* is still found to be due a receiving order must be made (*In re a Debtor, Ex parte the Petitioning Creditor*, (1917) 2 K. B. 60; 86 L. J. K. B. 746).

(4) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender.

(5) Nothing in the foregoing provisions of this section shall affect the rights of any *bonâ fide* assignee or holder for value without notice.

(6) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.

(7) In the application of this Act to Scotland this section shall be read as if the words "or is otherwise such that a court of equity would give relief" were omitted therefrom.

Registration of money-lenders, etc.

2.—(1) A money-lender as defined by this Act—

(*a*) shall register himself as a money-lender in accordance with regulations under this Act, at an office provided for the purpose by the Commissioners of Inland Revenue, under his own or usual trade name (*a*), and in no other name, and with the address, or all the addresses if more than one, at which he carries on his business of money-lender; and

(*b*) shall carry on the money-lending business in his registered name, and in no other name and under no other description, and at his registered address or addresses, and at no other address; and

(*c*) shall not enter into any agreement in the course of his business as a money-lender with respect to the advance and repayment of money, or take any security for money in the course of his business as a money-lender, otherwise than in his registered name; and (*b*)

(*d*) shall on reasonable request, and on tender of a reasonable sum for expenses, furnish the borrower with a copy of any document relating to the loan or any security therefor.

NOTE (*a*).—The Christian name need not be registered in full. The initial letter is sufficient (*Hart* v. *Hungerford*, (1916) 85 L. J. K. B. 1029).

NOTE (*b*).—This sub-section is not violated by the money-lender taking a security—a bill of exchange—in which his name does not appear at all (*Shaffer* v. *Sheffield and Another*, (1914) 2 K. B. 1; 83 L. J. K. B. 817). See also *Charles Taylor* (*London*) *Limited* v. *Miller and Fingard*, (1917) 86 L. J. K. B. 49.

Sect. 2, sub-s. 1 (*c*) applies to an unregistered money-lender, and renders incapable of enforcement any agreement with respect to the advance and repayment of money, and any security for money taken in the course of his business as an unregistered money-lender (*Victorian Daylesford Syndicate* v. *Bott*, (1905) 2 Ch. 624; 74 L. J. Ch. 673; approved in *Bonnard* v. *Dott*, (C. A.), (1906) 1 Ch. 740; 75 L. J. Ch. 446). But an unregistered money-

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lender can maintain an action for damages for fraudulent misrepresentations whereby he was induced to advance money on loan (*Dott* v. *Brickwell*, (1906) 23 T. L. R. 61).

The mere fact that the loan is actually completed at the borrower's office is not an infringement of sect. 2, sub-s. 1 (*b*), which requires the business to be carried on at the money-lender's registered address and at no other address (*King* v. *Massey*, (1908) 24 T. L. R. 710); it may be carried on through the post (*In re Seed, Ex parte King*, (1910) 1 K. B. 661; 79 L. J. K. B. 421; *Jackson* v. *Price*, (1910) 1 K. B. 143; 79 L. J. K. B. 130). It is not necessary that every stage and every incident of every piece of the money-lending business should be transacted at the registered office. The question is one of fact, not of law (*Kirkwood* v. *Gadd*, (1910) A. C. 422; 79 L. J. K. B. 815; reversing *Gadd* v. *Provincial Union Bank*, (1909) 2 K. B. 353; 78 L. J. K. B. 815).

A breach of the provisions of sect. 2 (1) (*b*) of this Act by a registered money-lender does not render the transaction void, though it subjects the money-lender to the penalties set out in sub-sect. 2. See *Finegold* v. *Cornelius*, (1916) 2 K. B. 719; 86 L. J. K. B. 1.

(2) If a money-lender fails to register himself as required by this Act, or carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address, or fails to comply with any other requirement of this section, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding one hundred pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding one hundred pounds, or to both: Provided that if the offender be a body corporate that body corporate shall be liable on a second or subsequent conviction to a fine not exceeding five hundred pounds.

(3) A prosecution under sub-section (1) (*a*) of this section shall not be instituted except with the consent in England of the Attorney-General or Solicitor-General, and in Ireland of the Attorney-General or Solicitor-General for Ireland.

Regulations as to registration.

3.—(1) The Commissioners of Inland Revenue, subject to the approval of the Treasury, may make regulations respecting the registration of money-lenders, whether individuals, firms, societies, or companies, the form of the register, and the particulars to be entered therein, and the fees to be paid on registration and renewal of registration, not exceeding one pound for each registration or renewal, and respecting the inspection of the register and the fees payable therefor.

(2) The registration shall cease to have effect at the expiration of three years from the date of the registration, but may be renewed from time to time, and if renewed shall have effect for three years from the date of the renewal.

Penalties for false state.

4. If any money-lender, or any manager, agent, or clerk of a money-lender, or if any person being a director, manager, or

other officer of any corporation carrying on the business of a money-lender, by any false, misleading, or deceptive statement, representation or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed, he shall be guilty of a misdemeanor, and shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both. Section 4. ments and representations.

5. Where in any proceedings under section two of the Betting and Loans (Infants) Act, 1892, it is proved that the person to whom the document was sent was an infant, the person charged shall be deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age. Amendment of 55 & 56 Vict. c. 4, s. 2, as to presumption of knowledge of infancy.

6. The expression "money-lender" in this Act shall include every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business; but shall not include— Definition of money-lender.

(*a*) any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers; or

(*b*) any registered society within the meaning of the Friendly Societies Act, 1896, or any society registered or having rules certified under sections two or four of that Act, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or under the Building Societies Acts, 1874 to 1894; or 59 & 60 Vict. c. 25. 6 & 7 Will. 4, c. 32.

(*c*) any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act; or 3 & 4 Vict. c. 110.

(*d*) any person *bonâ fide* carrying on the business of banking or insurance or *bonâ fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or

(*e*) any body corporate for the time being exempted from registration under this Act by order of the Board of Trade made and published pursuant to regulations of the Board of Trade.

7.—(1) This Act may be cited as the Money-lenders Act, 1900. Short title and commencement.

(2) This Act shall come into operation on the first day of November one thousand nine hundred.

ORDER L. RULE 33.

Proceedings under Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.

The following rule of practice has been made :—

Order L. Rule 33 (1). Where proceedings are taken by a money-lender, the powers of the court under sub-sect. 1 of the Money-lenders Act, 1900, may be exercised at any stage of the proceedings, and whether notice has or has not been given by the defendant of his intention to apply to the court to exercise such powers; subject, nevertheless, where no notice or insufficient notice of such intention has been given, to such terms as to adjournment, furnishing of particulars, costs, and otherwise, as may be just.

(2) An application to the court under sub-sect. 2 of sect. 1 of the said Act, at the instance of a borrower or surety or other person liable, shall be by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed in such action, stating concisely the grounds on which the application is made, and the relief which the plaintiff claims.

MONEY-LENDERS ACT, 1911.

(1 & 2 GEO. 5, c. 38.)

Rights of *bonâ fide* holders for value, &c., under contracts with money-lenders.

Sect. 1, sub-sect. 1. Notwithstanding anything in sect. 2 of the Money-lenders Act, 1900—

(*a*) any agreement with, or security taken by, a money-lender shall be, and shall be deemed always to have been, valid in favour of any *bonâ fide* assignee or holder for value without notice of any defect due to the operation of that section, and of any person deriving title under him (*a*) ;

(*b*) any payment or transfer of money or property made *bonâ fide* by any person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, without notice of any such defect, shall, in favour of that person, be, and be deemed always to have been, as valid as it would have been if the agreement or security had been valid ;

but in either such case the money-lender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this enactment, and nothing in this enactment shall render valid an agreement or security in favour of an assignee or holder for value who is himself a money-lender.

(*a*) See *Finegold* v. *Cornelius*, (1916) 2 K. B. 719; 86 L. J. K. B. 1.

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(2) A person shall not be deemed to have had notice of a defect in an agreement or security by reason only that a search in the register established under the Money-lenders Act, 1900, would have disclosed the defect or shown that the agreement or security was effected with a money-lender; and, for the purposes of this Act and the Money-lenders Act, 1900, the provisions of section three of the Conveyancing Act, 1882, shall apply and be deemed always to have applied as if the expression "purchaser" included a person making any such payment or transfer as aforesaid. 63 & 64 Vict. c. 51. 45 & 46 Vict. c. 39.

(3) Nothing in this section shall render valid for any purpose any agreement, security, or other transaction which would, apart from section two of the Money-lenders Act, 1900, have been void or unenforceable, nor any agreement or security which has, before the commencement of this Act, been declared void by a court of competent jurisdiction.

Prohibition on money-lenders being registered as bankers.

2.—(1) No person shall be registered as a money-lender under any name including the word "bank," or under any name implying that he carries on banking business; and, where any money-lender is registered under any such name, the name shall be removed from the register and a notification to that effect sent to the money-lender.

(2) If a money-lender, in the course of carrying on the money-lending business, issues or publishes, or causes to be issued or published, any circular, notice, advertisement, letter, account, or statement of any kind containing expressions which might reasonably be held to imply that he carries on banking business, he shall be liable on summary conviction to the like penalties as if he had failed to comply with section two of the Money-lenders Act, 1900.

Short title and construction.

3. This Act may be cited as the Money-lenders Act, 1911, and shall be construed as one with the Money-lenders Act, 1900, and that Act and this Act may be cited together as the Money-lenders Acts, 1900 and 1911.

CHAPTER III.

ACTS AFFECTING THE SERVICE AND EXECUTION OF PROCESS OF AND BY OTHER INFERIOR COURTS.

The London (City) Small Debts Extension Act, 1852 . . . 260
The Borough and Local Courts of Record Act, 1872 . . . 263
The Inferior Courts Judgments Extension Act, 1882 . . . 264

THE LONDON (CITY) SMALL DEBTS EXTENSION ACT, 1852.

[15 Vict. c. lxxvii. June 17, 1852.]

Processes out of district of court may be served by bailiff of any other court holden under 9 & 10 Vict. c. 95.

41. That any summons or other process which under this Act shall be required to be served out of the city of London or the liberties thereof may be served by the bailiff of any court holden in any part of England, under an Act passed in the ninth and tenth years of the reign of her present Majesty, intituled "An Act for the more easy recovery of Small Debts and Demands in England," or any Act altering or amending the same; any such service shall be as valid as if the same had been made under the provisions of this Act by the bailiff of the sheriffs court within the city of London or the liberties thereof.

The provisions of this section seem obsolete since 51 & 52 Vict. c. 43, ss. 84, 185, 186.

As to service of process of county courts in the city of London.

42. That any summons or other process which, under the before-mentioned Act for the more easy recovery of small debts and demands in England, or under any Act altering or amending the same, shall be required to be served out of the district of the court from which the same shall have issued, may be served within the city of London or the liberties thereof by the bailiff of the sheriffs court; and such service shall be as valid as if the same had been made by the bailiff of the court out of which such summons or other process shall have issued within the jurisdiction of the court.

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How execution may be had out of the jurisdiction of the court.

94. That in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under this Act, and such party or his goods and chattels shall be out of the jurisdiction of the court, it shall be lawful for the chief bailiff of the court to send such warrant of execution or of commitment to the clerk of any county court constituted under the before-mentioned Act for the more easy recovery of small debts and demands in England within the jurisdiction of which such party or his goods and chattels shall then be or believed to be, with a warrant thereto annexed, under the hand of the chief bailiff and seal of the court holden under the provisions of this Act, requiring execution of the same; and the clerk of the county court to which the same shall be sent shall seal or stamp the same with the seal of his court, and issue the same to the high bailiff of his court; and thereupon such bailiff shall be authorized and required to act in all respects as if the original warrant of execution or commitment had been directed to him by the court of which he is the high bailiff, and shall within such time as shall be specified in the rules of practice, return to the chief bailiff of the court holden under the provisions of this Act what he shall have done in the execution of such process; and in case a levy shall have been made shall within such time as shall be specified in the rules of practice, pay over all moneys received in pursuance of the warrant to the chief bailiff of the court holden under the provisions of this Act, retaining the fees for execution of the process; and where any order of commitment shall have been made, and the person apprehended, he shall be forthwith conveyed, in custody of the bailiff or officer apprehending him, to the gaol or house of correction or other prison of the court within the jurisdiction of which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this Act; and all constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such warrant: provided always, that if such party, or his goods and chattels, shall not be within the jurisdiction of any county court constituted under the before-mentioned Act, it shall be lawful for the bailiff of the court holden under the provisions of this Act to apply to any justice of the peace acting for the county or place in which such party or his goods and chattels shall happen to be; and upon such officer producing to such justice such warrant, and making oath (which oath such justice is hereby empowered to administer) that the same has been duly issued out of the court, and that the person or goods and chattels (as the case may be) of such person

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is or are not to be found within the jurisdiction of the court, but is or are believed by such officer to be within the county or place where such justice acts, such justice shall sign his name on the back of such warrant, and thereupon such bailiff shall have power to take the body or goods and chattels of such person (as the case may be) wheresoever the same shall be found within such county or place, and deal forthwith in like manner as if the same had been taken within the jurisdiction of the court; and all constables and other peace officers are hereby required to be aiding, within their respective jurisdictions, in the execution of the warrant so endorsed as aforesaid.

The City of London court being now a county court (51 & 52 Vict. c. 43, ss. 84, 185, 186), and subject to the general provisions applicable to coun y courts, it is believed that no provision in aid of that court is necessary.

How execution out of any county court may be had within the jurisdiction of this court.

95. That in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made, under the before-mentioned Act for the more easy recovery of small debts and demands in England, and such party or his goods and chattels shall be or be believed to be within the city of London or the liberties thereof, it shall be lawful for the high bailiff of the county court from which such warrant of execution shall have issued, or by which such order of commitment shall have been made, to send such warrant or order to the chief bailiff of the sheriffs court, with a warrant thereto annexed under the hand of the high bailiff and the seal of the county court from which the original warrant or order issued, requiring execution of the same, and the clerk of the sheriffs court shall seal or stamp the same with the seal of the court holden under the provisions of this Act, and shall issue the same to the chief bailiff of the court; and thereupon such chief bailiff shall be authorized and required to act in all respects as if the original warrant of execution or order of commitment had been directed to him by the court holden under the authority of this Act, and shall, within such time as shall be specified in the rules of practice, return to the high bailiff of the county court from which the same originally issued what he shall have done in the execution of such process; and in case a levy shall have been made shall, within such time as shall be specified in the rules of practice, pay over all moneys received in pursuance of the warrant to the high bailiff of the court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order of commitment shall have been made, and the person apprehended mentioned in such order shall be within the city of London or the liberties thereof, he shall be forthwith conveyed in the custody of the bailiff or officer apprehending him

to some gaol, house of correction or other prison within the city of London or the liberties thereof, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of the before-mentioned Act for the recovery of small debts and demands in England, or under any Act altering or amending the same. Section 95.

THE BOROUGH AND LOCAL COURTS OF RECORD ACT, 1872.

[35 & 36 Vict. c. 86.]

Sect. 6.—In all cases where final judgment shall have been obtained in any action brought in the court wherein the debt or damage does not exceed 20*l.*, exclusive of costs, and also in all cases where any rule or order shall be made by the judge for the payment of any sum of money, or any costs, charges or expenses, not exceeding the sum of 20*l.*, such court shall be at liberty to send a writ or precept for the recovery of the same to the registrar of any county court within the jurisdiction of which the defendant may possess any goods or chattels; and the registrar of such county court shall stamp or seal the same, and thereupon the high bailiff of such county court shall execute the same in the same manner as if such writ or precept had been issued out of such county court, and such high bailiff shall take all the usual and proper fees thereupon, and shall make a return of what he shall have done thereunder to the bailiff or serjeant-at-mace of the court: and in all matters done under such writ or precept, or in relation thereto, such high bailiff shall be under the direction and control of the judge of the county court of which he is high bailiff, as if such writ or precept had issued out of such county court: Provided always, that the costs of more than one writ, precept or warrant shall not be allowed against the execution debtor unless by order of the judge (*a*) of the said court. Power to send writs of execution to bailiffs of county court.

Note.—(*a*) The judge of the borough or other local court is probably intended, and not the judge of the county court; *sed quære.*

THE INFERIOR COURTS JUDGMENTS EXTENSION ACT, 1882 (*a*).

[45 & 46 Vict. c. 31. July 24, 1882.]

31 & 32 Vict. c. 54.

Whereas it is expedient to extend the principle of the Judgments Extension Act, 1868, to the judgments of certain inferior courts of Great Britain and Ireland :

Short title.

1. This Act may be cited for all purposes as the Inferior Courts Judgments Extension Act, 1882.

Interpretation of terms.

2. In this Act the following words and expressions shall have the interpretations and meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction ; (that is to say),

The expression " judgment " shall include decreet, civil bill decree, dismiss, or order :

The expression " inferior courts " shall include county courts, civil bill courts, and all courts in England and Ireland having jurisdiction to hear and determine civil causes, other than the high courts of justice ; and in Ireland, courts of petty sessions and the court of bankruptcy ; and in Scotland shall include the sheriffs courts and the courts held under the Small Debts and Debts Recovery Acts :

The expression " registrar of an inferior court " shall include the sheriff clerk of a sheriff's court in Scotland, and any officer fulfilling the duties of a registrar in an inferior court in England ; and in Ireland shall include the clerk of the peace or other officer whose duty it is to enter the judgment, decree, or order of the court :

" Prescribed " means prescribed by rules made under the provisions of this Act :

The expression " person " shall include any party or parties to a cause in any inferior court in England, Scotland, or Ireland :

The expression " plaintiff " shall include pursuer, complainer, or any person at whose instance any action or proceeding in an inferior court is instituted ; and the expression " defendant " shall include defender, respondent, or other person against whom any such action or proceeding is directed :

The expression " action " shall mean the action or other proceeding in which any judgment was pronounced ; and the expression " summons " shall mean the summons or other initial writ in such action.

Note.—(*a*) See County Court Rules thereunder, Order XLV., *post*, p. 629.

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Registrar of inferior court to grant certificate of judgment.

3. Where judgment shall hereafter be obtained or entered up in any of the inferior courts of England, Scotland, or Ireland respectively for any debt, damages, or costs, the registrar of such inferior court or other proper officer shall, after the time for appealing against such judgment shall have elapsed, and in the event of such judgment not being reversed upon appeal or of execution thereunder not being stayed, upon the application of the party who has recovered such judgment, and upon proof that the same has not been satisfied, and payment of the prescribed fee, grant a certificate in the form in the schedule to this Act annexed (*a*).

NOTE.—(*a*) The form of certificate is No. 430 in the County Court Forms, and see notes on *ante*, pp. 185—186.

Registration of certificate shall have the effect of a judgment of the court in which it is registered.

4. On the production to the registrar or other proper officer of a county court, or, in the city of London, of the city of London court in England where a judgment has been obtained in Scotland or Ireland, or to the registrar or other proper officer of a sheriff's court in Scotland where a judgment has been obtained in England or Ireland, or to the registrar or other proper officer of a civil bill court in Ireland where a judgment has been obtained in England or Scotland of a certificate under this Act purporting to be signed by the registrar or other proper officer of the inferior court where such judgment was obtained, such certificate shall, on payment of the prescribed fee, be registered in the prescribed form by such registrar or other proper officer to whom the same shall be produced for that purpose; and all reasonable costs and charges attendant upon the obtaining and registering such certificate shall be added to and recovered in like manner as if the same were part of the original judgment. No certificate of any such judgment shall be registered as aforesaid in any inferior court in the United Kingdom more than twelve months after the date of such judgment.

Execution of judgments.

5. Where a certificate of a judgment of any of the inferior courts aforesaid has been registered under this Act, process of execution may issue thereon out of the court in which the same shall have been so registered against any goods or chattels of the person against whom such judgment shall have been obtained, which are within the jurisdiction of such last-mentioned court, in the same or the like manner as if the judgment to be executed had been obtained in the court in which such certificate shall be so registered as aforesaid.

Jurisdiction over regis-

6. The courts of Great Britain and Ireland to which this Act applies shall, in so far as relates to execution under this Act, have

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tered judgments limited to execution.

and exercise the same control and jurisdiction over and with respect to the execution of any judgment, a certificate of which shall be registered under this Act, as they now have and exercise over and with respect to the execution of any judgment in their own courts.

Cancellation of registry.

7. On proof of the setting aside, or satisfaction, of any judgment of which a certificate shall have been registered under this Act, the court in which such certificate is so registered may order the registration thereof to be cancelled.

Costs not to be allowed in actions on judgments unless by order of court.

8. In any action brought in any of the inferior courts aforesaid for the purpose of enforcing any judgment which might be registered under this Act in the country in which such action is brought, the party bringing such action shall not recover or be entitled to any costs or expenses, unless the court in which such action shall be brought shall otherwise order.

Existing limits of local jurisdiction shall not be exceeded.

9. Nothing contained in this Act shall authorise the registration in an inferior court of the certificate of any judgment for a greater amount than might have been recovered if the action or proceeding had been originally commenced in such inferior court.

Provided that where a judgment obtained in an inferior court in Scotland cannot be registered in an inferior court in England or Ireland, by reason of its being for a greater amount than might have been recovered if the action or proceeding had been originally commenced in such inferior court, it shall be competent to register a certificate of such judgment in the register directed to be kept in the Court of Common Pleas at Westminster and Dublin respectively, to be called "The Register of Scotch Judgments," by section three of the Judgments Extension Act, 1868, in the same manner, to the same effect, and subject to the same provisions, as if the said certificate had been a certificate of an extracted decreet of the Court of Session, registered in the said register under the said Act.

Act not to apply in certain cases.

10. This Act shall not apply to any judgment pronounced by any inferior court in England against any person domiciled in Scotland or Ireland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district, nor to any judgment pronounced by any inferior court in Scotland against any person domiciled in England or Ireland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates

ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district, nor to any judgment pronounced by any inferior court in Ireland against any person domiciled in England or Scotland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district. Section 10.

Provided that it shall be competent to any person against whom any judgment to which this Act does not apply, as aforesaid, is sought to be enforced by registration in the register of an inferior court in England or Ireland, to apply for and obtain from one of the superior courts of England or Ireland a prohibition or injunction against the enforcement of such judgment, and of any execution thereupon; and that it shall be competent to any person against whom any judgment to which this Act does not apply, as aforesaid, is sought to be enforced by registration in the register of an inferior court in Scotland, to apply for and obtain from the bill chamber or Court of Session in Scotland suspension or suspension and interdict of or against the enforcement of such judgment and any diligence thereon, and in any such proceeding as aforesaid the unsuccessful party may be found liable in costs.

11. Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be respectively made under and for the purposes of the County Courts Acts in England; of the Sheriffs Courts Acts in Scotland, and of the Civil Bill Courts Acts in Ireland; provided that the said rules and regulations shall not extend the jurisdiction of any inferior court. Rules.

Provision is made by the rules for the delivery of particulars of the place where the goods of the debtor are, and for the sealing of a copy of the certificate, and for the costs (see Order XLV. rr. 8, 9, 10). A special form of warrant of execution is provided (Form 431).

Money will not be paid out of court without production of the sealed copy of the certificate, or a copy to be obtained in the prescribed manner (Order XLV. r. 11).

It has been held in the High Court that where a certificate of a decreet of the Court of Session in Scotland has been registered in the High Court under the Judgments Extension Act, 1868, that court has the same jurisdiction to appoint a receiver by way of equitable execution as if the judgment had been originally obtained in the High Court (*Thompson* v. *Gill* (C. A.), (1903) 88 L. T. 714).

CHAPTER IV.

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THE BANKRUPTCY ACT, 1883.

[46 & 47 Vict. c. 52.]

PART VII.

Small Bankruptcies (Administrations).

Power for county court to make administration order instead of order for payment by instalments.

122.—(1) Where a judgment has been obtained in a county court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding fifty pounds, inclusive of the debt for which the judgment is obtained, the county court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the county court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which the court may think just.

This section is preserved by Sched. 6 of the Bankruptcy Act, 1914.

It is presumed that the judge alone has jurisdiction to make the order (see, however, Rule 28 and 51 & 52 Vict. c. 43, s. 186).

The order is a "composition" or "arrangement with creditors," and as such operates to disqualify the debtor for certain public offices (*Bradfield* v. *Cheltenham Guardians*, (1906) 2 Ch. 371; 75 L. J. Ch. 618).

How obtained.]—Proceedings to obtain the order are commenced by filing a request and statement at any time before satisfaction of the judgment debt (46 & 47 Vict. c. 52, s. 122, sub-s. 1, rule 2).

Conditions necessary.]—There appear to be three conditions precedent to the power to make the order—(1) judgment in a county court, (2) inability of the debtor to pay the amount forthwith, (3) an *allegation* by the debtor that his whole indebtedness does not exceed 50*l.*, including the debt (*qu.* and costs), for which judgment has been obtained (see sect. 122, sub-s. 1). Even if the *allegation* be found to be untrue, the order will not necessarily be invalid. The court may, however, set it aside (see sect. 122, sub-s. 2).

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Request for Order.]—The first step towards obtaining the order must be taken by the debtor, by filing a request and statement (Form 1). If he is illiterate and unable to fill it up the registrar or his clerk may fill it up for him (Rule 2). See Bankruptcy (Administration) Orders and Forms, *post*, pp. 283—294.

Contents of Request.]—The debtor must state in his request whether he proposes to pay his creditors in full, or to pay a composition. He must also state the amount of the monthly or other instalments which he proposes to pay. If he proposes a composition he must also state the amount in the pound which he proposes to pay (Rule 3 (1); Form 1); but the court has power to make an order providing for the payment of the debts to a greater or less extent; or by greater or smaller instalments (Rule 3, 1A). He must also set out in a list attached to his request the names, addresses and descriptions of all his creditors, including all secured creditors, and all creditors having power to distrain, such as creditors for rent, rates and taxes. Where a creditor is secured or any person besides the debtor is liable for any debt, the particulars and estimated value of the security and the name and address of the other person liable shall be stated. Although other persons may be also liable the debt is still one of the judgment debtor's debts. Where judgment has been obtained or proceedings are pending in any county court or inferior court in respect of any debt scheduled, such fact shall be stated and the order or summons must be produced to the registrar (Rule 3 (2)). After the request is filed all proceedings on any judgment or order of the court or on any judgment or order of any other court sent for execution to the court in which the request is filed, may be stayed by the judge or registrar (Rule 6; Form 4A). Other courts in which a judgment or order has been obtained or sent for execution against the debtor may also stay all proceedings thereon. Rule 6A deals with the application of money received under execution, judgment summons or order of commitment where proceedings are stayed. The debtor must also attach an affidavit that to the best of his knowledge, information and belief, the names of all his creditors, and the true amounts of the debts due from him to them, are set out in the list, and that the statements made in his request and statement are true (Rule 3 (3)).

Second Request.]—If the court refuses the order, or if an order made be afterwards rescinded, no other request may be filed by the debtor in any court without leave of the court refusing the order (Rule 18).

Notice to Creditors.]—When the request is filed the registrar must send by post ten clear days' notice at least (Form 3) to all the creditors mentioned in the list, and also to the debtor (Form 2), stating the time for the hearing of the request (Rule 4; Form 2). Where from the request it appears that the debtor or a majority of the creditors reside in the district of another county court, the registrar may, before appointing a day for hearing the request, refer the matter to the judge; and the judge may either direct that the request proceed or may order the request and a certificate of the judgment to be forwarded to the county court of such above-mentioned district, and the latter court must proceed as if the request had originally been filed therein. Before making such an order the judge may direct the debtor to attend and show cause why the order should not be made; a copy of the order must be sent by post by the registrar to the debtor (Rule 4; Form 4). Creditors objecting to debts scheduled by the debtor, or to the amount of composition, or the instalments which the debtor proposes to pay, must give notice of objection not less than five clear days before the hearing, but the judge may hear an objection without (Rule 5). At any time between the filing and hearing of a request the court in which the request is filed may stay proceedings on any execution, judgment summons or commitment issued against the property or person of the debtor in respect of any scheduled debt, whether issued by that court or by any other county

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or inferior court, sent for execution to the court in which the request is filed. Costs of any such execution, judgment summons, or order of commitment incurred before the stay may be allowed (Rule 6; Form 4A).

Hearing.]—The debtor must attend in person unless the court otherwise directs. Any creditor whether he has received notice or not may attend the hearing and prove his debt, and subject to Rule 5, object to any debt or to the amount of the composition or to the instalments which the debtor proposes to pay. All debts set out in the list will be taken as proved unless objected to by a creditor (Rule 7, (1), (2), (3)).

Proof of Debts.]—All creditors whose debts are objected to either by the debtor or any creditor must prove their debts as on the hearing of an "ordinary summons," but the court may direct the proof of any debt to be adjourned, upon terms, and may either adjourn the further consideration of the application or proceed to determine it, in which latter case such debt, if and when proved, will be added to the schedule of proved debts (Rule 7 (4)).

The debtor must answer all questions put or allowed by the judge (Rule 7 (5)).

Landlord.]—The limited right of the landlord to distrain for rent accrued before or after the commencement of the bankruptcy now contained in sect. 35 (1) of the Bankruptcy Act, 1914, is still reserved to him (apparently to the same extent only) where an order for administration is asked for under sect. 122 of the Bankruptcy Act, 1883 (see sect. 42 (2) of the Bankruptcy Act, 1883, and Schedule 6 of the Bankruptcy Act, 1914), but he will be bound by the order when made.

Who may be Heard.]—Any creditor, and by leave any creditor the proof of whose debt has been adjourned, or any other person on behalf of any such creditor, will be entitled to be heard and to adduce evidence (Rule 7 (6)).

The judge may refuse to make an administration order when facts are proved, on proof of which a bankruptcy court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt (Rule 7 (7)).

No administration order is to be made under which the payment of instalments would, without default, extend over more than six years (Rule 7 (8)). Where the judge is of opinion that it would be inconvenient that the court should administer the estate, he may order the request and a certificate of the judgment to be forwarded to the court of the district in which the debtor or a majority of his creditors reside (Rule 7 (9); Form 4).

Order.]—The administration order is in the form in the Appendix (Form 5; Rule 8). A copy shall be sent by post to the debtor, to each creditor whose debt has been admitted or proved, to every other county court or inferior court in which to the knowledge of the registrar judgment has been obtained or proceedings are pending in respect of any scheduled debt (Rule 8; Form 6), and to the registrar of county court judgments, and notice of the order must be posted up in the office of the county court of the district in which the debtor resides (sect. 122, sub-s. 9; Form 19).

Notice shall be printed on the order of the cases in which it may be set aside or rescinded (Rule 8A; Form 5A).

The court may order payment in full, or by such composition as appears practicable (sect. 122, sub-s. 1; Form 5).

Instalments.]—The amount of the debts or the composition may be ordered to be paid by instalments, the instalments being paid into court and distributed by the registrar (sect. 122, sub-s. 1; Form 5, Rule 22).

Objections to Order made.]—No creditor to whom notice has been duly sent under Rule 4 shall be entitled to object to any debt scheduled or to the manner in which payment is to be made unless within two months from the

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date of the order he satisfies the court that the notice did not reach him and that he has not otherwise received notice of the proceedings. The application to allow the objection must in the first instance be heard *ex parte*, the judge may dismiss the application or direct it to be renewed upon notice to such persons and on such terms as to security for costs as to the judge seems fit, and before the *ex parte* application notice of the objection and of the grounds thereof must be given to the registrar, who shall appoint a day for the hearing of the objection (Rule 9).

(2) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed fifty pounds, but in such case the county court may, if it thinks fit, set aside the order.

(3) Where, in the opinion of the county court in which the judgment is obtained, it would be inconvenient that that court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the county court in the district of which the debtor or the majority of the creditors resides or reside, and thereupon the latter county court shall have all the powers which it would have under this section, had the judgment been obtained in it.

(4) Where it appears to the registrar of the county court that property of the debtor exceeds in value ten pounds, he shall, at the request of any creditor, and without fee, issue execution against the debtor's goods, but the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade to the value in the aggregate of twenty pounds, shall to that extent be protected from seizure.

(5) When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a county court, except with the leave of that county court, and on such terms as that court may impose; and any county court or inferior court in which proceedings are pending against the debtor in respect of any such debt shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor, and such costs may, on application, be added to the debt notified.

Notified Debt.]—By "notified" in the section is probably meant a debt set out in the debtor's list, or such debts as have been proved under the proceedings.

An administration order debtor must at once give notice to the registrar of any change of address (Rule 27).

(6) If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default and to have refused or neglected to pay the same.

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(7) The order shall be carried into effect in such manner as may be prescribed by general rules.

See Rule 13.

(8) Money paid into the court under the order shall be appropriated first in satisfaction of the costs of the plaintiff in the action, next in satisfaction of the costs of administration (which shall not exceed two shillings in the pound on the total amount of the debts) and then in liquidation of debts in accordance with the order.

Rescission.]—The order may (but need not) be rescinded if it is found at any time that the debts exceed £50 (sect. 122 (2)). It may also be rescinded at any time for any of the reasons set out in Rule 15; Forms 13, 14, 15, 16, 16A.

On an application for rescission the court may make any such order as is provided for in Rule 17A; Form 16A.

The registrar is directed to keep accounts in such manner as may be directed by the Treasury (Rule 25).

The Treasury directions were issued in December, 1883, and are as follows:

1. All moneys received and payments made in pursuance of an order of administration made under sect. 122 of the Bankruptcy Act, 1883, shall be passed through the cash book of the court, and shall from thence be posted into a ledger, the form of which is hereto annexed.

2. When a creditor is scheduled in respect of a debt incurred subsequent to the making of the order of administration under sub-s. 12 of the 122nd section of the Act, a note shall be made in the ledger of the fact in the column provided for that purpose.

3. When all the creditors scheduled in respect of debts incurred prior to the making of the order of administration shall have been paid, in accordance with the said order, all subsequent receipts and payments shall be entered in a fresh folio in the ledger and the names of the creditors scheduled under sub-s. 12, and the amounts of their proved debts shall be brought forward from the folio in which they have been noted, as previously directed.

4. As it is provided that the receipts are to be appropriated,—

1st. To the payment of the costs of the plaintiff;

2nd. In payment of the costs of the order of administration;

3rd. In payment of the debts in accordance with the order;

(*a*) Notice should be sent to the plaintiff that he may receive such costs so soon as the receipts shall be sufficient to pay them.

(*b*) Before a dividend is paid credit must be taken for the costs of administration calculated upon the debts of the creditors *then* scheduled in respect of debts incurred prior to the making of the order of administration.

(*c*) Where creditors in respect of any *such* debts are scheduled subsequent to the making of a dividend, credit must be taken for the costs of the administration calculated upon such further ascertained debts, and for payment of the dividend thereon, before any other dividend is made.

5. Credit must not be taken for the costs of the administration calculated upon the debts scheduled under sub-s. 12 until the creditors scheduled in respect of debts incurred previous to the order of administration shall have had dividends made in their favour equal to the amount ordered to be paid.

6. In order to simplify the accounts the dividend should always be an aliquot part of a pound, excluding such of those parts as when divided by four give a fraction of a penny; a dividend must not be calculated upon any fraction of five shillings of a debt, but such fraction must be added to and paid with the final dividend.

For example:—1*s.* 3*d.* is the 16th part of a pound, but is not to be taken for the purpose of calculating a dividend. Further, in examining debts for dividend, sums which are under 5*s.*, or are under 5*s.* beyond any multiple of

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5s., are to be excluded until the final dividend comes to be paid. Thus, A. B.'s debt is 2l. 14s. 9d., a dividend is made of 1s. 4d. in the £; the dividend to be paid to A. B. on 2l. 14s. 9d. is 3s. 4d., being calculated on 2l. 10s. The balance due on the debt after payment of fourteen further dividends of 1s. 4d. in the £, will be 4s. 9d.; and no part of this balance must be paid until the instalments received admit of its discharge in full by a single payment.

7. A separate file must be kept for the requests, and another for the orders of administration, which latter should be numbered in consecutive order, and any subsequent documents relating to any order, which it is thought desirable to file, should bear the number of the order to which they relate.

8. The number of orders of administration upon which credit has been taken for any part of their costs in any quarter shall be entered in Form A., and the total amount of such sums brought to credit.

9. The sums so brought to credit in a quarter shall be entered, in detail, in a book according to the form annexed, for which sums the treasurer or examiner of accounts, as the case may be, shall, after audit thereof by reference to the ledger, give his receipt. The said sums shall also be entered in Form B.

10. The administration ledger itself is prepared in *triplicate* in the first part of each opening, for receipts, and in *duplicate* in the second part of each opening, for dividends, of which there will be fewer entries. The triple and double columns are to be filled up, one after the other, as if they were separate books.

(9) Notice of the order shall be sent to the registrar of county court judgments, and be posted in the office of the county court of the district in which the debtor resides, and sent to every creditor notified by the debtor, or who has proved.

See Form 19.

(10) Any creditor of the debtor, on proof of his debt before the registrar, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.

This provision probably contemplates proof both at and after the hearing; but see Rule 7 (4).

(11) Any creditor may in the prescribed manner object to any debt scheduled, or to the manner in which payment is directed to be made by instalments.

(12) Any person who after the date of the order becomes a creditor of the debtor, shall, on proof of his debt before the registrar, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

See Rule 21.

(13) When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.

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(14) In computing the salary of a registrar under the County Courts Acts every creditor scheduled, not being a judgment creditor, shall count as a plaint.

Sales under executions to be public.

145. Where the sheriff sells the goods of a debtor under an execution for a sum exceeding twenty pounds (including legal incidental expenses), the sale shall, unless the court from which the process issued otherwise orders, be made by public auction, and not by bill of sale or private contract, and shall be publicly advertised by the sheriff on and during three days next preceding the day of sale.

This section is preserved by the 6th Sched. of the Bankruptcy Act, 1914. The purchaser acquires a good title against the trustee in bankruptcy (see sect. 46, sub-s. 3, and sect. 168).

Private Sale.]—An application for a sale otherwise than by auction must be made to the court on notice (Form 170), stating the grounds of application. The high bailiff must deliver to any applicant a list of the names and addresses of every person at whose instance any warrant or writ of execution has been lodged with him. This list must be produced to the court on the hearing. The notice must be served on every person named in the list except the applicant four clear days at least before the return day of the notice (Order XXV. r. 24).

If the high bailiff has notice of another execution or executions the court may not consider an application to sell privately until notice has been given to the other execution creditors (53 & 54 Vict. c. 71, s. 12). Every person on whom notice is served may attend the hearing and be heard. The court may order all or any part of the costs to be paid by any of the persons who attend (Order XXV. r. 24).

Account of Sale.]—The high bailiff must, on the request of the execution debtor, furnish him with a detailed account in writing of the sale and of the application of the proceeds thereof (Order XXV. r. 23).

THE BANKRUPTCY ACT, 1890.

[53 & 54 Vict. c. 71. August 18, 1890.]

Sale of assets by sheriff.

12. Where any goods of a debtor are taken in execution, and the sheriff has notice of another execution or other executions, the court shall not consider an application for leave to sell privately until the notice directed by rules of court has been given to the other execution creditor or creditors, who may appear before the court and be heard upon the application.

Every person on whom notice is served may attend the hearing and be heard. The court may order all or any part of the costs to be paid by any of the persons who attend (Order XXV. r. 24).

The high bailiff must, on the request of the execution debtor, furnish him with a detailed account in writing of the sale, and of the application of the proceeds thereof (Order XXV. r. 23).

BANKRUPTCY AND DEEDS OF ARRANGEMENT ACT, 1913 (*a*).

[3 & 4 Geo. 5, c. 34.]

By sect. 12, sub-s. (1) of this Act, "Every married woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the bankruptcy laws as if she were a *feme sole*."

Sub-s. (2). "Where a married woman carries on a trade or business, and a final judgment or order has been obtained against her, whether or not expressed to be payable out of her separate property, for any amount, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice, as though she were personally bound to pay the judgment debt, or sum ordered to be paid."

Under this section bankruptcy proceedings can be taken upon a judgment obtained after the Act came into force in respect of a debt incurred before the Act came into force (*Clark, In re, Pope, Ex parte*, (1914) 3 K. B. 1095; 84 L. J. K. B. 89).

A married woman continues to carry on business so long as any business debt remains unpaid. A judgment against her in tort arising out of the negligence of her servant, is available for bankruptcy proceedings against her under the Bankruptcy and Deeds of Arrangement Act, 1913, s. 12 (*Allen, In re*, (1915) 1 K. B. 285; 84 L. J. K. B. 271).

Note.—(*a*) Repealed and re-enacted in Bankruptcy Act, 1914, s. 125, *post*, p. 280.

DEEDS OF ARRANGEMENT ACT, 1914.

[4 & 5 Geo. 5, c. 47 (see *post*, Part V.).]

THE BANKRUPTCY ACT, 1914.

[4 & 5 Geo. 5, c. 59.]

Compositions and schemes of arrangement.

16.—(9) If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the court is required where the debtor is adjudged bankrupt to refuse his discharge, the court shall refuse to approve the proposal.

(10) If any facts are proved on proof of which the court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt, the court shall

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refuse to approve the proposal, unless it provides reasonable security for payment of not less than five shillings in the pound on all the unsecured debts provable against the debtor's estate.

(11) In any other case the court may either approve or refuse to approve the proposal.

Restriction of rights of creditor under execution or attachment.

40.—(1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

Attachment of Debt.]—The actual receipt of the debt is essential, the undertaking of the garnishee to pay will not suffice (*Re Trehearne* (C. A.), (1890) 60 L. J. Q. B. 50).

Receiver.]—It has been held in the High Court that where a certificate of a decree of the Court of Session in Scotland has been registered in the High Court under the Judgments Extension Act, 1868, that court has the same jurisdiction to appoint a receiver by way of equitable execution as if the judgment had been originally obtained in the High Court (*Thompson* v. *Gill* (C. A.), (1903) 88 L. T. 714).

The receiver may be appointed in the action by order made after final judgment; no new action is necessary (*Salt* v. *Cooper* (C. A.), (1880) 16 Ch. D. 544; 50 L. J. Ch. 529). It has been decided that when the order is made as to land, it is equivalent to an actual delivery in execution (*Hatton* v. *Haywood*, (1874) L. R. 9 Ch. 229; 43 L. J. Ch. 372), and therefore equivalent to a writ or order under the Land Charges Act, 1900 (63 & 64 Vict. c. 26, s. 2 (1)), and gives the judgment creditor priority over a subsequent purchaser of the judgment debtor's interest (*Re Pope*, (1886) 17 Q. B. D. 743; 55 L. J. Q. B. 522), provided it be registered pursuant to 51 & 52 Vict. c. 51, s. 5. The order will, moreover, complete the execution, as regards an equitable interest in land, against the trustee in bankruptcy for the purposes of this section; but when the order is made as to goods, even if it is to be treated as an execution, the mere possession of the receiver under it will not complete the execution for the purposes of the same section (*Re Dickinson* (C. A.), (1888) 22 Q. B. D. 187; 58 L. J. Q. B. 1).

The judge, in determining whether it is just or convenient that a receiver should be appointed, should, amongst other things, have regard to the amount which could probably be obtained by a receiver, and to the probable costs of appointment, and if necessary may direct inquiries on these points before making the appointment (Order XLL. r. 13). Where the debt and costs exceed 50*l*., but do not exceed 100*l*., the total amount to be allowed for fees and costs, including the cost of receiver's appointment, completing his security, passing his accounts and obtaining his discharge, but exclusive of

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his salary, must not exceed 2½ per cent. of such debt and costs in respect of fees, and the like amount in respect of costs (Order XIII. r. 14 (1)); where debt and costs exceed 20*l.*, but do not exceed 50*l.*, the total amount allowed is not to exceed 1*l.* 5*s.* for fees and a like amount for costs (Order XIII. r. 14 (2)); where debt and costs exceed 5*l.*, but do not exceed 20*l.*, there may be allowed for fees and costs respectively in each case not less than 7*s.* 6*d.*, or more than 1*l.*, as the judge shall direct (Order XIII. r. 14 (3)).

When a receiver is appointed by way of equitable execution where the debt and costs do not exceed 50*l.*, the judge may direct that instead of the receiver giving security, the applicant shall be answerable for his acts and defaults, and that the receiver shall not receive more, without leave of the court, than the debt and costs, the allowance to the receiver and the costs of the receiver's appointment (Order XIII. r. 14 (4)).

Forms 300A and 300B in the Appendix, with necessary modifications, may be used for interim or final orders for the appointment of a receiver by way of equitable execution (Order XIII. r. 15).

(3) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall in all cases acquire a good title to them against the trustee in bankruptcy.

Duties of sheriff as to goods taken in execution.

41.—(1) Where any goods of a debtor are taken in execution and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver or, as the case may be, to the trustee, who shall be entitled to retain the same as against the execution creditor.

"Balance."]—This means the balance proper, *i.e.*, the balance after the payment of the sheriff's costs, and where the execution creditor had paid 220*l.* for rent due to the landlord, and the sheriff then sold the debtor's goods and paid over the whole value (less his expenses) to the trustee in bankruptcy, held he had paid over 220*l.* which formed no part of the debtor's estate, and the trustee in bankruptcy must return such sum. Section 1 of the statute of 8 Anne, c. 14 (which requires the landlord's rent to a limited extent to be paid as a first charge on goods seized in

Section 41 Notes.

execution), is not overridden by sect. 41 of the Bankruptcy Act, 1914 (*In re Craig & Sons, Ex parte Hinchcliffe*, (1916) 2 K. B. 497; 85 L. J. K. B. 1537).

Execution being levied, the judgment debtor paid debt and costs to the execution creditors direct, and the sheriff withdrew. In less than fourteen days after the debtor had a receiving order made against him. Held, that the execution had not been completed, and the execution creditors must pay the money to the trustee in bankruptcy (*In re Godding*, (1914) 2 K. B. 70; 83 L. J. K. B. 1222). See Bankruptcy Act, 1883, sect. 45.

In ascertaining the 20*l.* in sub-sect. 2 (*supra*) the costs of the high bailiff to the time of sale must be included (*Ex parte Sims*, (1877) 5 Ch. D. 375; 46 L. J. Bk. 103); but not the expenses of possession money, appraisement and sale, unless they have been actually incurred (*Willey* v. *Hucks*, (1909) 1 K. B. 760; 78 L. J. K. B. 513).

This notice to be effective ought to be served on the high bailiff or at his office, and not on the bailiff in possession (see *Ex parte Warren* (C. A.), (1885) 15 Q. B. D. 48; 54 L. J. Q. B. 320; *Bellyse* v. *McGinn*, (1891) 2 Q. B. 227).

After completion of the levy, the high bailiff must within twenty-four hours send notice of the levy and of the amount realised to the registrar of the court out of which the warrant originally issued and to the execution creditor (Order II. r. 35; Form 171). If he has paid the money over to the registrar without notice of the receiving order, he is now protected, but must give notice to the registrar forthwith when such knowledge comes to him. The registrar, after deducting the costs of execution, must account to the official receiver (Bankruptcy Rule, 1916, dated September 15, 1916, may be cited amongst the Rules of 1915 as Rule 323A).

Purchaser acquires Good Title.]—An execution levied by seizure and sale is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the high bailiff acquires a good title against the trustee (see 46 & 47 Vict. c. 52, ss. 46, 168).

Powers of county court.

103. A county court shall, for the purposes of its bankruptcy jurisdiction, in addition to the ordinary powers of the court, have all the powers and jurisdiction of the High Court, and the orders of the court may be enforced accordingly in manner prescribed.

See *Savill* v. *Dalton*, *ante*, pp. 32—43.

General power of bankruptcy courts.

105.—(1) Subject to the provisions of this Act, every court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case:

Provided that the jurisdiction hereby given shall not be exercised by the county court for the purpose of adjudicating upon any claim, not arising out of the bankruptcy, which might heretofore have been enforced by action in the High Court, unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not, in the opinion of the judge, exceed in value two hundred pounds.

Section 107.

Judgment debtor's summons to be bankruptcy business

107.—(1) It shall be lawful for the Lord Chancellor by order to direct that the jurisdiction and powers under section five of the Debtors Act, 1869, now vested in the High Court, shall be assigned to and exercised by the judge to whom bankruptcy business is assigned.

(2) It shall be lawful also for the Lord Chancellor in like manner to direct that the whole or any part of the said jurisdiction and powers shall be delegated to and exercised by the registrars in bankruptcy of the High Court.

(3) Any order made under this section may, at any time, in like manner, be rescinded or varied.

(4) Where, under section five of the Debtors Act, 1869, application is made by a judgment creditor to a court, having bankruptcy jurisdiction, for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and the provisions of this Act, except Part VII. thereof, shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

Receiving Order.]—The creditor will have to pay the same fee and deposit as are required on a bankruptcy petition, and if he does not consent to pay them, the court may dismiss the application or adjourn it on such terms as may be just (Bankruptcy Rules, 1914, r. 376). The receiving order cannot be made if there is no evidence of means before the county court judge (*In re a Debtor, Ex parte the Debtor*, (1905) 1 K. B. 375; 74 L. J. K. B. 362; and see *In re Clark* (C. A.), (1898) 1 Q. B. 20; 66 L. J. Q. B. 875); though it has been held that the absence of means is immaterial in a case where the debtor had made an assignment of the whole of his property on the morning of the day when judgment was given against him (*R.* v. *Sussex C. C.*, (1888) 59 L. T. 32).

Transfer to Another Court.]—If the court has bankruptcy jurisdiction, but still is not the court to which a bankruptcy petition against the debtor could be properly presented, the court may make the order, but must then transfer the proceedings to the court to which a petition would be properly presented. The registrar must then transmit the proceedings and a sealed copy of the order of transfer to the registrar of the other court (Bankruptcy Rules, 1914, r. 378).

Transfer to Court having Bankruptcy Jurisdiction.]—Where the application is made to a court not having bankruptcy jurisdiction, if the judge is of opinion that a receiving order should be made in lieu of a commitment, he may order the matter to be transferred to the court to which a bankruptcy petition against the debtor might be presented. The registrar must then transmit by post to the court to which the matter is transferred, the proceedings in the matter, together with a copy of the order of transfer (Bankruptcy Rules, 1914, r. 377).

Notice of the order and of the subsequent proceedings must be served on the judgment debtor. The court to which the proceedings are transferred

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does not appear to be bound by the opinion of the court which transfers, but must decide on the merits (*Re Andrews*, (1885) 15 Q. B. D. 335; 54 L. J. Q. B. 572). The order of transfer suspends the operation of any commitment previously made (*Re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420).

The court may also make an administration order if the total liabilities of the debtor do not exceed 50*l.* and the court thinks that an order of commitment ought not to be made (Bankruptcy Rules, 1886, r. 358).

(5) General rules under this Act may be made for the purpose of carrying into effect the provisions of the Debtors Act, 1869.

APPEALS.

Appeals in bankruptcy.

108.—(1) Every court having jurisdiction in bankruptcy under this Act may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

See *In re A Debtor; Ex parte Goldstein*, (1917) 1 K. B. 558; 86 L. J. K. B. 705.

(2) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal as follows:—

(*a*) Where the order is made by a county court, an appeal shall lie to a divisional court of the High Court, of which the judge to whom bankruptcy business is for the time being assigned shall, for the purpose of hearing any such appeal, be a member. The decision of the divisional court upon any such appeal shall be final and conclusive, unless in any case the divisional court or the Court of Appeal sees fit to give special leave to appeal therefrom to the court of appeal, whose decision in such case shall be final and conclusive;

Courts to be auxiliary to each other.

122. The High Court, the county courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those courts respectively, shall severally act in aid of and be auxiliary to each other on all matters of bankruptcy, and an order of the court seeking aid, with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or the court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

Married women.

125.—(1) Every married woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the bankruptcy laws as if she were a feme sole.

(2) Where a married woman carries on a trade or business, and a final judgment or order for any amount has been obtained

against her, whether or not expressed to be payable out of her separate property, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice as though she were personally bound to pay the judgment debt or sum ordered to be paid. See *ante*, p. 275. Section 125.

137.—(1) A copy of the *London Gazette* containing any notice inserted therein in pursuance of this Act shall be evidence of the facts stated in the notice. *Gazette* to be evidence.

(2) The production of a copy of the *London Gazette* containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

167. In this Act, "sheriff" includes any officer charged with the execution of a writ or other process. Interpretation of terms.

THE BANKRUPTCY RULES, 1886.

358. Where an application to commit is made to a county court, and it appears to the court that the total liabilities of the judgment debtor do not exceed fifty pounds, the court may, if it thinks that an order for committal ought not to be made, make an administration order under section 122 of the Act in lieu of making a receiving order. Administration order in lieu of receiving order.

THE BANKRUPTCY RULES, 1914.

376.—(1) When a receiving order is made under section 107 (4) of the Act, the creditor shall pay the like fee and deposit as are prescribed in the case of a bankruptcy petition. Fee on receiving order.

(2) Where the court is of opinion that a receiving order ought to be made in lieu of committal, and the judgment creditor does not consent to pay the required fee and deposit, the court may dismiss the application or adjourn it on such terms, as to costs and otherwise, as may be just.

The receiving order cannot be made if there is no evidence of means before the county court judge (*In re a Debtor, Ex parte the Debtor*, (1905) 1 K. B. 375; 74 L. J. K. B. 362; and see *In re Clark* (C. A.), (1898) 1 Q. B. 20; 66 L. J. Q. B. 875), though it has been held that the absence of means is immaterial in a case where the debtor had made an assignment of the

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whole of his property on the morning of the day when judgment was given against him (*R.* v. *Sussex C. C.*, (1888) 59 L. T. 32).

Transfer in lieu of committal.

377.—(1) Where an application to commit is made to the judge of a court not having bankruptcy jurisdiction, and he is of opinion that a receiving order should be made in lieu of committal, he may order the matter to be transferred to the court to which, under the provisions of the Act and rules, a bankruptcy petition against the debtor in relation to the amount of the judgment debt would at the date of the transfer be properly presented.

(2) In such case the registrar of the court making the transfer shall transmit by post to the registrar of the court to which the matter is transferred the proceedings in the matter, together with a copy of the order of transfer.

Notice of the order and of the subsequent proceedings must be served on the judgment debtor. The court to which the proceedings are transferred does not appear to be bound by the opinion of the court which transfers, but must decide on the merits (*Re Andrews*, (1885) 15 Q. B. D. 335; 54 L. J. Q. B. 572). The order of transfer suspends the operation of any commitment previously made (*Re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420).

Transfer of matter to proper court.

378.—(1) Where under section 107 of the Act a receiving order is made by a court to which a bankruptcy petition against the debtor could not properly be presented, the court making the order shall by the order transfer the matter to the court to which a bankruptcy petition against the debtor would properly be presented, and thereupon the official receiver of such latter court shall be constituted the official receiver of the debtor's estate, and all proceedings shall be taken as if the receiving order had been made by such latter court.

(2) Where any such order of transfer is made the registrar of the court making the transfer shall forthwith transmit by post to the registrar of the court to which the matter is transferred the proceedings in the matter, together with a sealed copy of the order of transfer, and the registrar of the latter court shall forthwith give notice of the transfer to the official receiver and the Board of Trade.

County court rules to apply.

379. The county court rules for the time being in force as to the committal of judgment debtors shall, with any necessary modifications, apply to all courts exercising jurisdiction under section 5 of the Debtors Act, 1869, provided that any reference therein to the Bankruptcy Act, 1869, shall be deemed to extend also to the corresponding provisions of the Act (Act of 1914).

THE BANKRUPTCY (ADMINISTRATION ORDER) RULES, 1902, DATED JULY 10, 1902, AS AMENDED BY RULES, DATED APRIL 4, 1914.

It is ordered as follows :—

Former rules annulled.

1. The rules made on 21st December, 1888, under the provisions of section 122 of the Bankruptcy Act, 1883 (hereinafter called the Act), are hereby annulled as from the twenty-fourth day of October, 1902, and the following rules shall thereafter stand in lieu thereof, and shall apply, so far as may be practicable (unless otherwise expressly provided), to all proceedings taken under administration orders or requests for orders in force or pending on that day. They may be cited as the Bankruptcy (Administration Order) Rules, 1902. (Amended by Rules of 1914.)

Short title and application of rules.

Request for order.

Form 1.

2. A debtor against whom a judgment has been obtained in a county court, and who desires to obtain an administration order under section 122 of the Act, shall file with the registrar of the court a request and statement in writing in the form No. 1 in the Appendix.

When the debtor is illiterate and unable to fill up the request and statement, the registrar or his clerk shall fill them up from the information given by the debtor.

The judge may also make an administration order under a judgment summons instead of committing (Bankruptcy Rules, 1886, r. 358).

Form of request for administration order. Form 1.

2A. Form No. 1 in the Appendix to the principal Rules is hereby annulled, and Form No. 1 in the Appendix shall stand in lieu thereof.

Contents of request.

Form 1.

3.—(1) The debtor shall state in his request whether he proposes to pay his creditors in full, or whether he proposes to pay a composition. In the latter case he shall further state the amount in the pound which he proposes to pay, and in either case he shall state the amount of the monthly or other instalments by which he proposes to pay.

See Form 1.

(1A) The debtor's proposal shall be without prejudice to the power of the court to make on the hearing of the request an order providing for the payment of his debts to a greater or less extent, or by greater or smaller instalments, as appears practicable to the court under the circumstances of the case.

(Rule 2 of 1914).

Rule 3.

(2) The debtor shall set out in a list attached to his request the names, addresses, and descriptions of all his creditors, including all secured creditors, and all creditors having power to distrain, such as creditors for rent, rates and taxes. Where a creditor is secured, or any person in addition to the debtor is liable for any debt, the particulars and estimated value of the security, or the name and address of such other person, shall be stated. Where judgment has been obtained or proceedings are pending in any county court or inferior court in respect of any debt scheduled that fact shall be stated, and the order or summons in each case must be produced to the registrar.

(3) The debtor shall attach to his request and statement an affidavit deposing that, to the best of his knowledge, information, and belief, the names of all his creditors, and the true amounts of the debts due from him to them, are set out in the list attached to the request, and that the statements made by him in his request and statement are true.

Notice of request.

4. Upon a request being filed the registrar shall appoint a day for the hearing, and shall as soon as may be send in the form

Form 3.

No. 3 in the Appendix a notice to all the creditors mentioned in the list of the day and hour when the request will be heard. The notice shall be sent by post not less than ten clear days before the day appointed for hearing the request.

Form 2.

The registrar shall also in like manner send a notice to the debtor in the form No. 2 in the Appendix.

Provided, that where on the filing of a request it appears that the debtor or a majority of the creditors resides or reside in the district of another county court, the registrar may before appointing a day for the hearing refer the matter to the judge ; and thereupon the judge may either direct that the request shall proceed,

Form 4.

or may, if he is of opinion that it would be inconvenient that the court should administer the estate, order the request and a certificate of the judgment to be forwarded to the county court in the district of which the debtor or a majority of the creditors resides or reside, and thereupon the latter court shall proceed as if the request had originally been filed therein. Before making such order as last mentioned the judge may, if he thinks fit, direct notice to be given to the debtor to attend at the court on a day to be named in the notice, and to show cause why such order should not be made. If such order is made, a copy thereof shall be sent by post by the registrar to the debtor.

See Form 4.

Rule 5.

Objection to debts scheduled by debtor, or to composition or instalments offered.

5. Any creditor to whom notice of the hearing of a request has been sent, and who desires to object to any debt scheduled by the debtor, or to the amount of the composition or the instalments which the debtor proposes to pay, shall send written notice of his objection, by post or otherwise, to the registrar and to the debtor, and in the case of objection to a debt to the creditor whose debt is objected to, not less than five clear days before the day appointed for the hearing of the request, and he shall state in the notice the grounds of his objection. Provided that by leave of the judge an objection may be heard although such notice has not been given.

Stay of proceedings between filing and hearing of request.

6.—(1) At any time between the filing and the hearing of a request the judge or registrar of the court in which the request is filed may stay proceedings on any judgment or order of that court against the debtor, or on any execution, judgment summons, or order of commitment issued against the property or person of the debtor in respect of any debt scheduled to the request, whether issued by the court in which the request is filed, or issued by any other county court or inferior court and sent for execution to the court in which the request is filed.

(2) And any other court in which a judgment or an order has been obtained against the debtor, or from which an execution, judgment summons, or order of commitment has issued against the debtor, or to which an execution, judgment summons, or order of commitment issued by any other county court or inferior court has been sent for execution, may in like manner, on proof that a request for an administration order has been filed by the debtor, stay proceedings on such judgment, order, execution, judgment summons, or order of commitment.

Order for bailiff to withdraw.

(3) If in any such case the bailiff is in possession under a warrant of execution, the judge or registrar may on application made in accordance with the county court rules as to interlocutory applications order the bailiff to withdraw from possession until after the hearing of the request.

Costs already incurred may be allowed.

(4) Where proceedings are stayed under this rule, the judge or registrar may allow costs already incurred by the creditor, and such costs, if and so far as they are not allowed pursuant to Rule 6A out of any money received under the execution, judgment summons, or order of commitment, may on application be added to the debt scheduled.

Form of order. Form 4A.

(5) An order staying proceedings may be according to the Form No. 4A in the Appendix.

Rule 6.

Certificate that request has been filed. Form 4B.

(6) For the purposes of any application under this rule to a court other than that in which the request is filed, the registrar of the court in which the request is filed shall on the application of the debtor issue to him a certificate in the Form No. 4B in the Appendix.

Amended (Rule 5, 1914).

Application of money received under execution, &c. where proceedings stayed under Rule 6 or s. 122 (5).

6A. Where proceedings are stayed under the preceding rule, or under section 122 of the Act, any money received under the execution, judgment summons, or order of commitment shall, when received by the registrar of the court out of which the warrant issued from the high bailiff of that court, or, in the case of a warrant issued to a foreign court, when certified to the registrar of the home court under Order XXVIII. Rule 2, of the County Court Rules, be dealt with as follows, viz. :—

(*a*) if an administration order is made in or the proceedings are stayed by the court out of which the warrant issued, such money shall be dealt with as the judge of that court shall direct; and

(*b*) if an administration order is made in or the proceedings are stayed by any other court, such money shall be certified in accordance with Order XXVIII. Rule 2, of the County Court Rules, by the registrar of the court out of which the warrant issued to the registrar of the court in which the administration order is made or by which the proceedings are stayed, and the amount certified shall be paid over by the registrar of the court certifying the same to the treasurer, as the treasurer shall require; and the registrar of the court in which the administration order was made or by which the proceedings were stayed shall out of any moneys in his hands pay the amount so certified as the judge of that court shall direct, and shall be allowed by the treasurer of his court, at his audit, the amount so paid.

Costs.

Where in any such case the costs of the execution, judgment summons, or order of commitment incurred by the creditor are not allowed out of the money received, the creditor shall be liable for such costs; but if they are allowed as against the debtor, they may on application be added to the debt.

Order for possession fees.

6B. In any such case as in the last preceding rule mentioned the judge may, if he thinks fit, on application by the high bailiff made in accordance with Order XXVII. Rule 1, of the County Court

Rules, make an order for payment by the execution creditor to the high bailiff of any fees or expenses incurred by the high bailiff which are not allowed under the last preceding rule out of the money (if any) received under the execution. Rule 6B.

7. Upon the request coming on for hearing the course of proceedings shall be as follows :— Proceedings on hearing of request.

(1) The debtor shall attend in person unless the court otherwise directs.

(2) Any creditor, whether he has received a notice of the request or not, may attend the hearing thereof and prove his debt, and, subject to the provisions of Rule 5, object to any debt, or to the amount of the composition or the instalments which the debtor proposes to pay.

(3) All debts set out in the list attached to the request shall be taken to be proved unless objected to by a creditor or disallowed by the judge.

(4) All creditors whose debts are objected to either by the debtor or any other creditor shall prove their debts in like manner as upon the hearing of an ordinary summons, provided that the judge may in his discretion direct the proof of any debt to be adjourned upon any terms that he may think fit, and may thereupon either adjourn the further consideration of the application or proceed to determine the same, in which latter case such debt, if and when proved, shall be added to the schedule of proved debts.

(5) The debtor shall answer all questions put or allowed by the judge.

(6) Any creditor whose debt is admitted or who has proved, and by leave of the judge any creditor the proof of whose debt has been adjourned, and with the like leave any other person on behalf of any such creditor, shall be entitled to be heard and to adduce evidence.

(7) Where any facts are proved on proof of which the court exercising jurisdiction in bankruptcy would be required either to refuse, suspend, or attach conditions to the debtor's discharge if he were adjudged bankrupt, the judge may refuse to make an administration order.

(8) No administration order shall be made under which the payment of instalments, if kept up without default, would extend over a period of more than six years from the date of the order.

Rule 7.

Form 4.

(9) Where the judge is of opinion that it would be inconvenient that the court should administer the estate, he may order the request and a certificate of the judgment to be forwarded to the county court in the district of which the debtor or a majority of the creditors resides or reside, and thereupon the latter court shall proceed as if the request had originally been filed therein. If such order is made, a copy thereof shall be sent by post by the registrar to the debtor.

Proceedings when order made.

Form 5.

8. An administration order shall be in the form No. 5 in the Appendix, and when made a copy thereof shall be sent by post by the registrar to the debtor, but it shall not be necessary to prove the receipt thereof by the debtor before taking any proceedings upon the order.

Notice of cases in which order may be set aside to be printed thereon.

Form 5A.

8A. Notice shall be printed on the order of the cases in which the order may be set aside or rescinded, in the form No. 5A in the Appendix.

New (Rule 7, 1914).

Notice of the order having been made shall be sent to each creditor whose debt has been admitted or who has proved; the notice shall be sent by post and shall be in the form No. 6 in the Appendix.

Form 6.

Notice of the order having been made shall also be sent by post in the same form (with the necessary modifications) to every other county court or inferior court in which, to the knowledge of the registrar, judgment has been obtained or proceedings are pending against the debtor in respect of any debt scheduled to the order.

Objections under sub-section 11.

9. After an administration order has been made, any creditor entitled to object under sub-section 11 of section 122 of the Act to any debt scheduled, or to the manner in which payment is directed to be made, must give notice in writing, by post or otherwise, to the registrar of his objection and of the grounds thereof, and the registrar shall thereupon name a day when the objection will be heard. An application to allow the objection shall be heard *ex parte* in the first instance by the judge, who may dismiss the application, or may direct it to be renewed upon notice being given to such persons and upon such terms as to security for costs and otherwise as he may think fit.

Objections after time.

Provided that no creditor to whom notice of hearing of the request has been duly sent under Rule 4, shall be entitled to object to any debt scheduled, or to the manner in which payment

is directed to be made unless within two months from the date of the order he proves to the satisfaction of the court that the notice did not reach him and that he has not received reasonable notice of the proceedings in any other manner. Rule 9.

10. Any creditor of the debtor in respect of a debt due before the hearing of the request which has not been scheduled by the debtor, who desires to prove his debt, or any person who after the date of the order becomes a creditor of the debtor and desires to prove his debt under sub-section (12) of section 122 of the Act, shall send in his claim in writing, by post or otherwise, to the registrar, who shall thereupon send notice of the claim to the debtor, by post or otherwise, in the form No. 10 in the Appendix. Proof by creditor omitted from schedule, or of subsequent debt under sub-section (12). Form 10.

New (Rule 8, 1914).

11. If the debtor does not within the period allowed by the notice give notice that he disputes the claim the claim shall be deemed to be proved, and shall be added to the schedule to the order accordingly, and notice of the addition shall be sent, by post or otherwise, to the creditor, in the form No. 11 in the Appendix. Proceedings if claim not disputed. Form 11.

12. If the debtor within the period allowed gives notice of his objection, by post or otherwise, in the form No. 10 in the Appendix, the registrar shall appoint a day for the hearing of the objection, and give notice of the time for hearing to both parties, by post or otherwise, in the form No. 12 in the Appendix; and the judge on the hearing may either disallow the claim, or allow the same in whole or in part, in which latter case the debt allowed shall be added to the schedule, subject to the provisions of sub-section 12 of section 122 of the Act, and to Rule 21. Proceedings if claim disputed. Form 12.

13. The judge shall appoint some person to have the conduct of the order and may at any time afterwards remove him, and appoint any other person in his place. Conduct of order.

It shall be the duty of any person so appointed to take all proper proceedings for enforcing the terms of the order; but in case of his neglect to proceed, or of urgency, any creditor scheduled to the order may, by leave of the court, take such proceedings. Duties of persons having conduct of order.

In particular, it shall be the duty of the person so appointed—

(i.) if default is made in payment of any instalment payable in pursuance of the order,

(*a*) to apply for the issue of a judgment summons under the next following rule; or,

(*b*) if it appears that the debtor is unable to pay by reason of illness or other unavoidable misfortune, to apply to the judge or registrar under Rule 17.

Rule 13.

(ii.) if any facts become known to such person on which the order might be set aside or rescinded under Rule 15, to bring such facts to the attention of the judge, who may thereupon, if he thinks fit, direct notice to be given to the debtor, by post or otherwise, in the form No. 13 in the Appendix to attend at the court on a day to be named in the notice, and to show cause why the order should not be set aside or rescinded, or may make such order or give such directions in the matter as he may think fit.

Form 13.

Judgment summons to enforce order.

14. If default is made in payment of any instalment payable in pursuance of the order, a judgment summons may, on the application of any person entitled to take proceedings under Rule 13, be issued without fee. A judgment summons shall be in the form No. 8 in the Appendix, and shall be served personally five clear days before the return day thereof, and all proceedings thereon shall be taken in like manner as if it were a judgment summons issued in an action in the county court, except that (as provided by the Act) the debtor shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default, and to have refused or neglected to pay the same ; and the judge, if satisfied that the debtor has not had the means to pay the sum in respect of which he has made default, may direct that the administration order shall be deemed to have been suspended during the period covered by the default, or make a new order for payment of the amount remaining due under the order by instalments. An order of commitment shall be in the form No. 9 in the Appendix.

Form 8.

Form 9.

Rescission of order.

15.—(1) Where an administration order has at any time heretofore been or shall hereafter be made, such order may at any time be set aside or rescinded by the judge in any of the following cases ; namely,

Form 14.

(1) Where two or more of the instalments ordered to be paid are in arrear.

(2) Where the debtor has wilfully inserted in the list attached to his request the wrong name or address of any of his creditors, or has wilfully omitted therefrom the name of any creditor.

(3) Where the debtor subsequent to the date of the order has obtained credit to the extent of 2*l.* or upwards without informing the creditor that he has an administration order.

(4) Where the order has been obtained by fraud or misrepresentation. Rule 15.

(5) Where a receiving order has since the date of the administration order been made against the debtor.

(2) An administration order may be set aside or rescinded under this rule—

(1) on the hearing of a judgment summons; or,

(2) on the application of any person entitled to take proceedings under Rule 13, or of any creditor not scheduled to the order whose debt has been notified to the court, in which case notice shall be given to the debtor, by post or otherwise, in the form No. 13 in the Appendix to attend at the court on a day to be named in the notice, and to show cause why the order should not be set aside or rescinded; but such notice need not be given when the application is made on the ground of a receiving order having been made against the debtor. Form 13.

16.—(1) Where an administration order is set aside or rescinded under the last preceding rule, it shall be without prejudice to anything already done or suffered under the order. Effect of rescission.

(2) Any money paid into court under the order may be dealt with as if the order had not been set aside or rescinded.

(3) Notice that the order has been set aside or rescinded shall be sent by the registrar to the debtor and to every creditor named in the schedule, and to every creditor not scheduled whose debt has been notified to the court, and to every other county court or inferior court in which, to the knowledge of the registrar, judgment had been obtained or proceedings were pending against the debtor at the time when the order was made, in respect of any debts scheduled to the order. Such notice shall be sent by post, and shall be in the form No. 15 in the Appendix. Form 15.

17. Where it appears that the debtor is unable to pay any instalment, by reason of illness or other unavoidable misfortune, the registrar may from time to time suspend the operation of the order until the next sitting of the court, and the judge may from time to time suspend the operation of the order for such time as he shall direct, or make a new order for payment by instalments. Suspension of order. Form 16.

17A. Where notice is given to the debtor in the form No. 13 in the Appendix to attend and to show cause why the administration order should not be set aside or rescinded, the judge may on the day named in the notice either— What order may be made on application for rescission.

Rule 17A.

(*a*) set aside or rescind the order pursuant to Rule 15 ; or

(*b*) suspend the order or make a new order for payment by instalments pursuant to Rule 17 ; or

Form 16A.

(*c*) make an order in the form No. 16A in the Appendix, directing that the administration order shall be set aside or rescinded unless the debtor pays the sum in payment of which he has made default, either within a specified time, or by instalments to be specified in the order.

If the judge makes an order pursuant to paragraph (*c*) of this Rule, then—

(i.) the administration order shall be suspended during the time allowed to the debtor for payment of the sum in payment of which he has made default ; and

(ii.) if the debtor fails to pay such sum within the time so allowed, the administration order shall on such failure be rescinded without further notice to him : and in that case the provisions of Rule 16 shall apply.

Second request after refusal or rescission of order.

18. Where a debtor has filed a request for an administration order, and the judge has refused to make the order, or when an order has been rescinded, the debtor shall not be allowed to file another request in the same or any other court without first obtaining the leave of the judge of the court first mentioned.

Suspension of order pending commitment.

19. When an order of commitment is made upon the hearing of any judgment summons, and the execution of the order is suspended for a specified time to enable the debtor to pay the amount in respect of the nonpayment of which the order is made, the administration order shall be also suspended during that time.

Calculation of arrears.

20. In calculating the amount in arrear under an administration any instalments accruing due during the period for which such order has been suspended shall not be reckoned in that amount.

Payment *pari passu* of debts scheduled under sub-section 12.

21. All persons scheduled as creditors under sub-section 12 of section 122 of the Act before the administration order is superseded under sub-section 13 of the Act shall rank *pari passu inter se*, subject to the priority given by sub-section 12 to those creditors who are scheduled as having been creditors before the date of the administration order, but no payment made to any such creditor by way of dividend or otherwise shall be disturbed by reason of any subsequent proof by any other creditor under sub-section 12.

Payment into court and appropriation of

22. All moneys paid or levied under an administration order shall be paid into court and appropriated in accordance with sub-section 8 of section 122 of the Act.

Rule 23.

23. After payments of costs, dividends shall from time to time be declared and distributed among the creditors entitled thereto.

moneys paid under order.

24.—(1) The registrar shall send notice to the plaintiff in the action when a sum sufficient to satisfy his costs has been paid into court, and when a dividend is declared he shall send notice to each creditor entitled to share therein. Such notices shall be sent by post, and shall be in the form No. 17 in the Appendix.

Notice and payment out of costs and dividends.

Form 17.

(2) Such sum and dividends shall be paid to the persons entitled thereto in accordance with the County Court Rules as to payment out of court of money paid in under a judgment, the notice in the preceding paragraph mentioned being for the purpose of those rules considered as a plaint-note.

25. The registrar shall keep accounts of the money received and payments made under any administration order in such manner as may be from time to time directed by the Treasury.

Registrar's accounts.

26.—(1) The registrar shall in the month of March in each year make out a list of all dividends and other sums payable under administration orders which have remained unclaimed for five years before the first day of January then last past, with the names of the parties entitled thereto ; and a copy of such list shall be posted in some conspicuous place in the court house on the days when the court is sitting, and at all times in the registrar's office ; and all such dividends and other sums which shall have remained unclaimed for six years on the first day of January next after such list is so put up as aforesaid shall be accounted for by the registrar to the Treasury. The list to be made out and posted in the month of March one thousand nine hundred and three shall include all such dividends and other sums as shall have remained unclaimed for five years or upwards before the first day of January one thousand nine hundred and three under any administration orders made since the Act came into operation.

Unclaimed dividends.

(2) Any person claiming to be entitled to any such dividend or other sum after the same has been accounted for to the Treasury may apply to the judge to order the same to be paid to him ; and the judge, if satisfied that the person claiming is entitled, may make an order accordingly ; and thereupon the registrar shall pay the sum so ordered to be paid out of any money in his hands, and shall be allowed by the Treasury, at his audit, the amount so paid.

27. Where a debtor against whom an administration order has been made changes his address, he shall at once give notice to the registrar of his new address.

Notice by debtor of change of address.

Rule 28.

Use of forms.

28. The forms in the Appendix hereto, with such variations as circumstances may require, shall be used for the purposes of these rules and of section 122 of the Act.

Construction of rules.

29. In the construction of these rules, unless there is anything in the subject or context repugnant thereto, words shall have the same meaning as in the County Courts Act, 1888, and the Rules and Orders made thereunder.

HALSBURY, C.

I concur,

G. W. BALFOUR,

Dated President of the Board of Trade.

The 10th day of July, 1902.

The 4th day of April, 1914.

APPENDIX. FORMS.

1.

Request for an Administration Order.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at

No. of Plaint .

Between plaintiff,

and

defendant.

I, A. B., of, &c., the above-named defendant, state that a judgment was obtained against me in this action on the day of 19 , for the sum of £ , and that I am unable to pay the amount forthwith.

I am indebted to the several persons, including the plaintiff in this action, mentioned in the list hereto in the sums set opposite their names, not exceeding in the whole 50*l.*, and I am indebted to the best of my knowledge, information, and belief to no other person whatsoever.

I hereby request that an order may be made for the administration of my estate under the 122nd section of the Bankruptcy Act, 1883, and the payment of my debts in full [*or* to the extent of shillings in the pound], by instalments of pounds and shillings for every days.

NOTE.—The judgment debt must be inserted as well as all other debts.

LIST OF CREDITORS.

Name of Creditor.	Address.	Description.	Amount of Debt.

NOTE.—If any of the above creditors, in addition to the judgment creditor, have sued the defendant in any court, the summons or order in each case must be produced to the registrar.

If any creditor is secured or entitled to distrain, or any person in addition to the debtor is liable for any debt, this fact must be stated, with the particulars and estimated value of the security, or the name and address of such other person.

STATEMENT.

I state
That I am years of age, and am[1]
That I am employed at[2]
That my wages are[3]
That I have [*or* have not] a wife.
That my wife earns by[4]
That I have the following children living with me :—
[5]1. aged years.
2. aged years.
3. aged years.
&c. aged years.
That numbers earn money as follows :—
Number 1 £ *s.* *d.* a week.
,, 2
and so on.
That the reason why I am unable to pay my debts is[6]
That I have goods, household or otherwise, at to the value of ; and other property, to wit (*specifying the same*), to the value of [*or*, and no other property].

I, A. B., aforesaid, make oath and say that to the best of my knowledge, information, and belief, the names of all my creditors, and the debts due from me to them are truly set forth in the above list of my creditors, and that the particulars contained in my request and the above statement are true.

Sworn at, &c. A. B.

1 Here state what you are.
2 Here state name and address and description of employer.
3 Here state amount received weekly or otherwise.
4 Here insert the work done by wife, and the wages she earns.
5 Here insert names and ages of children.
6 Here state reason.

2.

Notice to Debtor.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at (Seal.)
In the matter of a request for an administration order against of, &c., debtor.

TAKE NOTICE, that your request for an administration order under section 122 of the Bankruptcy Act, 1883 [*add, if so*, which has been forwarded to this court from the county court of holden at], will be heard at the court house at in the county of , on the day of 19 , at the hour of in the noon.

You must bring with you to the court all your books of account, invoices, papers, summonses, or other documents relating to any debts owing by you.

Dated

Registrar.

To A. B.,
of

3.

Notice to Creditors.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at (Seal.)
In the matter of a request for an administration order against of, &c., debtor.

WHEREAS the above-named debtor has filed a request for an administration order under the 122nd section of the Bankruptcy Act, 1883, for the

payment of his debts in full [*or* to the extent of shillings in the pound] to be paid by instalments of pounds and shillings for every days [*add, if so,* which request has been forwarded to this court from the county court of holden at]:

This is to give you notice that the court will proceed to hear the said request at a court to be holden at the county court house at on the day of 19 , at the hour of in the noon.

The debtor states that he owes you the sum of £ .

[The debtor states that he is and is employed at [*as set out in the request*], and that his wages are , and that his wife earns and that he has children living with him, of whom earn wages amounting to , and that his goods are of the value of ; and that he has other property, to wit (*specifying the same*), to the value of [*or,* no other property].]

A list of creditors, with the amounts stated to be respectively owing to them, can be inspected on application at the registrar's office.

If you wish to object to the debt of any creditor named in the list, or to the amount of the composition or the instalments which the debtor proposes to pay, you must give written notice thereof, by post or otherwise, to the registrar of the court and to the debtor, and in the case of objection to a debt to the creditor whose debt is objected to, five clear days before the day fixed for the hearing of the request, stating in such notice the grounds of your objection.

If you claim more than the amount stated to be due to you, you should bring with you to the court on the day above-mentioned any witnesses, books, &c., necessary to prove your claim.

The debtor's proposal above-mentioned does not prejudice the power of the court to make on the hearing of the request an order providing for the payment of his debts to a greater or less extent, or by greater or smaller instalments, as appears practicable to the court under the circumstances of the case.

Dated, &c.

Registrar.

To C. D.,
of

4.

Order directing Request to be forwarded to another Court.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at .

No. of Plaint .

Between , plaintiff,
and
, defendant.

WHEREAS a judgment was obtained against the above-named defendant in this action on the day of 19 :

And whereas the defendant has filed a request in this court for an order for the administration of his estate under the 122nd section of the Bankruptcy Act, 1883 :

And whereas in the opinion of the court it would be inconvenient that this court should administer the estate :

It is ordered that the said request and a certificate of the said judgment be forwarded to the county court of holden at , in the district of which court the said debtor [*or* a majority of the creditors of the said debtor] resides [*or* reside].

Dated this day of 19 .

By the court,

Registrar.

4A.

Order staying Proceedings on Judgment, Order, Execution, Judgment Summons, or Order of Commitment.

BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at (Seal.)

Between

A.B. plaintiff.

and

C.D. defendant.

No. of Plaint.

No. of Execution, Judgment Summons, or Order of Commitment.

and

In the matter of a request for an administration order against the above-named *C.D.*

Upon the application of the above-named defendant, and it appearing that the said defendant has filed in this court [*or* in the county court of holden at] a request for an administration order under section 122 of the Bankruptcy Act, 1883,

And the defendant undertaking not to dispose of or remove any of his goods or chattels which are liable to be seized under warrant of execution until after the hearing of the said request,

IT IS ORDERED that proceedings under the judgment [*or* order] obtained against the defendant in this action [*or* the warrant of execution [*or* judgment summons *or* order of commitment] issued in this action against the defendant] be stayed until after the hearing of the said request on the day of 19 .

[*If the bailiff is in possession under a warrant of execution, and is ordered to withdraw, add*

And it is ordered that the bailiff do withdraw from possession of the goods and chattels seized under the said warrant until after the hearing of the said request.]

[*If costs allowed, add*

And it is ordered that the costs of the said warrant of execution [*or* judgment summons *or* order of commitment] incurred by the above-named plaintiff be allowed, and that such costs, if and so far as they are not allowed out of any money received under the warrant of execution [*or* judgment summons *or* order of commitment], may on the application of the plaintiff be added to the debt due to him from the said defendant and scheduled to the said request.]

Dated this day of 19 .

Registrar.

4B.

Certificate that Request has been filed.

BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at (Seal.)

In the matter of a request for an administration order against *A.B.* of debtor.

I hereby certify that a request for an order for the administration of the estate of *A.B.* of

(*here insert address and description of debtor*)

under the provisions of section 122 of the Bankruptcy Act, 1883, has been

filed in this court, and will be heard on the day of 19 , and that a debt of £ has been not paid by the said *A.B.* to this court as being due from him to

(*here insert name, address and description of the creditor whose name the debtor wishes to be inserted*)

under a judgment [*or* an order] of the

(*here insert name of court in which the judgment or order was obtained*).

Dated this day of 19 .

Registrar.

5.

Administration Order.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)

No. of administration order.

In the matter of an administration order against A. B., of, &c., debtor.

The day of 19 .

IT is this day ordered that the above-named debtor do pay the several debts in the schedule hereto, and all others now due and which may hereafter be duly proved under this order in respect of debts now incurred, in full [*or* to the extent of *s.* in the £].

And it is ordered that the said debtor do pay to the registrar of the court *s.* for every days until such debts shall be paid in full [*or* to the extent of *s.* in the £], together with the costs of this administration, and the costs of C. D. [*the plaintiff in the action upon the judgment in which administration order was made*], the first of such payments to be made on the day of 19 ; and it is directed that E. F., of, &c., have the conduct of this order.

By the court, &c.

[Here follows the schedule of debts.]

N.B.—On the copy sent to the debtor the following must be added :

Take notice that if you change your address you must at once give notice to the registrar of your new address.

5A.

Notice to be printed on Administration Order of Cases in which it may be rescinded.

This order may at any time be set aside or rescinded by the judge in any of the following cases ; namely,

(1) Where two or more of the instalments ordered to be paid are in arrear.

(2) Where the debtor has wilfully inserted in the list attached to his request the wrong name or address of any of his creditors, or has wilfully omitted therefrom the name of any creditor.

(3) Where the debtor subsequent to the date of the order has obtained credit to the extent of £2 or upwards without informing the creditor that he has an administration order.

(4) Where the order has been obtained by fraud or misrepresentation.

(5) Where a receiving order has since the date of the administration order been made against the debtor.

6.

Notice to Creditors and other Courts.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)
No. of administration order.
In the matter, &c. debtor.

TAKE NOTICE, that the court has this day made an administration order providing for the payment of the debts of the above named debtor in full [*or* to the extent of *s.* in the £] by instalments of *s.* every days, and has directed that E. F., of, &c., shall have the conduct of the order.

Dated, &c.

Registrar.

Bring this notice with you when you apply for a dividend or attend at the office of the registrar for any purpose whatsoever.

[*Where notice of the order is sent to another court, substitute for these words :*]

A debt amounting to due to , in respect of which it is stated that a judgment has been obtained or proceedings are pending in the county court of holden at [*or as the case may be*], is scheduled to the order.

Hours, &c.

7.

Warrant of Execution.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)
No. of administration order.
No. of execution.
In the matter of, &c., debtor.

WHEREAS an administration order was made against the above-named debtor on the day of , 19 :

And whereas it has been made to appear to the judge [*or* registrar] of the court that the property of the debtor exceeds in value 10 pounds :

You are therefore required and ordered forthwith to make and levy by distress and sale of the goods and chattels of the debtor, wheresoever they may be found within the district of this court (except the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade, to the value in the aggregate of 20 pounds), the sum stated at the foot of this warrant, and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the debtor which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court, this day of , 19 .

To the high bailiff of the court, and others the bailiffs thereof.

	£	s.	d.	
Amount to be levied * . . .				By the court,
				Registrar.
£				

* *The amount to be levied will be—1st, the costs of the plaintiff; 2nd, the costs of the administration, i.e., 2s. in the £ on the amount of debts then ascertained; and, 3rdly, the total amount of the debts scheduled, or so much thereof as the court may have ordered to be paid, less the amount (if any) already paid.*

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the debtor.

8.

Judgment Summons.

THE BANKRUPTCY ACT, 1883, SECT. 122, and THE DEBTORS ACT, 1869.

In the county court of , holden at . (Seal.)
No. of administration order.
No. of judgment summons.
In the matter of, &c., debtor.

WHEREAS an administration order was made against you, the above-named debtor in this court, on the day of 19 , for the payment of your debts in full [*or* to the extent of in the £], by instalments of shillings for every days:

And whereas you have made default in payment of the sum of payable in pursuance of the said order:

You are therefore hereby summoned to appear personally in this court, at , on the day of 19 , at the hour of in the noon, to be examined on oath by the court touching the means you have or have had since the date of the order to satisfy the sum payable in pursuance of the said order, and also to show cause why you should not be committed to prison for such default; and you are hereby warned that unless the contrary is proved you will under the act be deemed to have had since the date of the order the means to pay the sum in respect of which you have made default, and to have refused or neglected to pay the same.

Dated this day of , 19 .

Registrar.

	£	s.	d.
Amount paid under administration order			
Amount of instalments due and upon payment of which no further proceedings will be had until default in payment of the next instalment			

9.

Order of Commitment.

THE BANKRUPTCY ACT, 1883, SECT. 122, and THE DEBTORS ACT, 1869.

In the [*title of court ordering committal*]. (Seal.)

No. of administration order.
No. of judgment summons.
No. of order.

In the matter of, &c., debtor.

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and to the governor or keeper of the [*prison used by the court, if the debtor is resident within the jurisdiction; if not, no name of prison to be inserted*].

WHEREAS an administration order was made against the above-named debtor on the day of for the payment of his debts in full [*or* to the extent of in the £], by instalments of shillings for every days:

And whereas the debtor has made default in payment of payable in pursuance of the said order:

And whereas a summons was duly issued out of this court, by which the debtor was required to appear personally at this court on the day of , 19 , to be examined on oath touching the means he had then or had had since the date of the order to satisfy the sum then due and payable in pursuance of the order, and to show cause why he should not be committed to prison for such default, which summons has been proved to this court to have been duly and personally served on the debtor:

And whereas at the hearing of the said summons it has not been proved to the satisfaction of the court that the debtor has not [*or* has not had] since the date of the order the means to pay the sum then due and payable in pursuance of the order:

And whereas the debtor has refused [*or* neglected] to pay the same, and has shown no cause why he should not be committed to prison:

Now therefore it is ordered that, for such default as aforesaid, the debtor shall be committed to prison for days, unless he shall sooner pay the sum stated below as that upon the payment of which he is to be discharged.

These are therefore to require you, the said high bailiff, bailiffs and others to take the debtor, and to deliver him to the governor or keeper of the , and you the said governor or keeper to receive the debtor, and him safely keep in the said prison for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Given under the seal of this [*insert date of order*] day of 19 .

By the court,

Registrar.

	£	s.	d.
Total amount of instalments due at time of issue of judgment summons			
Deduct amount paid into court since issue of judgment summons .			
Sum on payment of which the debtor is to be discharged . . .			

N.B.—*Where this order is sent to a foreign court under s.* 158 *of the County Courts Act,* 1888, *the registrar of that court shall insert the name of the prison used by the foreign court.*

10.

Notice to Debtor of Creditor's Claim under sub-section 12.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at (Seal.)
No. of administration order.

In the matter, &c., debtor.

TAKE NOTICE, that E. F., of, &c., states that you owe him the sum of £ for , and claims to be scheduled as a creditor for that sum;

And further take notice, that if you wish to dispute such claim you must within seven days from this date sign and return the notice at the foot hereof to the registrar of the court.

If you do not return the notice as above-mentioned the said claim will be taken to be admitted by you, and will be added to the schedule accordingly.

To A. B., &c.

NOTICE.

No. of administration order.

I object to the claim of E. F., of against me.

(Signed) A. B., debtor.

To the registrar of the county court at .

11.

Notice to Creditor that his Claim is not objected to.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)
No. of administration order.

In the matter of, &c., debtor.

TAKE NOTICE, that the debtor has not given notice of his intention to dispute your claim, and that the same has been added to the schedule of debts proved.

To E. F., &c.

You must retain this notice and produce it when you come to the office to receive dividends or for any other purpose.

12.

Notice of Hearing of Objection to Claim.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)
No. of administration order.

In the matter of, &c., debtor.

YOU [*or* the debtor] having given notice of your [*or* his] intention to dispute the claim of E. F. of against you [*or* your claim against him],

Take notice that the objection will be heard at the court house at in the county of on the day of at the hour of in the noon.

You should bring with you to the court on the day above-mentioned any witnesses, books, &c., necessary to defeat [*or* prove] the claim.

Dated, &c. Registrar.

To, &c.

A. B. [*the debtor*] and
E. F. [*the claimant*].

13.

Notice to Debtor to attend and show cause why Administration Order should not be rescinded.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)
No. of administration order.
In the matter of, &c., debtor.
TAKE NOTICE, that you are hereby required to attend personally in this court, at , on the day of 19 , at the hour of in the noon, to show cause why the administration order made against you in this court on the day of 19 , should not be set aside or rescinded on the following grounds:
[*here state grounds alleged for rescission.*]
Dated this day of 19 .
To [*the debtor*] Registrar.

14.

Order rescinding Administration Order.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at (Seal.)
No. of administration order.
In the matter of, &c., debtor.
IT is hereby ordered that the administration order made against the above-named debtor in this court on the day of 19 , be and the same is hereby rescinded on the following grounds:
[*here state grounds for rescission.*]
Dated this day of 19 .
By the court, Registrar.

15.

Notice to Debtor and Creditors and other Courts of Rescission of Administration Order.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)
No. of administration order.
In the matter of, &c., debtor.
TAKE NOTICE, that by order dated the day of 19 , the administration order made against [you] the above-named debtor in this court on the day of 19 , has been rescinded on the following grounds:
[*here state grounds of rescission.*]
Dated this day of 19 .
To
Registrar.
[NOTE.—*If there are any moneys in court to be distributed, notice of dividend should also be sent to the creditors: See Rules* 16 (2), 24 (1), *and Form* 17.]

16.

Order suspending operation of Administration Order, or New Order for payment by Instalments.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)
No. of administration order.

In the matter of, &c., debtor.

WHEREAS an administration order was made against the above-named debtor on the day of for the payment of his debts in full [*or* to the extent of in the £] by instalments of shillings for every days:

And Whereas it appears that the debtor is unable to pay the instalments due under the said order by reason of illness [*or* unavoidable misfortune]:

It is hereby ordered that the operation of the said order be and the same is hereby suspended for a term of from this date.

[*or* It is hereby ordered that the said debtor do pay the amount remaining due under the said order by instalments of for every days, the first of such instalments to be paid on the day of 19 .]

Dated this day of 19 .

By the court,

Registrar.

16A.

Order rescinding Administration Order unless Debtor pays Instalments in Arrear within a specified Time or by Instalments.

BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at (Seal.)
No. of Administration Order.

In the matter of an administration order against *A.B.* of debtor.

It is hereby ordered that the administration order made against the above-named debtor in this court on the day of 19 , be rescinded without further notice to the debtor unless the sum of in payment of which the debtor has made default be paid on or before the day 19 [*or* by instalments of for every days, the first of such instalments to be paid on the day of 19].

Dated this day of 19 .

By the Court.

Registrar.

17.

Notice of Dividend.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)
No. of administration order.

In the matter of, &c., debtor.

(1.) *Notice of Payment of Plaintiff's Costs.*

Take notice, that a sum has been paid into court in this matter sufficient to pay your costs of action, amounting to

(2.) *Notice of Dividend.*

Take notice, that a sum has been paid into court in this matter sufficient to provide for payment of a dividend of in the pound.

The amount of the dividend on the debt of scheduled as due to you is

In either case proceed as follows.

The above sum will be paid out to you in accordance with the County Court Rules as to payment out of court of money paid in on a judgment. On your applying for the same it will be necessary that you should produce this notice.

Dated this day of 19 .

To [*the Plaintiff or other Creditor.*] Registrar.

18.

Order Superseding Administration Order.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . . . . . (Seal.)

No. of administration order.

In the matter, &c., debtor.

WHEREAS the above-named debtor has under this order paid into court a sum sufficient to pay each debt scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration: It is ordered that such order be superseded and that the debtor be discharged from his debts scheduled under such order.

Dated this day of 19 .

By the court,

Registrar.

19.

Notice of Administration Order made at the County Court of holden at , on the day of 19 .

Name of Debtor.		Residence.		Description.	Number of Creditors Scheduled.		Gross Amount of Debts.	Number of Order.
Surname.	Christian Name or Names.	Place, Street, &c.	County.		Judgment.	Non-judgment.	£ s. d	

I hereby certify that the above return is correct.

Registrar.

NOTE.—*To be sent to the Registry of County Court Judgments, and to be posted up in the Office of the Court within three days of the making of the order.*

CHAPTER V.

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THE FINES AND RECOVERIES ACT, 1833.

[3 & 4 Will. IV. c. 74. August 28, 1833.]

Section 79.

Every deed by a married woman, not executed by her as protector, to be acknowledged by her before a judge, etc.

79. And be it further enacted, that every deed to be executed by a married woman for any of the purposes of this Act, except such as may be executed by her in the character of protector for the sole purpose of giving her consent to the disposition of a tenant in tail, shall, upon her executing the same, or afterwards, be produced and acknowledged by her as her act and deed before a judge of one of the superior courts at Westminster, or a master in chancery, or before two of the perpetual commissioners, or two special commissioners to be respectively appointed as hereinafter provided.

The judge, etc., before receiving such acknowledgment, to examine her apart from her husband.

80. And be it further enacted, that such judge, master in chancery or commissioners as aforesaid, before he or they shall receive the acknowledgment by any married woman of any deed by which any disposition, release, surrender, or extinguishment shall be made by her under this Act, shall examine her apart from her husband, touching her knowledge of such deed, and shall ascertain whether she freely and voluntarily consents to such deed, and unless she freely and voluntarily consents to such deed shall not permit her to acknowledge the same; and in such case such deed shall, so far as relates to the execution thereof by such married woman, be void.

When a married woman shall acknowledge a deed, the person taking the

84. And be it further enacted, that when a married woman shall acknowledge any such deed as aforesaid, the judge, master in chancery or commissioners taking such acknowledgment, shall sign a memorandum, to be endorsed on or written at the foot or in the margin of such deed; which memorandum, subject to any

alteration which may from time to time be directed by the court of common pleas (*a*), shall be to the following effect; videlicet (*b*). Section 84. acknowledgment to sign a memorandum to the effect here mentioned.

NOTE.—(*a*) Now K. B. D.; 36 & 37 Vict. c. 66, s. 32; and see Rules 3, 5, *infra*.

NOTE.—(*b*) Residue of section as well as sects. 85 to 88 repealed by 45 & 46 Vict. c. 39, s. 7; and see s. 3.

Acknowledgments by Married Women.]—Any acknowledgment to be made by any married woman of any deed, under the Fines and Recoveries Act, 1833, may be received by a judge of a county court in the same manner as the acknowledgment may be received by a judge of the High Court (see County Courts Act, 1888, s. 184).

THE MARRIED WOMEN'S REVERSIONARY INTERESTS ACT, 1857.

[20 & 21 VICT. c. 57.]

By this Act married women may dispose of their reversionary interests in personal estate and release powers over such estate, and also their rights to a settlement out of such estate in possession.

Deeds under this Act must be acknowledged in the manner required by the Fines and Recoveries Act, 1833 (*supra*).

RULES UNDER THE ACT FOR THE ABOLITION OF FINES AND RECOVERIES, AND SECTION 7 OF THE CONVEYANCING ACT, 1882.

2. Before a commissioner shall receive an acknowledgment, he shall inquire of the married woman separately and apart from her husband and from the solicitor concerned in the transaction whether she intends to give up her interest in the estate to be passed by the deed without having any provision made for her; and where the married woman answers in the affirmative and the commissioner shall have no reason to doubt the truth of her answer, he shall proceed to receive the acknowledgment; but if it shall appear to him that it is intended that provision is to be made for the married woman, then the commissioner shall not take her acknowledgment until he is satisfied that such provision has been actually made by some deed or writing produced to him; or if such provision shall not have been actually made before, then the commissioner shall require the terms of the intended provision to be shortly reduced into writing, and shall verify the same by his signature in the margin, at the foot, or at the back thereof.

Rule 3.

3. The memorandum to be indorsed on or written at the foot or in the margin of a deed acknowledged by a married woman shall be in the following form in lieu of the form set forth in section 84 of the Fines and Recoveries Act :

This deed was this day produced before me, and acknowledged by therein named to be her act and deed [*or* their several acts and deeds], previous to which acknowledgment [*or* acknowledgments] the said was [*or* were] examined by me separately and apart from her husband [*or* their respective husbands] touching her [*or* their] knowledge of the contents of the said deed and her [*or* their] consent thereto, and [each of them] declared the same to be freely and voluntarily executed by her.

5. A memorandum of acknowledgment purporting to be signed according to any of the following forms shall be deemed to be a memorandum purporting to be signed by a person authorised to take the acknowledgment :— (Signed) *A. B.*

A judge of the High Court of Justice in England,
or A judge of the county court of
or A perpetual commissioner for taking acknowledgments of deeds by married women,
or The special commissioner appointed to take the aforesaid acknowledgment.

But this rule is not to derogate from the effect of any memorandum purporting to be signed by a person authorised to take the acknowledgment, though not signed in accordance with any of the above forms (*a*).

Note.—(*a*) The above are the rules now in force in the High Court and elsewhere.

6. Nothing in the five preceding rules contained shall make invalid any acknowledgment which would have been valid if these rules had not been enacted.

9. The following rules and orders are hereby repealed, except as to certificates not lodged before the 1st of January, 1883, of acknowledgments by married women of deeds executed before the 1st of January, 1883, and the affidavits relating thereto :—

The general rules of the Court of Common Pleas, Hil. Term, 1834.

The general rules of the Court of Common Pleas, Trin. Term, 1834.

The general order of the Court of Common Pleas, dated the 24th of November, 1862.

The general order of the Court of Common Pleas, dated the 13th of January, 1863.

10. These rules shall take effect from and after the 31st of December, 1882.

CHAPTER VI.

SUMMARY PROCEDURE ON BILLS OF EXCHANGE, AND SALE OF GOODS ACT, 1893.

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ORDER IN COUNCIL.

Published in the *London Gazette* of Friday, February 1, 1856.

At the Court of Buckingham Palace, the 30th day of January, 1856.

PRESENT:

The Queen's most Excellent Majesty in Council.

Order in Council extending provisions to the county courts.

WHEREAS by "The Summary Procedure on Bills of Exchange Act, 1855," it is enacted that it shall be lawful for Her Majesty, from time to time, by an Order in Council, to direct that all or any part of the provisions of the said Act shall apply to all or any court or courts of record in England and Wales, and that within one month after such order shall have been made and published in the *London Gazette*, such provisions shall extend and apply in manner directed by such order, and that any such order may be, in like manner, from time to time altered and annulled; and that in and by such order Her Majesty may direct by whom any powers or duties incident to the provisions applied under the said Act shall and may be exercised with respect to matters in such court or courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied:

See Order following excluding operation of the Act where amount claimed less than 10*l*.

And whereas it has seemed fit to Her Majesty, by and with the advice of her Privy Council, that all the provisions of the said Act should be extended and applied to all the courts of record established under the provisions of an Act passed in the session holden in the ninth and tenth years of her present Majesty, chapter ninety-five:

Order.

Now, therefore, Her Majesty, by and with the advice aforesaid, is pleased to order, and it is hereby ordered, that all the provisions of "The Summary Procedure on Bills of Exchange Act, 1855," shall apply to the said courts of record established under the provisions of the Act passed in the session holden in the ninth and tenth years of her present Majesty, chapter ninety-five, in respect of actions upon bills of exchange and promissory notes, where the plaintiff claims a sum not exceeding fifty pounds:

And Her Majesty is further pleased, by and with the advice aforesaid, to direct that the powers and duties incident to the provisions of the said "Summary Procedure on Bills of Exchange Act, 1855," with respect to matters in the said courts of record, shall and may be exercised by the judges of the said courts respectively, or their respective deputies, for the time being, or in their absence by the respective clerks of the said courts for the time being; and that the enactments, Secretary of State's orders, practice and forms, in force and used in the said courts of record, shall be adopted with reference to proceedings had under the said last-recited Acts, so far as the same are applicable, *mutatis mutandis*.

WM. L. BATHURST.

THE SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT, 1855.

[18 & 19 VICT. c. 67. JULY 23, 1855.]

Jurisdiction of County Court.]—By "The Summary Procedure on Bills of Exchange Act, 1855" (18 & 19 Vict. c. 67), a new and more speedy mode of proceeding for the recovery of bills of exchange and promissory notes in the superior courts of common law was created.

By an Order in Council, dated January 30th, 1856, the provisions were extended to the county courts, when the amount claimed did not exceed 50*l*.

By an order of July 27th, 1863, the preceding order was altered, and the provisions of the Act do not apply where a less sum than 10*l*. is claimed. In such cases the remedy is therefore by plaint and summons in the ordinary way; and in any case, when proceedings could be taken under the Act, the plaintiff may, if he thinks fit, avail himself of the ordinary process (*Waters* v. *Handley*, (1848) 6 D. & L. 88; *Nind* v. *Rhodes*, (1848) 5 D. & L. 621; 17 L. J. Q. B. 179). If the registrar refuses to issue a summons under the Act, where the plaintiff has a right to it, an order will lie to the registrar to compel him to issue it (*R.* v. *Southampton C. C.* (2), (1892) 61 L. J. Q. B. 706).

The Summary Procedure on Bills of Exchange Act, 1855, is repealed as regards the High Court by 46 & 47 Vict. c. 49. Sect. 7 of the latter Act preserves its operation in county courts.

From Oct. 24, 1855, all actions upon bills of ex-

1. From and after the twenty-fourth day of October, one thousand eight hundred and fifty-five, all actions upon bills of exchange or promissory notes commenced within six months

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change, etc., may be by writ of summons as form in schedule (A); plaintiff, on filing affidavit of personal service, may at once sign final judgment as form in schedule (B).

after the same shall have become due and payable may be by writ of summons in the special form contained in Schedule (A) to this Act annexed, and indorsed as therein mentioned; and it shall be lawful for the plaintiff, on filing an affidavit of personal service of such writ within the jurisdiction of the court, or an order for leave to proceed, as provided by the Common Law Procedure Act, 1852, and a copy of the writ of summons and the indorsements thereon, in case the defendant shall not have obtained leave to appear and have appeared to such writ according to the exigency thereof, at once to sign final judgment in the form contained in Schedule (B) to this Act annexed (on which judgment no proceeding in error shall lie) for any sum not exceeding the sum indorsed on the writ, together with interest, at the rate specified (if any), to the date of the judgment, and a sum for costs to be fixed by the masters of the superior courts or any three of them, subject to the approval of the judges thereof or any eight of them (of whom the Lord Chief Justices and the Lord Chief Baron shall be three), unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way, and the plaintiff may upon such judgment issue execution forthwith.

A note payable on demand is within the statute, and the six months run from the date of the note (*Maltby* v. *Murrells*, (1860) 5 H. & N. 813; 29 L. J. Ex. 377).

Material Part of Cause of Action.]—The general rules as to where the plaint must be entered apply to actions commenced under these provisions. Some decisions upon the question as to what is a material part of a cause of action specially affecting bills of exchange will now be noticed. Drawing and indorsing (*Betteley* v. *Buck*, (1849) 13 Jur. 368; *Huth* v. *Long*, (1850) 19 L. J. Q. B. 325; *Trevor* v. *Wilkinson*, (1875) 31 L. T. 731), and acceptance (*Roff* v. *Miller*, (1850) 19 L. J. C. P. 278), are material parts, so is notice of dishonour (*Huth* v. *Long*, *supra*); and it seems that presentment and dishonour at a place appointed for payment by the acceptor constitute a material part at the place of dishonour (*Hawes* v. *Paveley* (C. A.), (1876) 1 C. P. D. 418; 46 L. J. C P. 18). Where a plaintiff residing at N. drew a bill of exchange on the defendant, who resided at L., not within the jurisdiction of the N. court; and the defendant accepted the bill at L. and returned it to the plaintiff at N., it was held that the whole cause of action did not arise within the district of N. court (*Wilde* v. *Sheridan*, (1852) 21 L. J. Q. B. 260). So where a bill was drawn and accepted, and the indorser put his name on it within the city of London, but it was delivered to the indorsee elsewhere, it was held, in an action by the indorsee against the indorser, that the whole cause of action did not arise in London (*Buckley* v. *Hann*, (1851) 5 Ex. 43; 19 L. J. Ex. 151; 82 R. R. 553).

Procedure.]—Particulars of demand must be filed in all cases on the entry of the plaint; they must state that the instrument sued upon became due and payable within six months before the commencement of the action (Order XXXV. r. 1; Order VI. r. 1; see form of plaint-note, Form 21; of summons, Form 25; of particulars, Form 26; as to the district in which to enter plaint, see *ante*, p. 72. Form of judgment, Form 151).

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Parties.]—The action may be commenced by one plaint against all or any of the parties to or indorsers of the bill (see sect. 6). The plaint may be entered under these provisions against partners in the name of their firm. Service may then be on any partner (Order VII. r. 31).

Service of Summons.]—The summons on the plaint must be served personally, but where the judge or registrar is satisfied by affidavit (Form 43) that reasonable efforts have been made to effect service, and that the summons has come to the defendant's knowledge, or that he wilfully evades service, the judge or registrar may order, on such terms as he may think just, that the plaintiff may proceed as if personal service had been effected (Order VII. r. 39; 51 & 52 Vict. c. 43, s. 86; Forms 44, 45, 46).

Defendant showing a defence upon the merits to have leave to appear.

2. A judge of any of the said courts shall, upon application within the period of twelve days from such service, give leave to appear to such writ, and to defend the action, on the defendant paying into court the sum indorsed on the writ, or upon affidavits satisfactory to the judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the judge may seem fit.

Judgment by Default.]—On filing an affidavit of personal service, or an order to proceed, the plaintiff may, twelve days after service of the summons, **unless** the defendant has obtained leave to defend, at once obtain judgment **for the** amount claimed, interest and costs (18 & 19 Vict. c. 67, ss. 1, 2). No order or judgment need be served on the defendant (Order XXIII. rr. 5, 8). Judgment will not be entered after two calendar months from the date of service of the summons, if no order to defend has been obtained (Order VII. r. 36; Order LV.).

Deposit of Bill.]—In any proceedings under the Bills of Exchange Act, the judge may order the bill or note sought to be proceeded upon to be forthwith deposited with an officer of the court, and further order all proceedings to be stayed until the plaintiff has given security for the costs (18 & 19 Vict. c. 67, s. 4). When the judge is absent this power may be exercised by the registrar (Order in Council, January 30th, 1856).

Leave to Defend.]—The defendant may not defend the action without first obtaining leave; in order to obtain leave to defend, the defendant must within twelve days after service of the summons, inclusive of the day of the service (Order VII. r. 2A), apply to the judge, or, in his absence, to the registrar (Order in Council, January 30th, 1856). The application is *ex parte*. Unless the defendant pays into court the amount claimed in the summons, the application for leave to defend must be made on affidavit, stating such facts as show that there are grounds for giving leave to defend; and the affidavit and a copy must be filed with the registrar (18 & 19 Vict. c. 67, s. 2; Order XXXV. r. 2). It is not necessary that the defendant should make an affidavit of merits. It is enough if he discloses a legal or equitable defence. Non-joinder of a defendant is a sufficient defence (*Casella* v. *Darton*, (1873) L. R. 8 C. P. 100; 42 L. J. C. P. 58). For form of affidavit, see Form 11, Appendix A. If the judge or registrar is satisfied that the defendant has a good defence, and it is sufficient that the affidavit should show reasonable and plausible grounds of defence (*Clay* v. *Turley*, (1858) 27 L. J. Ex. 2; *Mathews* v. *Marsland*, (1858) 27 L. J. Ex. 148); or if the defendant pays the amount into court, leave will be given to defend on such terms, as to security or otherwise, as the judge or registrar thinks fit. The court will not, however, require the amount to be paid into court, or impose any terms upon the defendant, unless the defence appears to

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be vexatious, or not to be set up *bonâ fide* (*Agra and Masterman's Bank* v. *Leighton*, (1866) L. R. 2 Ex. 56; 36 L. J. Ex. 33).

Where a defendant has obtained leave to defend, the judge may set aside the order if it has been obtained fraudulently, or it is shown clearly that there can be no defence (*Pollock* v. *Turnock*, (1857) 1 H. & N. 741; 3 Jur. N. S. 92; 108 R. R. 802; *Agra and Masterman's Bank* v. *Leighton*, *supra*).

Security when required must be given in the form of a bond (Form 42), or by deposit of money. For the provisions as to security, see *ante*, p. 116.

Lost Bill.]—At common law no action lay on a negotiable bill, note, or cheque, or on the consideration, when the instrument had been lost. To relieve against the rigour of this rule various provisions were made, but now the Bills of Exchange Act, 1882, itself provides a sufficient remedy. It provides that in any action on a bill the court or judge may order that the loss of the instrument shall not be set up provided an indemnity be given to the satisfaction of the judge against the claims of any other person (45 & 46 Vict. c. 61, s. 70).

The application for this order may be made to the court at any time before the hearing, on notice in writing, supported by affidavit, a copy of which must be served with the notice; by leave of the judge the application may also be made at the hearing. The application may be granted on such terms as to payment of costs by the applicant and postponement of the trial as may be just; any offer of indemnity made by the applicant is to be taken into consideration (Order XII. r. 10). Such offer should be made before action, otherwise the applicant may be made to pay the costs as a term of the order under the above provisions (*King* v. *Zimmerman*, (1871) L. R. 6 C. P. 466; 40 L. J. C. P. 278). The fact of the loss should be shown to be a defence in the affidavit for leave to defend (see *Charnley* v. *Grundy*, (1854) 14 C. B. 608; 23 L. J. C. P. 121; 98 R. R. 782). If the plaintiff does not after notice of such defence obtain relief under the section, the loss of the instrument may be set up and the claim defeated. As to the practice, see Order XV. rr. 1, 4, and Order XII. r. 11.

Hearing.]—Where leave is given to defend, the registrar must appoint the cause to be heard at the first convenient sitting to be held after leave is granted. No order will be drawn up (Order XXIII. r. 5), but the registrar must send to the plaintiff notice (Form 40) thereof, together with a copy of the affidavits made by the defendant. He must also send to the defendant, by post, notice of the day fixed for the trial (Order XXXV. r. 3; Form 41).

The defendant is not, at the hearing, limited to the grounds of defence disclosed by the affidavit upon which he obtained leave to defend (*Saul* v. *Jones*, (1859) 1 El. & El. 59; 28 L. J. Q. B. 37; 117 R. R. 137).

Evidence and Rights of Parties.]—In an action on a bill or promissory note, if it be by payee against acceptor or maker the handwriting must be proved; the acceptance of a bill admits the drawing (*Smith* v. *Marsack*, (1848) 6 C. B. 486; 12 Jur. 1050; *Hallifax* v. *Lyle*, (1849) 3 Ex. 446; 18 L. J. Ex. 197; 77 R. R. 691).

If the action is by indorsee, the handwriting of the indorsement must be proved in addition.

In an action by indorsee against a drawer or previous indorser, the indorser's signature, which admits the signature and ability of all previous parties, must be proved; secondly, presentment for payment or acceptance, and dishonour; thirdly, notice of dishonour, or a sufficient excuse for not giving it.

The effect of sect. 25 of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61) which says that a signature "*per pro*" is notice that the authority of the agent so signing is limited, is that if the authority has been exceeded the principal may refuse payment of the bill, and persons take it subject to this risk, but where the bill has once been paid the transaction is complete, and the section does not give a right to recover the proceeds

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(*Morison* v. *London County and Westminster Bank*, (1914) 3 K. B. 356; 83 L. J. K. B. 1202).

Right of Holder.]—A transfer by indorsement of a bill of exchange vests in the indorsee a right of action against all the parties whose names are on the bill in case of default of acceptance or payment (45 & 46 Vict. c. 61, ss. 54, 55).

Presentment.]—In order to preserve his right of action against the drawer or any prior indorsers, it is necessary that the holder should duly present the bill, or cause it to be presented, on the day on which by custom it is payable, and that if payment is refused, notice of dishonour should be given. The same rule does not, however, apply to acceptors, who still remain liable, notwithstanding non-presentment or the omission to give notice (*Maliby* v. *Murrells*, (1860) 5 H. & N. 813; 29 L. J. Ex. 377; 45 & 46 Vict. c. 61, ss. 45, 48). And presentment does not appear to be indispensable even where the bill is made payable by the acceptor at a banker's (*Turner* v. *Harden*, (1825) 4 B. & C. 1; *Sebag* v. *Abitbol*, (1816) 4 M. & S. 462), unless payable there, "and not otherwise or elsewhere" (see *Rhodes* v. *Gent*, (1821) 5 B. & Ald. 244).

Notice of Dishonour.]—The notice of dishonour, where all the parties live in London, should be given so as to be received on the day after actual dishonour of the bill (45 & 46 Vict. c. 61, s. 49; *Bateman* v. *Joseph*, (1810) 12 East, 433; 11 R. R. 443); but if the person to whom notice is necessary lives in another town, a reasonable time is allowed beyond this; and if reasonable diligence is shown, whether in town or country, notice on a later day is sufficient (45 & 46 Vict. c. 61, ss. 49, 50; *Gladwell* v. *Turner*, (1870) L. R. 5 Ex. 59; 39 L. J. Ex. 31).

Cheques.]—Cheques on bankers are within the Bills of Exchange Act (*Eyre* v. *Waller*, (1860) 5 H. & N. 460; 29 L. J. Ex. 246; 120 R. R. 686), and are subject to many of the rules which regulate the rights and liabilities of parties to bills of exchange (45 & 46 Vict. c. 61, s. 73; see *per* Maule, J., *Webb* v. *Inwards*, (1848) 5 C. B. 483, 485). The holder should present promptly and give notice of non-payment, in order to preserve his rights against the drawer and prior transferors, as if presentment be not made in a reasonable time, and the bank fail in the meantime, he will have to bear the loss himself (see *Camidge* v. *Allenby*, (1827) 6 B. & C. 373; 5 L. J. K. B. 95; 30 R. R. 358). Presentment through the post-office is a reasonable mode of presentment (see *Hare* v. *Henty*, (1861) 30 L. J. C. P. 302; *Prideaux* v. *Criddle*, (1869) L. R. 4 Q. B. 455; 38 L. J. Q. B. 232). "If the drawer dishonours the cheque, and the holder sends a notice of dishonour to the person from whom he received the cheque on the day following that on which the cheque was dishonoured, each previous transferor has one day in which to give notice of dishonour" (*per* Lush, J., *Prideaux* v. *Criddle*, (1869) L. R. 4 Q. B. at p. 469)—*i.e.*, apparently, from the time when he is in a position to give notice (see *Gladwell* v. *Turner*, *supra*). Notice of dishonour by the holder to the drawer is excused if the latter is aware of the want of effects sufficient to meet the cheque (*Carew* v. *Duckworth*, (1869) L. R. 4 Ex. 313; 38 L. J. Ex. 149).

By sect. 82 of the Bills of Exchange Act, 1882, a banker who has collected a crossed cheque for a customer whose title was defective is relieved from liability provided he acted in good faith and without negligence. Therefore where a cheque is signed "*per pro*" without authority but is honoured by the bank, sect. 25 of the Act does not deprive the collecting banker of the protection given by sect. 82, nor is such protection affected by the addition of the words "not negotiable" or "not negotiable a/c payee," *Morison* v. *London County and Westminster Bank*, (1914) 3 K. B. 356; 83 L. J. K. B. 1202.

Section 2 Notes.

Defence.]—In defence the defendant may show that the bill or note is not properly stamped. That the three days of grace did not expire before action (*Kennedy* v. *Thomas* (C. A.), (1894) 2 Q. B. 759; 63 L. J. Q. B. 761). That the signature is a forgery. That a material alteration has been made in the bill without the consent of defendant (*Master* v. *Miller*, (1791) 4 T. R. 320; 2 R. R. 399; 1 Smith's L. C. 803 (12th edit.); *Aldoue* v. *Cornwell*, (1868) L. R. 3 Q. B. 573; 37 L. J. Q. B. 201). (As to suing on the original consideration see *Payana Reena Saminathan* v. *Pana Lana Palaniappa* (1914), A. C. 618; 83 L. J. P. C. 131.) That defendant when he accepted or indorsed the bill was insane, or too intoxicated to understand the effect of the contract, within the knowledge of plaintiff, but not otherwise (*Gore* v. *Gibson*, (1845) 13 M. & W. 623; 14 L. J. Ex. 151; 67 R. R. 762; *Molton* v. *Camroux*, (1848) 2 Ex. 487; 18 L. J. Ex. 68; 76 R. R. 669; *Dixon* v. *Birch*, (1873) L. R. 8 Ex. 135; 42 L. J. Ex. 135). He may also show that his signature was obtained by fraud, or that the consideration was illegal. In this case, if the action be by indorsee, it lies upon the plaintiff to show that he is a holder for value. And if it appear that he and each of the prior holders through whom he claims took the bill with knowledge of the facts, or when overdue, or gave no consideration for it, this will be an answer to the action. The defendant may likewise prove that there was no consideration for the bill or note, or that the consideration has wholly failed, and that the plaintiff and each of the prior holders through whom he claims gave no consideration for it. He may also prove payment to the plaintiff or a previous holder, unless the payment was made to the plaintiff by a previous holder upon the understanding that the plaintiff should sue for his benefit (*Williams* v. *James*, (1850) 15 Q. B. 498; 19 L. J. Q. B. 445); and if the action be against an indorser, he may show that the plaintiff has discharged him by giving time to the acceptor or previous indorser (*Duncan* v. *N. Wales Bk.*, (1880) 6 App. Cas. 1; 50 L. J. Ch. 355; *Overend & Co.* v. *Oriental Corporation*, (1874) L. R. 7 H. L. 348). He cannot set up a verbal agreement in defeasance of the contract created by the bill. *Hitchens and Coulthurst Co.* v. *Northern Leather Co. of America and Donshkess*, (1914) 3 K. B. 907; 83 L. J. K. B. 1819.

Judgment.]—Final judgment is to be in the same form as when judgment is entered up under sect. 86, sub-ss. 1, 2, of the County Courts Act, 1888 (Order XXXV. r. 1A; Form 151).

Setting aside Judgment.]—The judge may, under special circumstances, set aside the judgment, and, if necessary, stay or set aside execution, and give the defendant leave to appear and defend if it seems to him reasonable, and on such terms as he thinks just (see sect. 3). The application to set aside a judgment must be made to the judge, but until he can hear it execution will be stayed, upon the defendant giving security to abide the decision of the judge (Order XXXV. r. 4; see *ante*, p. 116, as to security).

Execution.]—Execution will issue in the same manner, and the same provisions at and after the trial will apply to these proceedings as have been already described (see *ante*, p. 172).

Appeal.]—It has always been assumed that there is an appeal in these cases.

Judge may, under special circumstances, set aside judgment.

3. After judgment, the court or a judge may, under special circumstances, set aside the judgment, and, if necessary, stay or set aside execution, and may give leave to appear to the writ, and to defend the action, if it shall appear to be reasonable to the court or judge so to do, and on such terms as to the court or judge may seem just.

The application to set aside a judgment must be made to the judge, but until he can hear it, execution will be stayed, upon the defendant giving security to abide the decision of the judge (Order XXXV. r. 4).

Section 4.

Judge may order bill to be deposited with officer of court in certain cases.

4. In any proceedings under this Act it shall be competent to the court or a judge to order the bill or note sought to be proceeded upon to be forthwith deposited with an officer of the court, and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

When the judge is absent, this power may be exercised by the registrar (Order in Council, January 30th, 1856).

Remedy for the recovery of expenses of noting non-acceptance of dishonoured bill.

5. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Act for the recovery of the amount of such bill or note.

Holder of bill of exchange may issue one summons against all or any of the parties to the bill.

6. The holder of any bill of exchange or promissory note may, if he think fit, issue one writ of summons, according to this Act, against all or any number of the parties to such bill or note, and such writ of summons shall be the commencement of an action or actions against the parties therein named respectively, and all subsequent proceedings against such respective parties shall be in like manner, so far as may be, as if separate writs of summons had been issued.

The plaint may be entered under these provisions against partners in the name of their firm. Service may then be on any partner (Order VII. r. 31).

Common Law Procedure Acts and rules incorporated with this Act.

7. The provisions of the Common Law Procedure Act, 1852, and the Common Law Procedure Act, 1854, and all rules made under or by virtue of either of the said Acts, shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act.

Her Majesty may direct Act to apply to courts of record in England and Wales.

See Order in Council, *infra*.

9. It shall be lawful for Her Majesty from time to time, by an Order in Council, to direct that all or any part of the provisions of this Act shall apply to all or any court or courts of record in England and Wales, and within one month after such order shall have been made and published in the *London Gazette* such provisions shall extend and apply in manner directed by such order, and any such order may be, in like manner, from time to time altered and annulled; and in and by any such order Her Majesty may direct by whom any powers or duties incident to the provisions applied under this Act shall and may be exercised with respect to matters in such court or courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied.

11. In citing this Act in any instrument, document or proceeding it shall be sufficient to use the expression, "The Summary Procedure on Bills of Exchange Act, 1855." Section 11. Short title.

ORDER IN COUNCIL.

At the Court at Osborne House, Isle of Wight, the 27th day of July, 1863.

PRESENT:

The Queen's most Excellent Majesty in Council.

WHEREAS by "The Summary Procedure on Bills of Exchange Act, 1855," it is enacted that it shall be lawful for Her Majesty from time to time, by an Order in Council, to direct that all or any part of the provisions of the said Act shall apply to all or any court or courts of record in England and Wales, and that within one month after such order shall have been made and published in the *London Gazette*, such provisions shall extend and apply in manner directed by such order, and that any such order may be, in like manner, from time to time altered and annulled; and that in and by such order Her Majesty may direct by whom any powers or duties incident to the provisions applied under the said Act shall and may be exercised with respect to matters in such court or courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied:

And whereas, on the thirtieth day of January, one thousand eight hundred and fifty-six, an order was made by Her Majesty, by and with the advice of her Privy Council, ordering that all the provisions of "The Summary Procedure on Bills of Exchange Act, 1855," should apply to the courts of record established under the provisions of the Act passed in the session holden in the ninth and tenth years of her present Majesty, chapter ninety-five, in respect of actions upon bills of exchange and promissory notes, where the plaintiff claims a sum not exceeding fifty pounds; and directing that the powers and duties incident to the provisions of the said "Summary Procedure on Bills of Exchange Act, 1855," with respect to matters in the said courts of record, should and might be exercised by the judges of the said courts respectively, or their respective deputies for the time being, or, in their absence, by the respective clerks of the said courts for the time being; and that the enactments, Secretary of State's orders, practice and forms, in force, and used in the said courts

Order.

of record, should be adopted with reference to proceedings had under the said last-recited Act, so far as the same were applicable, *mutatis mutandis :*

And whereas it hath been represented that it is desirable that the provisions of " The Summary Procedure on Bills of Exchange Act, 1855," should not apply in respect of actions brought in the county courts upon bills of exchange or promissory notes, where the plaintiff claims a sum less than ten pounds :

Her Majesty, having taken the premises into consideration, is thereupon pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, that the said order of the thirtieth day of January, one thousand eight hundred and fifty-six, shall be altered, and that the provisions of " The Summary Procedure on Bills of Exchange Act, 1855," shall not apply to the courts of record established under the provisions of the Act passed in the session holden in the ninth and tenth years of her present Majesty, chapter ninety-five, in respect of actions upon bills of exchange and promissory notes where the plaintiff claims a sum less than ten pounds.

SALE OF GOODS ACT, 1893.

[56 & 57 Vict. c. 71. 20th February, 1894.]

PART I.

Formation of the Contract.

Contract of Sale.

Sale and agreement to sell.

1.—(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale ; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

As to goods obtained under agreement to purchase—"hire purchase agreements"—and when the person in possession of such goods under such an agreement, can or cannot give a title to the same, see *Lee* v. *Butler*, (1893) 2 Q. B. 318; *McEntire* v. *Crossley Bros.*, (1895) A. C. 457; *Helby* v. *Matthews*, (1895) A. C. 471. Section 1 Note.

2. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property. Capacity to buy and sell.

Provided that where necessaries are sold and delivered to an infant, or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery.

"Necessaries."]—*Ryder* v. *Wombwell*, (1868) 4 Ex. 32; Ex. Ch. 38; *Nash* v. *Inman*, (1908) 2 K. B. 1; *Re Rhodes*, (1890) 44 C. D. 94.

Formalities of the Contract.

3. Subject to the provisions of this Act and of any statute in that behalf, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties. Contract of sale, how made.

Provided that nothing in this section shall affect the law relating to corporations.

"Implied."]—*Brogden* v. *Metropolitan Rail. Co.*, (1877) 2 A. C. 666.

4.—(1) A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf. Contract of sale for ten pounds and upwards.

(2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

(3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.

(4) The provisions of this section do not apply to Scotland.

Section 4 Note.

As to this section, which was formerly in substance sect. 17 (really sect. 16) of the Statute of Frauds (29 Chas. II., c. 3), see Chalmers, "Sale of Goods Act, 1893," 7th edit., pp. 18—25.

Subject matter of Contract.

Existing or future goods.

5.—(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called "future goods."

(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

"**Contingency.**"]—*Hale* v. *Rawson*, (1858) 27 L. J. C. P. 189; *Barnett* v. *Iaveri & Co.*, (1916) 85 L. J. K. B. 1703.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

"**Future Goods.**"]—See *Watts* v. *Friend*, (1830) 10 B. & C. 446; *Ajello* v. *Worsley*, (1898) 1 Ch. 274; *Holroyd* v. *Marshall*, (1862) 10 H. L. C. 191; *Collyer* v. *Isaacs*, (1881) 50 L. J. Ch. 707.

Goods which have perished.

6. Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

See *Couturier* v. *Hastie*, (1856) 5 H. L. C. 673; 25 L. J. Ex. 253; *Smith* v. *Myers*, (1870) L. R. 5 Q. B. 429; L. R. 7 Q. B. 139.

Goods perishing before sale but after agreement to sell.

7. Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

See *Howell* v. *Coupland*, (1874) L. R. 9 Q. B. 462; (1876) 1 Q. B. D. 258; *Elphick* v. *Burnes*, (1880) 5 C. P. D. 821.

The Price.

Ascertainment of price.

8.—(1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

"**Reasonable Price.**"]—*Acebal* v. *Levy*, (1834) 10 Bing. 376; *Valpy* v. *Gibson*, (1847) 4 C. B. 837.

Deposit.]—Money paid as a deposit in the absence of an agreement is forfeited if the sale goes off through the buyer's fault (*Soper* v. *Arnold*, (1889) 14 A. C. 435).

Section 9.

Agreement to sell at valuation.

9.—(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided; provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

See *Vickers* v. *Vickers*, (1867) L. R. 4 Eq. 529; *Clarke* v. *Westrope*, (1856) 25 L. J. C. P. 287.

Conditions and Warranties.

Stipulations as to time.

10.—(1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulations as to time is of the essence of the contract or not depends on the terms of the contract.

(2) In a contract of sale "month" means *primâ facie* calendar month.

"Essence of Contract."]—See *Martindale* v. *Smith*, (1841) 1 Q. B. 389; *Mersey Steel and Iron Co.* v. *Naylor*, (1884) 9 A. C. 434.

When condition to be treated as warranty.

11.—(1) In England or Ireland—

(*a*) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated (*a*).

(*b*) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract (*b*):

(*c*) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating he contract as repudiated (*c*), unless there be a term of the contract, express or implied, to that effect.

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(2) In Scotland, failure by the seller to perform any material part of a contract of sale is a breach of contract, which entitles the buyer either within a reasonable time after delivery to reject the goods and treat the contract as repudiated, or to retain the goods and treat the failure to perform such material part as a breach which may give rise to a claim for compensation or damages.

(3) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

NOTE.—(*a*) See notes to *Pasley* v. *Freeman*, Smith's L. C., 12th edit., 87.
NOTE.—(*b*) **"Depends in each case on the construction of the contract."**]—See *Woolfe* v. *Horne*, (1877) 2 Q. B. D. 360.
NOTE.—(*c*) See *Heilbutt* v. *Hickson*, (1872) L. R. 7 C. P. 450.

Implied undertaking as to title, &c.

12. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

(1) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass :

(2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods :

(3) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

See *Eichholz* v. *Bannister*, (1864) 34 L. J. C. P. 105.

Sale by description.

13. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description ; and if the sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description (*a*).

NOTE.—(*a*) **"Description."**]—See *Randall* v. *Newson*, (1877) 2 Q. B. D. 109 ; *Bowes* v. *Shand*, (1877) 2 A. C. 455 ; *Varley* v. *Whipp*, (1900) 1 Q. B. 513 ; *Re North Western Rubber Co.*, (1908) 2 K. B. 907.
In buying from a firm of good reputation a customer is justified in trusting to the label as to quantity in a package, and is not guilty of contributory negligence in not discovering that a mistake has been made in this respect (*British South African Co.* v. *Lennon, Ltd.*, (1916) 85 L. J P. C. 111).

Implied conditions as to quality or fitness.

14. Subject to the provisions of this Act and of any statute in that behalf (*a*), there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows (*b*) :—

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are

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required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose (*c*), provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose (*d*) :

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality (*e*) ; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed :

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

NOTE.—(*a*) *E.g.*, Scale of Food and Drugs Act, 1875, and Amendment Acts.

NOTE.—(*b*) See *Chanter* v. *Hopkins*, (1838) 4 M. & W. 399; *Ward* v. *Hobbs*, (1878) 4 A. C. 13.

NOTE.—(*c*) **"Fit for Such Purpose."**]—*Jones* v. *Just*, (1868) L. R. 3 Q. B. 203; *Randall* v. *Newson*, *ante*, p. 322 ; *Drummond* v. *Van Ingen*, (1887) 12 A. C. 284.

NOTE.—(*d*) See *Chanter* v. *Hopkins* (*supra*); *Ollivant* v. *Bayley*, (1843) 5 Q. B. 288; *Gillespie* v. *Cheney & Co.*, (1896) 2 Q. B. 59.

NOTE.—(*e*) See *Jones* v. *Just* (*supra*); *Jones* v. *Padgett*, (1890) 24 Q. B. D. 650.

A defence, to an action for the price of goods, of breach of warranty, is not a statutory defence, and need not be specially pleaded (*Bright* v. *Rogers*, (1917) 1 K. B. 917 ; 86 L. J. K. B. 804).

Sale by Sample.

Sale by sample.

15.—(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample—

(*a*) There is an implied condition that the bulk shall correspond with the sample in quality (*a*) :

(*b*) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample (*b*) :

(*c*) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

Section 15 Notes.

NOTE.—(*a*) **"Correspond with the Sample in Quality."**]—See *Walker* v. *Shaw*, (1904) 2 K. B. 152.

NOTE.—(*b*) See *Lorymer* v. *Smith*, (1822) 1 B. & C. 1; *Heyworth* v. *Hutchinson*, (1867) 2 Q. B. D. 447.

PART II.

EFFECTS OF THE CONTRACT.

Transfer of Property as between Seller and Buyer.

Goods must be ascertained.

16. Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

See *Dixon* v. *Yates*, (1833) 5 B. & Ad. 340; *Campbell* v. *Mersey Docks*, (1863) 14 C. B. N. S. 412; *Jenner* v. *Smith*, (1869) L. R. 4 C. P. 276; *Badische Anilin Fabrik* v. *Hickson*, (1906) A. C. 419.

Property passes when intended to pass.

17.—(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

See *Seath* v. *Moore*, (1886) 11 A. C. 350; *Reid* v. *Macbeth*, (1904) A. C. 223; *Sir J. Laing* v. *Barclay & Co.*, (1908) A. C. 35.

Rules for ascertaining intention.

18. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1.—Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed (*a*).

Rule 2.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done (*b*), and the buyer has notice thereof.

Rule 3.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has notice thereof (*c*).

Rule 4.—When goods are delivered to the buyer on approval or

"on sale or return" or other similar terms the property therein passes to the buyer :— Section 18.

(*a*) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction :

(*b*) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5.—(1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract (*d*), either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made (*e*) :

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodier (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

(*a*) **"Postponed."**]—See *Tarling* v. *Baxter*, (1827) 6 B. & C. 360 ; *Barr* v. *Gibson*, (1838) 3 M. & W. 390 ; *Seath* v. *Moore*, *ante*, p. 324.

(*b*) See *Anderson* v. *Morice*, (1875) A. C. 713 ; *Leath* v. *Moore* (*supra*).

(*c*) *Furley* v. *Bates*, (1863) 33 L. J. Ex. 43.

(*d*) See *Healy* v. *Howlett & Sons*, (1917) 1 K. B. 337 ; 86 L. J. K. B. 252 ; *Denny* v. *Skelton*, (1917) 86 L. J. K. B. 280.

(*e*) See *Groom, Ltd.* v. *Barber*, (1915) 84 L. J. K. B. 318 ; *Pritchett & Co.* v. *Currie*, (1916) 85 L. J. Ch. 753.

19.—(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee or custodier for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled. Reservation of right of disposal.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *primâ fa ce* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer

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together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

See *Mirabita* v. *Imperial Ottoman Bank*, (1878) 3 Ex. Div. 164; *Shepherd* v. *Harrison*, (1871) L. R. 5 H. L. 116.

Risk *primâ facie* passes with property.

20. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

Provided that where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee or custodier of the goods of the other party.

See *Castle* v. *Playford*, (1872) L. R. 7 Ex. 100; *Anderson* v. *Morice*, (1875) L. R. 10 C. P. 609; affirmed, 1 A. C. 713; *Head* v. *Tattersall*, (1871) L. R. 7 Ex. 7; *Elphick* v. *Barnes*, (1880) 5 C. P. D. 321; *Martineau* v. *Kitching*, (1872) L. R. 7 Q. B. 436.

Transfer of Title.

Sale by person not the owner.

21.—(1) Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell (*a*).

(2) Provided also that nothing in this Act shall affect—

(*a*) The provisions of the Factors Acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

(*b*) The validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

NOTE.—(*a*) See *Colonial Bank* v. *Whinney*, (1886) 11 A. C. 426; *Hollins* v. *Fowler*, (1875) L. R. 7 H. L. 757; *Candy* v. *Lindsay*, (1878) 3 A. C. 459; *Helby* v. *Matthews*, (1895) A. C. 471; *Pickard* v. *Lears*, (1837) 6 A. & E. 469; *Weiner* v. *Gill*, (1906) 2 K. B. 582; *Farquharson* v. *King*, (1902) A. C. 325.

Market overt.

22.—(1) Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.

(2) Nothing in this section shall affect the law relating to the sale of horses. Section 22.

(3) The provisions of this section do not apply to Scotland.

See *Crane* v. *London Dock Co.*, (1864) 33 L. J. Q. B. 224; *Hargreave* v. *Spink*, (1892) 1 Q. B. 25; *Clayton* v. *Le Roy*, (1911) 81 L. J. K. B. 49.

23. When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title. Sale under voidable title.

See *Cundy* v. *Lindsay*, (1878) 3 A. C. 459; *Croft* v. *Lumley*, (1856) 6 H. L. 705; 27 L. J. Q. B. 321.

24.—(1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise (*a*). Revesting of property in stolen goods on conviction of offender.

(2) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revest in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender (*b*).

(3) The provisions of this section do not apply to Scotland.

NOTE.—(*a*) "**Market overt or otherwise.**"]—See *Scattergood* v. *Sylvester*, (1850) 19 L. J. K. B. 447; *Clayton* v. *Le Roy* (*supra*).

NOTE.—(*b*) "**Conviction.**"]—See Larceny Act, 1861 (24 & 25 Vict. c. 96, s. 100), also Criminal Appeal Act, 1907 (7 Edw. VII. c. 23, s. 6); *Oppenheimer* v. *Frazer*, (1907) 2 K. B. 50.

25.—(1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same. Seller or buyer in possession after sale.

(2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the

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delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(3) In this section the term "mercantile agent" has the same meaning as in the Factors Acts.

See *Lee* v. *Butler*, (1893) 2 Q. B. 318; *Helby* v. *Matthews*, (1895) A. C. 471. "Agreed to buy," see *Martin* v. *Whale*, (1917) 1 K. B. 544; 86 L. J. K. B. 544; C. A. (1917), 2 K. B. 480.

Effect of writs of execution.

26.—(1) A writ of *fieri facias* or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ to endorse upon the back thereof the hour, day, month, and year when he received the same.

Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.

(2) In this section the term "sheriff" includes any officer charged with the enforcement of a writ of execution.

(3) The provisions of this section do not apply to Scotland.

Execution.]—See *ante*, pp. 172—182.

See *Murgatroyd* v. *Wright*, (1907) 2 K. B. 333; *Birstall Candle Co.* v. *Daniells*, (1908) 2 K. B. 254.

PART III.

Performance of the Contract.

Duties of seller and buyer.

27. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

See *Buddle* v. *Green*, (1857) 27 L. J. Ex. 33; *Woolfe* v. *Horne*, (1877) 2 Q. B. D. 355; *Dunlop* v. *Lambert*, (1839) 6 Cl. & Fin. 603; *Calcutta Co.* v. *De Mattos*, (1863) 32 L. J. Q. B. 322.

Payment and delivery are concurrent conditions.

28. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

See *Bloxam* v. *Sanders*, (1825) 4 B. & C. 941; *Chinery* v. *Viall*, (1860) 29 L. J. Ex. 183; *Pickford* v. *Grand Junction Rail. Co.*, (1841) 8 M. & W. 378; *Paynter* v. *James*, (1867) L. R. 2 C. P. 348; *Baker* v. *Firminger*, (1859) 28 L. J. Ex. 130.

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Rules as to delivery.

29.—(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence: Provided that, if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time (*a*).

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf (*b*); provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

NOTE.—(*a*) **"Reasonable time."**]—*Ellis* v. *Thompson*, (1838) 3 M. & W. 445; *Jones* v. *Gibbons*, (1853) 8 Ex. 920.

NOTE.—(*b*) **"Holds the goods on his behalf."**]—See *Farina* v. *Howe*, (1846) 16 M. & W. 119; *Godts* v. *Rose*, (1855) 17 C. B. 229; *Buddle* v. *Green*, (1857) 27 L. J. Ex. 33.

Delivery of wrong quantity.

30.—(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate (*c*).

NOTE.—(*c*) Where the contract was for the "remainder" of a cargo of goods, and an estimate given as to the amount, the whole of the remainder of the cargo passed under the contract, though it turned out to be considerably in excess of the estimate. (*Harrison* v. *Micks, Lambert & Co.*, (1917) 86 L. J. K. B. 573.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which

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are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

See *Oxendale* v. *Wetherell*, (1829) 4 M. & Ry. 429; *Colonial Ins. Co.* v. *Adelaide Jus Co.*, (1886) 12 A. C. 138.

Instalment deliveries.

31.—(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

See *Reuter* v. *Sala*, (1879) 4 C. P. D. 239; *Mersey Steel and Iron Co.* v. *Naylor*, (1884) 9 A. C. 434; *Dominion Coal Co.* v. *Dominion Iron and Steel Co.*, (1909) A. C. (P. C.) 293; *Ebbw Vale Steel Co.* v. *Blaina Iron Co.*, (1901) 6 C. C. 33; *Braithwaite* v. *Foreign Hardware Co.*, (1905) 2 K. B. 543.

Delivery to carrier.

32.—(1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is *primâ facie* deemed to be a delivery of the goods to the buyer (*a*).

(2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself (*b*), or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit (*c*).

(*a*) **"Delivery of goods to buyer."**]—See *Wait* v. *Baker*, (1848) 2 Ex. 1; *Dunlop* v. *Lambert*, (1889) 6 Cl. & Fin. 600; *Badische Anilin Fabrik* v. *Basle Chemical Works*, (1897) A. C. 203; *Clemens Horst & Co.* v. *Biddell*, (1912) A. C. 18.

(*b*) **"Delivery to himself."**]—*Clarke* v. *Hutchins*, (1811) 14 East, 475; *Buckman* v. *Levi*, (1813) 3 Camp. 414; *Norman* v. *Phillips*, (1845) 14 M. & W. 277.

(*c*) *Law and Bonar, Ltd.* v. *British America Tobacco Co., Ltd.*, (1916) 2 K. B. 605; 85 L. J. K. B. 1714.

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33. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Risk where goods are delivered at distant place.

See *Bull* v. *Robinson*, (1854) 10 Ex. 342; *Beer* v. *Walker*, (1877) 46 L. J. C. P. 677.

Buyer's right of examining the goods.

34.—(1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract (*a*).

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

NOTE.—(*a*) **"In conformity with the contract."**—See *Lorymer* v. *Smith*, (1822) 1 B. & C. 1; *Heilbutt* v. *Hickson*, (1872) L. R. 7 C. P. 438; *Khan* v *Duchè*, (1905) 10 Com. Ca. 87.

Acceptance.

35. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

See *Parker* v. *Palmer*, (1821) 4 B. & A. 387; *Chapman* v. *Morton*, (1843) 11 M. & W. 534; *Taylor* v. *Great Eastern Rail. Co.*, (1911) 1 K. B. 774; *Heilbutt* v. *Hickson* (*supra*).

Buyer not bound to return rejected goods.

36. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

See *Grimoldby* v. *Wells*, (1875) L. R. 10 C. P. 391.

Liability of buyer for neglecting or refusing delivery of goods.

37. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

See *Bloxam* v. *Sanders*, (1825) 4 B. & C. 941; *Mersey Steel Co.* v. *Naylor*, (1884) 9 A. C. 434; *Braithwaite* v. *Foreign Hardware Co.*, (1905) 2 K. B. 543.

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PART IV.

Rights of Unpaid Seller against the Goods.

Unpaid seller defined.

38.—(1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—

(*a*) When the whole of the price has not been paid or tendered ;

(*b*) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise (*a*).

(2) In this part of this Act the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Note.—(*a*) **"Dishonour of the instrument or otherwise."**]—See *Griffiths* v. *Perry*, (1859) 28 L. J. Q. B. 204; *Gunn* v. *Bolckow, Vaughan & Co.*, (1875) L. R. 10 Ch. App. 491; *Goldshede* v. *Cottrell*, (1836) 2 M. & W. 20; *Imperial Bank* v. *London and St. Katherine Docks Co.*, (1877) 5 Ch. D. 195.

Unpaid seller's rights.

39.—(1) Subject to the provisions of this Act, and of any statute in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(*a*) A lien on the goods or right to retain them for the price while he is in possession of them ;

(*b*) In case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them ;

(*c*) A right of re-sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.

See *Kendal* v. *Marshall, Stevens & Co.*, (1883) 11 Q. B. D. 368; *Cassaboglou* v. *Gibb*, (1883) 11 Q. B. D. at p. 804; *Kemp* v. *Falk*, (1882) 7 A. C. 590; *Merchant Banking Co.* v. *Phœnix Co.*, (1877) 5 C. D. 205.

Attachment by seller in Scotland.

40. In Scotland a seller of goods may attach the same while in his own hands or possession by arrestment or poinding ; and such arrestment or poinding shall have the same operation and effect in a competition or otherwise as an arrestment or poinding by a third party.

Unpaid Seller's Lien. **Section 41.**

Seller's lien.

41.—(1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:—

(*a*) Where the goods have been sold without any stipulation as to credit;

(*b*) Where the goods have been sold on credit, but the term of credit has expired (*a*);

(*c*) Where the buyer becomes insolvent (*b*).

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee or custodier for the buyer (*c*).

NOTE.—(*a*) **"Credit has expired."**]—See *Martindale* v. *Smith*, (1841) 8 Q. B. 395.

NOTE.—(*b*) **"Insolvent."**]—*Bloxam* v. *Thorley*, (1825) 4 B. & C. 951; *Gunn* v. *Bolckow, Vaughan & Co.*, (1875) L. R. 10 Ch. App. 501.

NOTE.—(*c*) **"Custodier for the buyer."**]—*Grice* v. *Richardson*, (1877) 3 A. C. 319, comp. *Cusack* v. *Robinson*, (1861) 30 L. J. Q. B. 264.

"Lien."]—Is for the unpaid price of goods, not for custody of same, see *Somes* v. *British Empire Shipping Co.*, (1859) 30 L. J. Q. B. 229.

Part delivery.

42. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

See *Kemp* v. *Falk*, (1882) 7 A. C. 573; *Ex parte Chalmers*, (1873) L. R. 8 Ch. App. 289; *Merchant Banking Co.* v. *Phœnix Co.*, (1877) 5 C. D. 205.

Termination of lien.

43.—(1) The unpaid seller of goods loses his lien or right of retention thereon—

(*a*) When he delivers the goods to a carrier or other bailee or custodier for the purpose of transmission to the buyer without reserving the right of disposal of the goods (*a*);

(*b*) When the buyer or his agent lawfully obtains possession of the goods (*b*);

(*c*) By waiver thereof.

(2) The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

NOTE.—(*a*) **"Transmission to the buyer."**]—*Bolton* v. *Lancashire and Yorkshire Rail. Co.*, (1866) L. R. 1 C. P. 431.

NOTE.—(*b*) **"Lawfully obtains possession of the goods."**]—*Cooper* v. *Bill*, (1865) 34 L. J. Ex. 161; *Schotsmans* v. *Lancashire and Yorkshire Rail. Co.*, (1867) L. R. 2 Ch. App. 332; *Knights* v. *Wiffen*, (1870) L. R. 5 Q. B. 660.

Section 44. *Stoppage* in transitu.

Right of stoppage *in transitu*.

44. Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

See *Lickbarrow* v. *Mason*, (1793) 6 East, 21, and notes thereto in 1 Smith's L. C., 12th edit., 772 *et seq.* ; *Bethell* v. *Clarke*, (1887) 20 Q. B. D. 615; *Berndtson* v. *Strang*, (1868) L. R. 3 Ch. App. 588; *Lyons* v. *Hoffnung*, (1890) 15 A. C. 391; *Kendall* v. *Marshall, Stevens & Co.*, (1883) 11 Q. B. D. 356; *Ex parte Miles, In re Isaacs*, (1885) 15 Q. B. D. 39; *Reddall* v. *Union Castle Mail Steamship Co.*, (1915) 84 L. J. K. B. 360.

Duration of transit.

45.—(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee or custodier for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee or custodier.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodier acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodier for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee or custodier continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent to the buyer.

(6) Where the carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

See *Valpy* v. *Gibson*, (1847) 4 C. B. 887; *Schotsman* v. *Lancashire and Yorkshire Rail. Co.*, *ante*, p. 333; *Ex parte Barrow*, (1877) 6 C. D. 783; *Lyons*

v. *Hoffnung* (*supra*); *Kendall* v. *Marshall, Stevens & Co.* (*supra*); *Ex parte Miles* (*supra*); *Bolton* v. *Lancashire and Yorkshire Rail. Co.*, (1866) L. R. 1 C. P. 431; *Ex parte Rosevear China Clay Co.*, (1879) 11 C. D. 560; *Kemp* v. *Falk*, (1882) 7 A. C. 588. Section 45 Note.

46.—(1) The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee or custodier in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer. How stoppage *in transitu* is effected.

(2) When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee or custodier in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

See *Whitehead* v. *Anderson*, (1842) 9 M. & W. 518; *McTigress*, (1863) 32 L. J. Adm. 97; *Booth Steamship Co.* v. *Cargo Fleet Iron Co.*, (1916) 2 K. B. 570; 85 L. J. K. B. 1577.

Re-sale by Buyer or Seller.

47. Subject to the provisions of this Act, the unpaid seller's right of lien or retention or stoppage *in transitu* is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto (*a*). Effect of sub-sale or pledge by buyer.

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage *in transitu* is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage *in transitu* can only be exercised subject to the rights of the transferee (*b*).

NOTE.—(*a*) **"Seller has assented thereto."**]—*Stoveld* v. *Hughes*, (1811) 14 East, 308; *Woodley* v. *Coventry*, (1863) 32 L. J. Ex. 185; *Merchant Banking Co.* v. *Phœnix Steel Co.*, (1877) 5 C. D. 205.

NOTE.—(*b*) See notes to *Lickbarrow* v. *Mason*, (1793) 6 East, 21, in Smith's L. C., 12th edit., 772; *Leask* v. *Scott*, (1877) 2 Q. B. D. 376; *Kemp* v. *Falk* (*supra*); *Sewell* v. *Bardick*, (1884) 10 A. C. 74.

48.—(1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage *in transitu*. Sale not generally rescinded by lien or stoppage *in transitu*.

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(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage *in transitu* re-sells the goods, the buyer acquires a good title thereto as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

See *Kemp* v. *Falk*, *ante*, p. 335; notes to *Lickbarrow* v. *Mason*, *ante*, p. 334; *Lord* v. *Price*, (1874) L. R. 9 Ex. 55; *Ex parte Stapleton*, (1879) 10 C. D. 586; *Lamond* v. *Davall*, (1847) 9 Q. B. 1030; *Johnson* v. *Credit Lyonnais*, (1877) 3 C. P. D. 32.

PART V.

Actions for Breach of the Contract.

Remedies of the Seller.

Action for price.

49.—(1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery (*a*), and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.

(3) Nothing in this section shall prejudice the right of the seller in Scotland to recover interest on the price from the date of tender of the goods, or from the date on which the price was payable, as the case may be (*b*).

Note.—(*a*) As to the meaning of these words see *Stein Forbes & Co.* v. *County Tailoring Co.*, (1917) 86 L. J. K. B. 448.

Note.—(*b*) See *Dunlop* v. *Grote*, (1845) 2 C. & R. 153; *Fessard* v. *Magnier*, (1865) 34 L. J. C. P. 126; *Calcutta Co.* v. *De Mattos*, (1863) 32 L. J. Q. B. 328.

Damages for non-acceptance.

50.—(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance (*a*).

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

Section 50.

(3) Where there is an available market (*b*) for the goods in question the measure of damages is *primâ facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept (*c*).

NOTE.—(*a*) "**Non-acceptance.**"]—*Graves* v. *Legg*, (1854) 9 Ex. 709.

NOTE.—(*b*) "**Available market.**"]—*Dunkirk Colliery* v. *Lever*, (1878) 9 C. D. 25; *Brown* v. *Muller*, (1872) L. R. 7 Ex. 319; *Roper* v. *Johnson*, (1873) L. R. 8 C. P. 167; *Diestal* v. *Stevenson*, (1906) 2 K. B. 345; *Ex parte Stapleton*, (1879) 10 C. D. 586.

NOTE.—(*c*) If on a breach of contract to accept shares the seller retains the shares, he is entitled to recover the difference in the value of the shares at the time of the breach, though the value of the shares may afterwards rise (*A. K. A. S. Jamal* v. *Moolla Dawood, Sons & Co.*, (1916) L. R. P. C. 175).

Remedies of the Buyer.

Damages for non-delivery.

51.—(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is *primâ facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

See notes to *Hadley* v. *Baxendale*, 2 Smith's L. C., 12th edit., 547; *Jones* v. *Gibbons*, (1853) 8 Ex. 920; *Lewis* v. *Clifton*, (1854) 14 C. B. 245; *Smeed* v. *Foord*, (1859) 28 L. J. Q. B. 178; *Grèbert Borgnis* v. *Nugent*, (1885) 15 Q. B. D. 85; *Hammond* v. *Bussey*, (1887) 20 Q. B. D. 93; *Ashmore* v. *Cox*, (1899) 1 Q. B. 436; *Diestal* v. *Stevenson* (*supra*); *Cory* v. *Thames Iron Works*, (1868) L. R. 3 Q. B. 181; *Thol* v. *Henderson*, (1881) 8 Q. B. D. 457; *Hinde* v. *Liddell*, (1875) L. R. 10 Q. B. 265; *Roper* v. *Johnson*, (1873) L. R. 8 C. P. 167; *Nickoll* v. *Ashton*, (1900) 2 Q. B. 298; *Hydraulic Co.* v. *McHaffie*, (1878) 4 Q. B. D. 670.

Specific performance.

52. In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree (*a*).

Section 52.

The provisions of this section shall be deemed to be supplementary to, and not in derogation of, the right of specific implement in Scotland.

NOTE.—(*a*) This section substantially reproduces sect. 2 of the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97). See, as to specific delivery of goods in action in the county court, County Court Rules, Order XXV., r. 69.

Remedy for breach of warranty.

53.—(1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may

(*a*) set up against the seller the breach of warranty in diminution or extinction of the price; or

(*b*) maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(3) In the case of breach of warranty of quality such loss is *primâ facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

(5) Nothing in this section shall prejudice or affect the buyer's right of rejection in Scotland as declared by this Act.

Consult *Heilbutt* v. *Hickson*, (1872) L. R. 7 C. P. 438; *Parsons* v. *Seton*, (1847) 4 C. B. 809; *Bannerman* v. *White*, (1861) 31 L. J. C. P. 28; *Davis* v. *Hedges*, (1871) L. R. 6 Q. B. 687; *Randall* v. *Roper*, (1858) 27 L. J. Q. B. 266; *Smith* v. *Green*, (1875) 1 C. P. D. 92; *Randall* v. *Newson*, (1877) 2 Q. B. D. 102; *Hammond* v. *Bussey*, (1887) 20 Q. B. D. 79; *Bostock* v. *Nicholson*, (1904) 1 K. B. 725; *Elbinger Actien Gesellschaft* v. *Armstrong*, (1874) L. R. 9 Q. B. 473; *Holdsworth* v. *Glasgow Bank*, (1880) 5 A. C. 317; *Bright* v. *Rogers*, (1917) 86 L. J. K. B. 804.

Interest and special damages.

54. Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

See *Hydraulic Engineering Co.* v. *McHaffie*, (1878) 4 Q. B. D. 677; *Grebert Borgnis* v. *Nugent*, (1885) 15 Q. B. D. 85; *Agius* v. *Great Western Colliery Co.*, (1899) 1 Q. B. 413, and notes to *Hadley* v. *Baxendale*, 2 Smith's L. C., 12th edit., 547.

Exclusion of implied terms and conditions.

55. Where any right, duty, or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage (*a*), if the usage be such as to bind both parties to the contract.

Consult *Calcutta Co.* v. *De Mattos*, (1863) 32 L. J. Q. B. 328; *Honck* v. *Muller*, (1881) 7 Q. B. D. 108; *Drummond* v. *Van Ingen*, (1887) 12 A. C. 284.

NOTE.—(*a*) **"Usage."**]—See notes to *Wigglesworth* v. *Dallison*, 2 Smith's L. C., 12th edit., 620 *et seq.*, and *Sutro & Co.* v. *Heilbut, Symons & Co., In re* (1917) 2 K. B. 348.

Reasonable time a question of fact.

56. Where, by this Act, any reference is made to a reasonable time the question what is a reasonable time is a question of fact.

Rights, &c., enforceable by action.

57. Where any right, duty, or liability is declared by this Act, it may, unless otherwise by this Act provided, be enforced by action.

Auction sales.

58. In the case of a sale by auction—

(1) Where goods are put up for sale by auction in lots, each lot is *primâ facie* deemed to be the subject of a separate contract of sale:

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made any bidder may retract his bid (*a*):

(3) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person (*b*): Any sale contravening this rule may be treated as fraudulent by the buyer:

(4) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller (*c*).

Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

NOTE.—(*a*) **"Retract his bid."**]—*Payne* v. *Cave*, (1789) 3 T. R. 148; *Warlow* v. *Harrison*, (1858) 28 L. J. Q. B. 20; *Fenwick* v. *Macdonald*, (1904) 6 F. (Sc.) 850.

NOTE.—(*b*) **"Auctioneer knowingly."**]—*Mainprice* v. *Westley*, (1865) 34 L. J. Q. B. 229.

NOTE.—(*c*) **"On behalf of the seller."**]—*Thornett* v. *Haines*, (1846) 15 M. & W. 372; *Mortimer* v. *Bell*, (1865) L. R. 1 Ch. App. 10. See also *McManus* v. *Fortescue*, (1907) 2 K. B. 1; *Anderson* v. *Croall*, (1903) 6 F. (Sc.) 153.

Section 59.

Payment into court in Scotland when breach of warranty alleged.

59. In Scotland where a buyer has elected to accept goods which he might have rejected, and to treat a breach of contract as only giving rise to a claim for damages, he may, in an action by the seller for the price, be required, in the discretion of the court before which the action depends, to consign or pay into court the price of the goods, or part thereof, or to give other reasonable security for the due payment thereof.

Repeal.

60. The enactments mentioned in the schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

Savings.

61.—(1) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act contained.

(2) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(3) Nothing in this Act or in any repeal effected thereby shall affect the enactments relating to bills of sale, or any enactment relating to the sale of goods which is not expressly repealed by this Act.

(4) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.

(5) Nothing in this Act shall prejudice or affect the landlord's right of hypothec or sequestration for rent in Scotland.

Interpretation of terms.

62.—(1) In this Act, unless the context or subject matter otherwise requires,—

"Action" includes counterclaim and set off, and in Scotland condescendence and claim and compensation:

"Bailee" in Scotland includes custodier:

"Buyer" means a person who buys or agrees to buy goods:

"Contract of sale" includes an agreement to sell as well as a sale:

"Defendant" includes in Scotland defender, respondent, and claimant in a multiplepoinding:

Section 62.

"Delivery" means voluntary transfer of possession from one person to another:

"Document of title to goods" has the same meaning as it has in the Factors Acts:

"Factors Acts" means the Factors Act, 1889, the Factors (Scotland) Act, 1890, and any enactment amending or substituted for the same: 52 & 53 Vict. c. 45. 53 & 54 Vict. c. 40.

"Fault" means wrongful act or default:

"Future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale:

"Goods" include all chattels personal other than things in action and money, and in Scotland all corporeal moveables except money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale:

"Lien" in Scotland includes right of retention:

"Plaintiff" includes pursuer, complainer, claimant in a multiplepoinding and defendant or defender counterclaiming:

"Property" means the general property in goods, and not merely a special property:

"Quality of goods" includes their state or condition:

"Sale" includes a bargain and sale as well as a sale and delivery:

"Seller" means a person who sells or agrees to sell goods:

"Specific goods" mean goods identified and agreed upon at the time a contract of sale is made:

"Warranty" as regards England and Ireland means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

As regards Scotland a breach of warranty shall be deemed to be a failure to perform a material part of the contract.

(2) A thing is deemed to be done "in good faith" within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not.

(3) A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he has become a notour bankrupt or not.

(4) Goods are in a "deliverable state" within the meaning of

Section 62. this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

Commencement. **63.** This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four.

Short title. **64.** This Act may be cited as the Sale of Goods Act, 1893.

Section 60.

SCHEDULE.

This schedule is to be read as referring to the revised edition of the statutes prepared under the direction of the Statute Law Committee.

ENACTMENTS REPEALED.

Session and Chapter.	Title of Act and Extent of Repeal.
1 Jac. I. c. 21 .	An Act against Brokers. The whole Act.
29 Cha. II. c. 3 .	An Act for the prevention of frauds and perjuries. In part; that is to say, sections fifteen and sixteen.*
9 Geo. IV. c. 14 .	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements. In part; that is to say, section seven.
19 & 20 Vict. c. 60	The Mercantile Law Amendment (Scotland) Act, 1856. In part; that is to say, sections one, two, three, four, and five.
19 & 20 Vict. c. 97	The Mercantile Law Amendment Act, 1856. In part, that is to say, sections one and two.

* Commonly cited as sections sixteen and seventeen.

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(*a*) The County Court Rules of 1917, dated February 19th, 1917, have been incorporated.

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THE COUNTY COURT RULES, 1903 TO 1917.

Short title.

THE following orders and rules may be cited as "The County Court Rules, 1903," and shall apply, so far as may be practicable (unless otherwise expressly provided), to all proceedings taken in all actions and matters pending on the day on which these rules come into force.

Annulment of prior rules.

The County Court Rules, 1889, and all county court rules of subsequent date are hereby annulled, and the following orders and rules shall stand in lieu thereof.

In this reprint of the rules, a note appended thus (R. S. C., Order V. r. 9) signifies that the rule is based on the High Court rule so indicated.

The County Court Rules of 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, and 1913 are all annulled by the County Court Rules, 1914, by which the rules of those respective years are all consolidated.

The County Court Rules, 1914, are directed to be read and construed as if they were contained in the County Court Rules, 1903. The County Court Rules of 1917 are also incorporated. For the convenience of practitioners all the rules are here printed together, and it is believed are now complete.

ORDER I.

COURT AND OFFICES.

Appointment and notice of sittings of court.

1. Every judge shall appoint the days and hours for holding his courts; and a notice of the day and hour on which each court is to be held shall, three months before the holding thereof, be affixed in some conspicuous place in the court-house and in the registrar's office; and whenever any day or hour so appointed for holding a court is altered, notice of such alteration shall immediately be affixed in like manner; but any judge may from time to time hold additional and adjourned courts.

Additional or adjourned courts.

The court must be held within each district at such times as the judge appoints, provided it is held once at least in every calendar month, or at such other interval as the Lord Chancellor may appoint (see 51 & 52 Vict. c. 43, s. 10).

Courts need not be held in the month of September, unless the Lord Chancellor otherwise orders, and with his sanction, the judge, if he holds courts in September, need not hold them during some other month in the year. The office must, however, always be open for the receipt and payment of money in and out of court pursuant to the rules, or for any proceedings before the registrar (51 & 52 Vict. c. 43, s. 11).

No two courts to be held on same day.

2. Two courts shall not be held before the same judge on one day, unless with the consent of the Lord Chancellor; but this rule shall not apply to the holding of an additional or adjourned court, or to the City of London Court.

This rule allows of the appointment of two deputies, who may sit in different courts on the judge's circuit on the same day (*R.* v. *Lloyd*, (1906) 1 K. B. 552; 75 L. J. K. B. 406).

O. I. r. 3.

On what days registrar to keep county court office open.

3. An office shall be kept open by the registrar at each place where the court of which he is registrar is held, and such office shall be kept open every day from ten o'clock in the morning until four o'clock in the afternoon, except on Christmas Day, Good Friday, the Saturday next after Good Friday, Easter Monday, Easter Tuesday, Whit Monday, the first Monday in August, or any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving, or any day appointed for closing the same by the Lord Chancellor; provided that the office may be closed at one o'clock in the afternoon on Saturday, or if for any reason it would be more convenient that the office should be closed on some other day, the office may be closed at one o'clock on some other day of the week instead of Saturday, which day shall be fixed upon for such purpose by the judge, and shall not afterwards be changed except by his leave: Provided also, that an office need not be kept open in more than one place within the district of a court, although the court is held at more than one place within the district, unless the Lord Chancellor otherwise orders: And provided also, that during the days on which the court is held in any place within the district other than the place where the registrar's office is situate, or during the days on which an office is open at such other place, the office may be closed in the place in which it is required generally to be kept open.

An order for closing at Whitsuntide will be found, *post*, p. 905.

Moneys may be paid into court, under order of the judge or otherwise, during office hours on any day when the office is open (Order II. r. 9).

Searches may be made, including searches necessary before entering up judgment on a default summons, on every day on which the office is open, and moneys paid out of court on three days at least in each week (Order II. r. 10).

For certain purposes, an office may, by order of the Lord Chancellor, be kept open on certain days, although no court is held at the place in which it is (Order I. r. 4).

There is power, but no obligation, to serve a summons on any day in which the office need not be open under the rules or under any order of the Lord Chancellor; but such days are counted in computing the time required by the rules relating to service (Order LIV. r. 19).

Keeping open office at place where no court is held.

4. By order of the Lord Chancellor an office may be kept open by the registrar at any place within the district of a court at such times and for such purposes as the order may direct, although no court may be held at such place.

Offices may be closed by order.

5. The offices of the courts, or any of them, may from time to time be closed by special order of the Lord Chancellor on such days as may be mentioned in any such order.

ORDER II.

Officers.

Registrar.

Rule 1.

Absence of registrar or deputy registrar from court.

1. Whenever the registrar or his lawful deputy is absent from the sitting of a court, the judge shall appoint a deputy to act on behalf of the registrar ; and an entry of such appointment and of the cause of such absence (when ascertained) shall be made on the minutes of the court.

Where a registrar was not present at the sitting of the court, but was represented by an assistant clerk who was competent and ready to discharge the duties of registrar, and the registrar was himself in another part of the building, engaged in business connected with his duties as registrar, half an hour after the sitting of the court, it was held that the registrar was not absent in such a sense as to entitle the judge to appoint a deputy (*Wetherfield* v. *Nelson*, (1869) L. R. 4 C. P. 571 ; 38 L. J. C. P. 220). In case of the death or removal of the registrar, the deputy may continue to act until a successor is appointed (51 & 52 Vict. c. 43, s. 31) ; and if no deputy has been appointed, the judge may provisionally appoint a person qualified to be registrar to discharge the duties for not more than three months (51 & 52 Vict. c. 43, s. 32). The deputy has all the powers and privileges, and must perform all the duties of, and is subject to the same provisions and penalties as a duly appointed registrar (51 & 52 Vict. c. 43, ss. 31, 32).

Registrar to keep books. Appendix, Part II.

2. The registrar shall keep books in the forms given in Part II. of the Appendix, subject as follows :—

Where book A is used, neither books B, C, D, nor E shall be used, but book F shall be used.

Where books B and C are used, neither books A, D, nor E shall be used, but book F shall be used.

Where books D and E are used, books A and B shall not be used, but book C may be used ; and if book C be used, book F shall be used.

Where the number of plaints entered in a court has exceeded 2,000, and book A is not used, books C and F shall be used, and either book B or books D and E.

Every registrar acting as high bailiff may keep book K instead of books L, N, and T.

Every entry in such books shall have a number prefixed, corresponding with the number of the plaint to which the entry relates.

These books are useless to practitioners and are not printed in any appendix hereto.

Documents to be filed and distinguished by number of plaint and by letters.

3. The registrar shall file all documents delivered to him in any action or matter, and shall distinguish them by the number of the plaint in respect of which they are filed, and from each other, by a distinctive letter of the alphabet, and he shall enter in the

"Notice Book" the fact of the despatch of all summonses to foreign courts, and of all documents, notices, and letters sent by him to any party, and all particulars required by the form of such book. O. II. r. 3.

The registrar is entitled to require also the delivery of copies to him pursuant to Order LIV. r. 13.

4. The registrar shall issue all summonses, warrants, and orders of committal forthwith after the plaints are entered or the warrants or orders are applied for. Registrar to issue all processes.

4A. (1) Before a summons is issued the registrar shall make a true copy thereof. Provided that where the summons is to be served by a solicitor the solicitor shall prepare the summons and copy and deliver them to the registrar, who shall examine, complete, and seal the same. Copy of summons. Documents to be annexed to summons and copy.

(2) The registrar shall in all cases where by these rules particulars are required annex to the summons and copy copies of the plaintiff's particulars, sealed with the seal of the court, and such particulars shall be deemed to be part of the summons.

(3) Where leave is granted under s. 74 of the Act for the issue of either an ordinary or a default summons for service out of the district, the registrar shall also annex to the summons a copy of the affidavit mentioned in Order V. r. 13, with a copy thereon of the order granting leave, and such copy shall be served with the summons.

(4) And where in the case of a default summons the plaintiff at the time of the entry of the plaint files a notice pursuant to Order V. r. 19, the registrar shall also annex to the summons a copy of such notice, and such copy shall be served with the summons.

4B. (1) Where a summons is to be served by a bailiff of the court, the registrar shall deliver the summons and copy, with the documents annexed thereto respectively which are required to be so annexed under the last preceding rule, to the bailiff. Delivery of summons and copy to bailiff or plaintiff.

(2) Where a summons is to be served otherwise than by a bailiff, the registrar shall deliver or forward the summons and copy, with the documents annexed thereto respectively which are required to be so annexed under the last preceding rule, to the plaintiff or his solicitor.

5. Where a summons is required to be served in a foreign district, the registrar shall transmit the summons and the copy thereof, with the documents annexed thereto respectively which are required to be so annexed under Rule 4A of this Order, to Transmission of summons for service in foreign district.

O. II. r. 5.

Forms 27, 28. Notice of non-service. Form 30.

the bailiff of the foreign court within forty-eight hours after the plaint is entered, with a letter according to one or other of the forms in the Appendix, unless the judge of the home court orders the summons in any particular case to be served by the bailiff of such court; and where any summons is returned to the registrar of the home court by a bailiff of a foreign court, not served, the registrar shall forthwith give notice to the plaintiff of such non-service; the letter need not be transmitted from one metropolitan court to another except with default summonses.

For form of letter to be sent with summons, see Form 27.
For form of letter to be sent with default summons, see Form 28.
For form of notice of non-service of ordinary summons, see Form 30.

Notice of doubtful service in foreign district. Form 31.

6. Where, by the indorsement on the copy of a summons made by a bailiff of a foreign court it appears that the summons was delivered to some person at the place mentioned in the summons as the residence or place of business of the defendant, but from the indorsement of the statement made by such person it appears doubtful whether the court will be satisfied that the service of the summons has come to the knowledge of the defendant before the return day, the registrar of the home court shall forthwith on receiving back such copy send to the plaintiff a notice according to the form in the Appendix.

Copies of documents how made.

7. Copies of all proceedings or documents in the custody of the court or its officers shall be prepared by the registrar for any party entitled to require the same, upon pre-payment of the costs of such copies.

Copies may be obtained for the purpose of evidence in other actions, pursuant to the provisions of 51 & 52 Vict. c. 43, s. 28, and Order XXIII. r. 10.

In ascertaining the length of copies of documents or proceedings, every figure will be counted as a word, and a folio will comprise seventy-two words (Order LIII. r. 27).

Rule 8 no longer exists. It is included in r. 4A, *supra*.

Payment into court.

9. Moneys to be paid into court under the order of the judge or otherwise may be so paid, during office hours, on every day on which such office is open.

An acknowledgment of the payment will be given in all cases (Order II. r. 11).

Within twenty-four hours from the time of such payment, the registrar must give notice of the payment to the plaintiff by post, or by causing the notice to be delivered at his usual place of abode or business (51 & 52 Vict. c. 43, s. 107; Order IX. r. 12 (2); Forms 73, 74).

Searches and payment out of court.

10. The registrar shall on every day on which the office is open allow such searches to be made as may be necessary before

ntering up judgment on a default summons; and he shall allow ther searches to be made, and shall pay out upon demand, in ash if required, the money to which suitors are entitled, on such roof of title thereto as is prescribed by Order IX. r. 21, on three ays at the least in each week, such days to be fixed by the egistrar from time to time, with the approbation of the judge, nd to be printed or written on the plaint note. For the purpose, owever, of enabling the registrar to furnish the list of balances n the ledgers according to the requirements of the Treasury, no earches shall be made or money paid out of court during one eek in each year, provided that due notice of such week shall ave been affixed in some conspicuous place in the office of the egistrar a month beforehand. O. II. r. 10.

11. Whenever money is paid into or deposited in court, whether before or after judgment, an acknowledgment in writing of such payment or deposit shall be given. Acknowledgment of payments and deposits.

12. The books of the court, including the bankers' book and ash book, shall at all times be open to the inspection of the reasurer. Court books to be produced to treasurer.

In *Burridge* v. *Nicholetts*, (1861) 6 H. & N. 383; 30 L. J. Ex. 145; 123 . R. 582, it was held that where a registrar, to whom notice of the easurer's intention to audit the books had been given, locked up his office nd left at the time for closing appointed by the then 6th Rule of Practice, ne treasurer was justified in breaking open the office to get at the books.

13. No registrar, deputy registrar, registrar's clerk, high bailiff, ailiff, broker, or other officer of the court, and no partner, or lerk of any such officer shall, on account of suitors, sign the edger or any other book, or receive money or otherwise act as an gent for that purpose. No officer to act as agent to parties.

Nor may any registrar, deputy registrar, registrar's clerk, high bailiff, ailiff, broker, or other officer of the court, become surety in any case where, y the practice of the court, security is required (Order XXIX. r. 6).

14. Before executing any order directing the payment or ransfer of any fund, or part of any fund, in respect of which any uty shall be payable to the revenue under the Acts relating to gacy, succession or estate duty, it shall be the duty of the regis- ar, before making the payment, to require a certificate from the roper officer of, or the production of the receipt for, the payment f the duty chargeable in respect of such fund, or any part thereof. Where legacy, succession or estate duty payable, it must be paid before execution of order directing payment or transfer of funds.

15. Where any judge acting for any other judge under section ineteen of the Act, signs any document, the registrar shall make Memorandum where one

O. II. r. 15.

judge signs document for another.

a memorandum at the foot thereof according to the form in the Appendix.

51 & 52 Vict. c. 43, s. 19.

Form 4.

Custody of securities.

16. Every registrar shall comply with the regulations which may from time to time be made by the Treasury for the safe custody of any securities deposited with him under section seventy of the Act.

High Bailiff.

51 & 52 Vict. c. 43, s. 70.

Absence of high bailiff from court.

17. Whenever the high bailiff is absent from the sitting of a court, he shall transmit to the registrar a statement in writing of the cause of his absence, and an entry of the cause of such absence shall be made by the registrar on the minutes of the then sitting or the next succeeding court.

By 51 & 52 Vict. c. 43, s. 35, the high bailiff must attend every sitting of the court for such time as the judge requires, unless his absence shall be allowed for reasonable cause by the judge.

High bailiff to keep books.

18. The high bailiff shall keep books and make returns according to the forms in Part II. of the Appendix.

Appendix, Part II.

Attendance at office of registrar.

19. The high bailiff or a bailiff of the court shall attend for the purpose of receiving processes or for the performance of other duties, at the office of the registrar once at least every day during the hours it is open; and shall compare and examine all processes delivered to him by the registrar, so as to enable him to prove their correctness.

Keeping open an office.

20. An office of the high bailiff of a court, in which the plaints entered have exceeded six thousand in any one year, shall be kept open for the purpose of answering inquiries, giving information, or for any other purpose connected with the duties of the high bailiff, during the same hours as the office of the registrar of the court is to be kept open.

Service of process.

21. The high bailiff shall serve or cause to be served process issued out of the court of which he is high bailiff, or sent to him for service from other courts, as soon as practicable.

Bailiffs to be provided with certificates of appointment.

21A. Every bailiff appointed to assist the high bailiff shall at all times be provided with a certificate of his appointment, showing the character in which he is acting, and shall on request produce the same.

Service and indorsement where defen-

22. Where the bailiff to whom a summons has been delivered for service ascertains in sufficient time before the return day, and

before notice of non-service has been sent, that the defendant has removed from the address given on the summons to some other address within the district, it shall be his duty to effect service of the summons as if the actual address had been given on the summons, and to indorse the new address upon the copy retained by him. O. II. r. 22. dant has removed to new address within district.

23. If the service of a summons has been personal, the bailiff who served the same shall indorse on the copy of the summons delivered to him by the registrar the fact of such service; and if the service has not been personal, he shall indorse on such copy the mode of service so as to show that the provisions as to service which are applicable to the case have been complied with, and any statement made by the person to whom the summons was delivered, and any other circumstance from which it may be inferred that the service of the summons has come to the knowledge of the defendant; and in every case of service the bailiff shall indorse on such copy the place where service was effected; and if the summons has not been served, the bailiff shall indorse on such copy the reason of such non-service: and all indorsements on summonses shall be signed by the bailiff. The high bailiff shall deliver to the registrar the copy of every summons which has been served, and also the summons itself when not served, together with the list of summonses mentioned in Rule 30 of this Order, and such copies and summonses shall be produced by the registrar or high bailiff, as the judge may require. Indorsement of service or non-service on copy of summons. Forms 29, 32, 34. Return of copy summons, and of summons not served.

24. Where an ordinary summons or a judgment summons required to be served in a home district has not been served, the high bailiff shall forthwith give notice to the plaintiff of the fact of such non-service according to the form in the Appendix. Notice of non-service in home district. Form 30.

25. Where by the indorsement on the copy of an ordinary summons required to be served in a home district it appears that the summons was delivered to some person at the place mentioned in the summons as the residence or place of business of the defendant, but from the indorsement of the statement made by such person it appears doubtful whether the court will be satisfied that the service has come to the knowledge of the defendant before the return day, the high bailiff shall forthwith send to the plaintiff a notice according to the form in the Appendix. Notice of doubtful service in home district. Form 31.

26.—(1) Where a summons is issued against a company registered under the Companies (Consolidation) Act, 1908, it shall be the duty of the bailiff to whom such summons is delivered for Inquiry, service, and indorsement on summons

O. II. r. 26. service to ascertain at the address given on the summons whether the registered office of the company is situate at such address.

against registered company.

(2) If the bailiff ascertains, either by seeing the words "registered office" painted or affixed on the outside of the premises, or by inquiry at the premises, that the registered office of the company is situate at the address given on the summons, he shall effect service of the summons at such address, and shall indorse on the copy of the summons the fact and mode of such service, and the fact that he has ascertained in one or other of the modes aforesaid that the registered office of the company is situate at the address given.

8 Edw. 7, c. 69, s. 116.

Form 32 (1).

(3) If the bailiff ascertains in sufficient time before the return day, and before notice of non-service has been sent, that the registered office of the company is situate at some other address within the district, it shall be his duty to effect service of the summons at such other address, and to indorse on the copy of the summons the new address, and the fact that he has ascertained that the registered office of the company is situate at such address.

Form 32 (1).

(4) If the bailiff is unable to ascertain whether the registered office of the company is situate at the address given on the summons, he shall effect service of the summons at such address, but shall indorse on the copy of the summons a statement to the effect that he has been unable to ascertain whether the registered office of the company is situate at such address: and the high bailiff, or, where the summons has been sent to a foreign court for service, the registrar of the home court, on the return of the copy of the summons, shall forthwith send to the plaintiff a notice according to the form in the Appendix. In such case, if the company does not appear on the return day, the action shall not proceed unless the court is satisfied, on the evidence before it, that the registered office of the company is situate at the address given; and the court, if not so satisfied, may either adjourn the action to a future day for further evidence, or order it to be struck out, or order a successive summons to issue, as to it may seem just.

Form 32 (2).

Form 33.

(5) If the bailiff ascertains that the registered office of the company is not situate at the address given on the summons, and does not ascertain that it is situate at some other address within the district, he shall make an indorsement to that effect on the copy of the summons, and return the summons itself as not served, in which case notice of non-service shall be given to the plaintiff as in other cases of non-service.

Form 32 (3).

Form 30.

Return of copy of ordinary

27. Where an ordinary summons is required to be served in a foreign district, the high bailiff of the foreign court shall, eight

clear days at least before the return day, transmit the copy thereof to the registrar of the home court duly indorsed and signed by the bailiff (who shall name the court of which he is a bailiff), and also the summons itself when not served. O. II. r. 27. summons served by bailiff of foreign court.

The time is eighteen clear days in actions under the extended jurisdiction (Order XXIIA. r. 5).

28. Where a judgment summons is required to be served in a foreign district, the high bailiff of the foreign court shall, three clear days at least before the return day, transmit the copy thereof to the registrar of the home court duly indorsed and signed by the bailiff (who shall name the court of which he is a bailiff), and also the summons itself when not served. Return of copy of judgment summons served by bailiff of foreign court.

29.—(1) Where the high bailiff of a foreign court neglects to return to the registrar of the home court the copy of an ordinary summons or a judgment summons as required by the two last preceding rules, the judge of the home court may, upon evidence of such summons having been posted to the high bailiff of the foreign court, direct notice, according to the form in the Appendix, to be given to such high bailiff that the said judge will on a day to be mentioned, unless such high bailiff shows cause to the contrary, make an order directing such high bailiff to pay to the plaintiff such sum as the judge may think reasonable, as compensation for any loss of time and expense which may have been caused to the plaintiff by such neglect. Where return of service to home court is not made, foreign bailiff may be ordered to pay costs. Form 353.

(2) If on the day mentioned the judge makes any order for payment by such high bailiff, a memorandum of such order shall be made in the minute book, and the registrar of the home court shall transmit to the high bailiff of the foreign court a notice thereof according to the form in the Appendix. Form 354.

(3) If the high bailiff within the time limited by the order remits to the registrar of the home court the sum directed by the order to be paid, the registrar shall pay the same to the plaintiff.

(4) If the high bailiff does not within the time limited by the order remit to the registrar of the home court the sum directed by the order to be paid, the registrar shall pay such sum to the plaintiff out of any money in his hands, and shall transmit to the treasurer of the foreign court a copy of the notice, certifying thereon the neglect of the high bailiff to pay the money as required, and the payment thereof by the registrar of the home court; and the registrar shall be allowed by the treasurer of his court at his audit the amount so paid: and the treasurer of the foreign court shall deduct such sum from any payment he may thereafter make to the high bailiff.

O. II. r. 30.

High bailiff to deliver list of ordinary summonses served.

30. Seven clear days at least before the day of holding any court the high bailiff shall deliver to the registrar a list of all ordinary summonses on plaint before judgment, issued to him and returnable at such court, and shall state therein the mode of service or the cause of non-service of each summons.

The time required in actions under the extended jurisdiction is seventeen clear days (Order XXIIA. r. 5).

Notice of service or non-service of default summons.

Form 35.

Form 36.

31. Within two days after the service of a default summons, the high bailiff of the court in the district of which it has been served shall send notice thereof to the plaintiff according to the form in the Appendix, and shall return the copy of the summons duly indorsed to the registrar of the court from which it issued, and where any such summons cannot be served within one month from the date of issue, the high bailiff of the court in the district of which it is to be served shall send to the plaintiff a notice stating why it has not been served, and shall send a similar notice at the end of every one month during which it remains in force and unserved.

Return of summons for amendment, where name of defendant not correctly stated, etc.

(2) Where the summons cannot be served by reason of the plaintiff having mis-stated or insufficiently stated any of the particulars as to the name, residence or place of business, and occupation or description of the defendant required by paragraphs (*b*) and (*c*) of Order V. Rule 4, or of the defendant having before the entry of the plaint removed from the address given on the summons, the high bailiff shall, subject to the provisions of paragraph 2 of Order VII. Rule 5A, as applied by paragraph 2 of Order VII. Rule 30A, return the summons to the registrar of the court in which the summons was issued, and shall in his notice of non-service sent to the plaintiff state that the summons has been so returned.

NOTE.—This clause added by Rules of 1917. Dated February 19th, 1917.

Order Book.

32. The high bailiff shall enter in the "Order Book" all judgments or orders for the payment of money or costs, or both, or other orders, which he has received, and the date on which he has posted or otherwise sent the same.

Execution and entries of warrants and orders.

33. The high bailiff shall execute every warrant, order of commitment, or other order of the court delivered to him as soon as possible, and shall enter in the proper book every warrant and order which he has been required to execute, and shall state from time to time therein what he has done under each warrant or order, and if the same be not executed within one month from the day of delivery to him, why it has not been executed; and he shall, at all reasonable times, give to a suitor or his solicitor all

information which he may reasonably require as to the execution or non-execution of any warrant or order which has been issued at his instance. O. II. r. 33.

34. Every high bailiff levying or receiving any money by virtue of the process of any county court shall forthwith enter in ink on the face of the process, at the foot or in the margin thereof, the amount levied or received, and shall sign the entry; and, subject to Rules 34A, 35, and 36 of this Order, he shall within twenty-four hours from the receipt of any such money, except where he is by statute required to retain the same, pay over the same to the registrar of the court of which he is high bailiff, who shall indorse on the process a memorandum of having received the same, and return the process to the high bailiff. Money received under process to be entered thereon and paid to registrar within 24 hours. 4 & 5 Geo. 5, c. 59, s. 41 (2).

34A. Provided that where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, any money is seized or received in part satisfaction of the execution, the following provisions shall apply: – Where notice of receiving order received by high bailiff before or after payment over to registrar of money received in part satisfaction of an execution. 4 & 5 Geo. 5, c. 59, s. 41 (1). Bankruptcy Rule, 1916, 323A

(i.) If before paying over such money to the registrar the high bailiff receives notice that a receiving order has been made against the debtor, he shall on request pay over such money, after deducting the costs of the execution, to the official receiver in accordance with subsection 1 of section 41 of the Bankruptcy Act, 1914, and shall send notices to the registrar and the execution creditor in accordance with Rule 36 of this Order:

(ii.) If after paying over any such money to the registrar the high bailiff receives notice that a receiving order has been made against the debtor, he shall forthwith give notice thereof to the registrar of the court of which he is high bailiff, and shall also, if the warrant issued out of any other court, and the money, after deducting the costs of the execution, has been certified to the registrar of that court pursuant to Order XXVIII. Rule 2, give a similar notice to the last-mentioned registrar:

(iii.) In any case mentioned in paragraph (ii.) the amount paid to the registrar, after deducting the costs of the execution, shall on request be paid over to the official receiver or trustee in bankruptcy by the registrar to whom the same was paid, or if it has been certified to any other court pursuant to Order XXVIII. Rule 2, by the registrar of that court, unless in either case it has been paid out by

O. II. r. 34a.

the registrar to the execution creditor before he receives notice of the receiving order :

(iv.) A registrar paying over any money pursuant to the last preceding paragraph shall be allowed by the treasurer of his court, at his audit, the amount so paid ; and where any such money has been paid to the registrar of one court, and certified to any other court pursuant to Order XXVIII. Rule 2, the registrar of the first-mentioned court shall account for and pay over the amount received by him to the treasurer of his court at such time as the treasurer shall require.

Under the Bankruptcy Act, 1883, an execution creditor is not entitled to retain the benefit of his execution, as against the trustee, unless the execution is completed by sale as well as by seizure before the date of the receiving order, and before notice of a bankruptcy petition against the debtor, or of the commission of any available act of bankruptcy by him (46 & 47 Vict. c. 52, s. 45, now s. 40 of Bankruptcy Act, 1914).

If the high bailiff has paid money to the registrar before notice of a receiving order against the execution debtor, this is made a good discharge to him as against the official receiver. If having so done he hears of a receiving order made against the debtor he must forthwith inform the registrar, who, after deducting the costs of execution, must on request pay to the official receiver all of such monies not already paid out. See Bankruptcy Rules, 1916 (Rule 323A).

Notice where proceeds of execution are to be held for 14 days.

4 & 5 Geo. 5, c. 59, s. 41 (2).

35. Where under an execution in respect of a judgment for a sum exceeding twenty pounds the goods of a debtor are sold, or money is paid in order to avoid sale, and the high bailiff is by subsection two of section forty-one of the Bankruptcy Act, 1914, required to retain the balance of the proceeds of sale or the money paid, after deducting the costs of the execution, for fourteen days, he shall within twenty-four hours after the sale of the goods or the receipt of the money send to the registrar of the court out of which the warrant of execution originally issued, and to the execution creditor, notice according to the form in the Appendix of the sale or payment and the amount realised thereunder.

Form 171.

See note (*supra*).

An execution levied by seizure or sale is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the high bailiff acquires a good title against the trustee (s. 40 (3), Bankruptcy Act, 1914).

Notice of withdrawal, or of payment over of money received, on notice of

36. Where the high bailiff withdraws from possession of goods taken in execution, or pays over to the official receiver or trustee in bankruptcy the proceeds of sale of goods sold under an execution, or money paid in order to avoid sale or received in part satisfaction of the execution, in consequence of having received

notice that a receiving order in bankruptcy has been made against the debtor, he shall within twenty-four hours after such withdrawal or payment send to the registrar of the court out of which the warrant of execution originally issued, and to the execution creditor, notice thereof according to the form in the Appendix. O. II. r. 36. receiving order. Form 172.

36A. When any process has been executed, satisfied, withdrawn, or stopped, the high bailiff shall file such process and retain the same in his custody, unless, in the case of a warrant of execution, he is required to lodge the same in court pursuant to Order XXV. Rule 38, or, in the case of an order of commitment, the same has been delivered to the gaoler. Filing and custody of process when executed, etc.

NOTE.—Rules 34, 34A, 35, 36, and 36A are either new or amended by Rules of 1917, dated February 19th, 1917.

37. Whenever a warrant, order of commitment, or other order of the court required to be executed in a foreign district has not been executed within one month from the day of delivery, the high bailiff of the foreign court shall, on the day after the termination of such month, make a return to the registrar of the home court according to the form in the Appendix, and shall send a copy thereof to the execution creditor, and when any such warrant or order has not been executed during the time it is in force, such high bailiff shall return the same to the registrar of the home court within twenty-four hours from the expiration of such time, and shall indorse on such warrant or order the reason why the same could not be executed, and he shall sign such indorsement; but the high bailiff shall return such warrant or order, although unexecuted, to the home court at any time if he shall be directed so to do by the registrar of the home court, and he shall at all times give such information as such registrar may require respecting such warrant or order. Non-execution of warrant in foreign district. Form 174. Return of warrant, if so directed.

38. Where any personal property is directed to be sold by public auction, detained, or preserved, the high bailiff shall, if the court so directs, superintend such sale, detention, or preservation; and where any such property is directed to be sold by private contract, it shall be his duty, if the court so directs, to see that the directions of the court are duly carried out. This rule shall not apply to an execution issued under section one hundred and forty-six of the Act. Duties of high bailiff as to sale, &c., of personal property. 51 & 52 Vict. c. 43, s. 146.

39. Where a warrant directs the high bailiff to detain and preserve any goods or chattels, he shall take and retain possession thereof until further order be made by the court thereon. Taking possession of goods.

O. II. r. 40.

Where possession ordered to be taken until security given.

40. Where a warrant directs the high bailiff to take possession of any goods or chattels until security be given by some party for the safe keeping of the same, or for the payment of the value of the same in default of such safe keeping, but does not specify the amount of such security, the high bailiff shall make or cause to be made an inventory and appraisement of the goods or chattels which he may take into his possession; and, upon receiving as a deposit the amount of such appraisement, or sufficient security, to be approved by the registrar, for the safe custody of such goods and chattels, and for the delivery up of possession thereof upon request, the high bailiff shall relinquish the possession thereof on condition that the same shall be re-delivered to him on request, or held to abide the order of the court. If the warrant specifies the amount of security, no less deposit or security shall be sufficient.

Notices where party acts by solicitor.

41. Where the plaintiff or execution creditor acts by a solicitor, the notices and copies referred to in Rules 5, 6, 24, 25, 26, 31, 35, 36 and 37 of this Order shall be sent to such solicitor.

ORDER III.

Parties.

Generally.

Persons may be joined as plaintiffs who claim relief jointly, severally, or in the alternative in respect of the same transaction, when common question of law or fact arises.

1. All persons may be joined as plaintiffs in one action in whom any right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise: Provided that if upon the application of any defendant it appears that such joinder may embarrass or delay the trial, the judge may order separate trials, or make such other order as may be expedient. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to any extra costs occasioned by so joining any person who is not found entitled to relief, unless the court in disposing of the costs of the action otherwise directs.

This rule was passed in consequence of the decision in *Carter* v. *Rigby & Co.* (C. A.), (1896) 2 Q. B. 113; 65 L. J. Q. B. 537.

Transactions between the same persons are not to be confused with the same transactions. Thus where the causes of action do not arise out of the same transactions, a plaintiff cannot join personal claims with claims in a representative character, though against the same defendant (*Stroud* v. *Lawson*, (1898) 2 Q. B. 44; 67 L. J. Q. B. 718). The defendant may then

set up counterclaims against each plaintiff (*M. S. & L. Rail. Co.* v. *Brooks*, (1877) 2 Ex. D. 243 ; 46 L. J. Ex. 244). Misjoinder of a plaintiff will not prevent a defendant from having the benefit of a set-off or counterclaim against him (Order X. r. 8).

O. III. r. 1 Notes.

2. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Persons may be joined as defendants against whom relief claimed jointly, severally, or in the alternative.

3. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him ; but the court may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

All defendants joined need not be interested in all the relief prayed for.

4. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

All or any of the persons liable under any one contract may be joined.

5. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

Where plaintiff in doubt from whom he is entitled to redress.

See *Honduras Co.* v. *Tucker*, (1877) 2 Ex. D. 301 ; 46 L. J. Ex. 391.

6. Trustees, executors and administrators, may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons ; but the court may, at any stage of the proceedings, order any of such persons to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

Trustees, executors, and others may sue or be sued without joining parties beneficially interested.

This rule shall apply to trustees, executors, and administrators sued in proceedings to enforce a security by foreclosure or otherwise.

In county courts, executors and administrators may sue and be sued in their own names, as if the action were brought by or against them in their own right (51 & 52 Vict. c. 43, s. 95 ; but see Order V. r. 6). Trustees, executors, or administrators so suing will, it is conceived, let in a set-off or counterclaim, available against them in their private capacity. At law, the rule as to joinder was that all the executors named in the will should be joined as plaintiffs, though one only had proved (1 Wms. Saund. 291, *k*, *l*),

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except in case of renunciation (20 & 21 Vict. c. 77, s. 79); but the rule in equity was much more elastic (see Williams on Executors, 1904, 9th edit.). Assuming that the provisions of the 51 & 52 Vict. c. 43, s. 97, extend to actions against executors, the plaintiff will only require to select as defendant an executor who has administered; if not, all who have administered should be joined (Bul. & L. 18, note *b*; Dicey on Parties, 322).

Where parties numerous, one or more may sue or be sued or defend for the benefit of all.

7. Where there are numerous persons having the same interest in one action or matter, one or more of such persons may sue or be sued, or may be authorized by the court, before or at the trial, to defend in such action or matter, on behalf or for the benefit of all parties so interested.

The provisions of this rule and of Rule 8 apply to proceedings under the Workmen's Compensation Act, 1906, and Rules, whether by way of arbitration or not (Workmen's Compensation Rules, rr. 7, 78A).

This rule does not authorise an action for debt against selected members of an unincorporated religious society on their own behalf and on behalf of all other members of the society, and asking that the defendants be directed to defend the action on behalf of, or for the benefit of all persons so interested, where the plaintiff does not by writ claim any declaration of right as between himself and all the members of the Society (*Walker* v. *Suer and Others*, (1914) 2 K. B. 930; 83 L. J. K. B. 1188, Comp.; *Taff Vale Rail. Co.* v. *Amalgamated Society of Railway Servants*, (1901) A. C. 426; 70 L. J. K. B. 905; and *Bedford* (*Duke*) v. *Ellis*, (1901) A. C. 8; 70 L. J. Ch. 102. *Quære*, whether this rule applies at all to an action of tort. See *Mercantile Marine Service Association* v. *Toms*, (1916) 2 K. B. 243; 85 L. J. K. B. 311. Decided on Order XVI. r. 9, of Rules of Supreme Court, substantially identical in terms.

Where defendant desires to defend on behalf of others.

Form 96.

Form 98.

Form 97.

8. When a defendant desires to defend on behalf or for the benefit of others having the same interest, he shall within two clear days of the date of service of the summons on him give notice to the plaintiff of his intention to apply, upon a day and hour to be named in such notice, to the court for leave so to defend, and shall file an affidavit of the facts upon which he relies to obtain such leave, together with the names, addresses, and occupations of such persons; and the court may thereupon make an order for the defendant so to defend, and the names of the persons as to whom such order is made shall be added to that of the defendant in the plaint and minute-book; and a copy of such order, with a copy of the summons and particulars in the action, and a notice according to the form in the Appendix, shall be personally served on each of such persons, and notice shall be sent to the plaintiff according to the form in the Appendix: Provided that the plaintiff or any of the persons whose names have been so added may at the trial object to the defendant defending on behalf of all or any of the persons as to whom such order has been made, and the judge may thereupon, if he thinks fit, strike the names of all or any of such persons out of the proceedings, and order the defendant to pay such costs as he may think fit.

O. III. r. 9.

Power to approve compromise in absence of some of the persons interested.

9. Where in proceedings concerning a trust a compromise is proposed, and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the court and assenting to the compromise, the judge, if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.

Persons under Disability.

Infants.

51 & 52 Vict. c. 43, s. 96.

10. Infants may sue as plaintiffs by their next friends, and may defend by their guardians appointed for that purpose; but nothing herein contained shall affect the right of any infant to sue as if he were of full age in the cases enumerated in section ninety-six of the Act.

An infant when suing for any sum not exceeding 100*l.* for wages or piece-work, or for work done as a servant, may prosecute such action in the same manner as if he were of full age (51 & 52 Vict. c. 43, s. 96; 3 Edw. VII. c. 42, s. 3). As to procedure generally see Order V. r. 16.

Next Friend.]—A married woman cannot, during coverture, act as next friend (*Thynne* v. *St. Maur*, (1887) 34 Ch. D. 465; 56 L. J. Ch. 733).

Married women.

45 & 46 Vict. c. 75.

11. Married women may sue and be sued as provided by the Married Women's Property Act, 1882.

By 45 & 46 Vict. c. 75, s. 1 (2): "A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued either in contract, or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise."

By sect. 12: "Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*, but except as aforesaid no husband or wife shall be entitled to sue the other for a tort."

Effect of Act.]—The effect of the Act is to render a wife's property, as described in the Act, her separate property for all purposes. She may sue alone for damage to it (*Weldon* v. *De Bathe* (C. A.), (1884) 14 Q. B. D. 339; 54 L. J. Q. B. 113); or for libel, affecting any separate trade carried on by her (see *Moore* v. *Robinson*, (1878) 48 L. J. Q. B. 156; *Ramsden* v. *Brearley*, (1875) L. R. 10 Q. B. 147; 44 L. J. Q. B. 46). She may also sue alone for damages for personal injuries, even though the cause of action

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arise, and the marriage take place before the Act; damages so recovered will be her separate property (*Weldon* v. *Winslow* (C. A.), (1884) 13 Q. B. D. 784; 53 L. J. Q. B. 528). She cannot sue her husband for damages for fraud, though she may claim rescission of a deed entered into with him, which she has improperly been induced to sign (*Hulton* v. *Hulton*, (1917) 86 L. J. K. B. 51; on appeal (1917) 1 K. B. 813; 86 L. J. K. B. 633. She may sue her husband in detinue (*Larner* v. *Larner*, (1905) 2 K. B. 539; 4 L. J. K. B. 797).

Liability of Property subject to Restraint.]—Property which at the time of the making of a contract or thereafter a married woman is restrained from anticipating cannot be made available to satisfy any liability arising from such contract (56 & 57 Vict. c. 63, s. 1; *Barnett* v. *Howard*, (1900) 2 Q. B. 784; 69 L. J. Q. B. 955; *Brown* v. *Dimbleby* (C. A.), (1904) 1 K. B. 28; 73 L. J. K. B. 35), and the restraint on anticipation applies even to arrears which accrue due after the date of the judgment (*Bolitho & Co.* v. *Gidley*, (1905) A. C. 98; 74 L. J. K. B. 430; approving *Whiteley* v. *Edwardes*, (1896) 2 Q. B. 48; 65 L. J. Q. B. 457). But property subject to a restraint on anticipation may be made liable for the costs of the opposite party in any "proceeding instituted" by a married woman or her next friend; and this liability may be enforced by the appointment of a receiver and sale of the property or otherwise, as may be just (56 & 57 Vict. c. 63, s. 2; Order XXIII. r. 3); a counterclaim is such a proceeding instituted (*Hood-Barrs* v. *Cathcart*, (1895) 1 Q. B. 873; 64 L. J. Q. B. 520); and so is a written notice of claim to goods taken in execution (*Nunn* v. *Tyson*, (1901) 2 K. B. 487; 70 L. J. K. B. 854). An appeal from a judgment in an action against a married woman is not a proceeding instituted by her (*Hood-Barrs* v. *Heriot*, (1897) A. C. 177; 66 L. J. Q. B. 356); but an appeal by a married woman plaintiff is an appeal in an action commenced or instituted by her, and in that case costs are payable out of her separate estate subject to a restraint on anticipation (*Dresel* v. *Ellis*, (1905) 1 K. B. 574; 74 L. J. K. B. 401).

Judgment for costs against Married Woman Plaintiff.]—Where judgment is given, or an order made, for costs against a married woman in an action or proceeding instituted by her the judgment or order will be according to the form applicable in the circumstances of the case to a judgment against a married woman defendant; and, unless the judge otherwise orders, the judgment or order will reserve to the opposite party liberty to apply for payment of the costs out of her property subject to a restraint on anticipation (Order XXIII. r. 3, and see 56 & 57 Vict. c. 63, s. 2).

Liability on Contracts.]—Every contract entered into by a married woman otherwise than as agent, since December 5th, 1893, will be deemed to be entered into with reference to her separate property, whether or not possessed of or entitled to any separate estate when she makes the contract; such contract binds all separate property which she may then or thereafter be possessed of or entitled to; and is enforceable against all property which she may thereafter while discovert be possessed of or entitled to (56 & 57 Vict. c. 63, s. 1). She may be sued alone upon such contracts (*Robinson* v. *Lynes*, (1894) 2 Q. B. 577; 63 L. J. Q. B. 759; *Bursill* v. *Tanner*, (1884) 13 Q. B. D. 691); she may be sued by her husband to recover out of her separate estate money lent to her after marriage (*Butler* v. *Butler* (C. A.), (1885) 16 Q. B. D. 374; 55 L. J. Q. B. 55).

Liability to Bankruptcy Proceedings.]—A married woman who carries on a trade or business, whether separately from her husband or not, may be made bankrupt. See Bankruptcy and Deeds of Arrangement Act, 1913, now Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59, s. 125), *ante*, p. 280.

Liability for Contracts, etc., before Marriage.]—A married woman is liable, to the extent of her separate property (but not liable to be made

bankrupt (*In re A Debtor*, (1898) 2 Q. B. 576; 67 L. J. Q. B. 820, but see *supra*, "Liability to bankruptcy proceedings")), for debts contracted, contracts entered into, and wrongs committed before the then existing (*Jay* v. *Robinson* (C. A.), (1890) 25 Q. B. D. 467; 59 L. J. Q. B. 367) marriage (see *Axford* v. *Reid* (C. A.), (1889) 22 Q. B. D. 548; 58 L. J. Q. B. 230); and her husband is secondarily liable, but only to the extent of property acquired from or through his wife (45 & 46 Vict. c. 75, ss. 13, 14). She may now be made a bankrupt if she carries on a trade whether separately from her husband or not (4 & 5 Geo. 5, c. 59, s. 125, *supra*), although her husband manages it on her behalf (*In re Simon*, (1909) 1 K. B. 201; 78 L. J. K. B. 392). Husband and wife may be sued together or separately for the wife's antenuptial debts, though the husband is only liable to the extent of property acquired from or through her (*Williams* v. *Mercier* (C. A.), (1882) 9 Q. B. D. 337; 51 L. J. Q. B. 594; *Beck* v. *Pierce* (C. A.), (1889) 23 Q. B. D. 16; 58 L. J. Q. B. 516). If sued together, the husband will be entitled to his costs if found not liable (45 & 46 Vict. c. 75, s. 15). Even if an action has been brought against the wife, and judgment recovered, the husband may still be sued if the wife's separate estate is insufficient to satisfy the judgment, if he admits that he received assets with his wife (*Beck* v. *Pierce*, *supra*). But it has been held in the High Court that where husband and wife are sued as alternatively liable and judgment under Order XIV. is signed against the wife, this amounts to a conclusive election to rely on the liability of the wife, and the plaintiff cannot afterwards insist on the liability of the husband (*Morel* v. *E. of Westmorland* (H. L.), (1904) A. C. 11; 73 L. J. K. B. 93; and see *French* v. *Howie*, (1905) 2 K. B. 580; 74 L. J. K. B. 853; (C. A.), (1906) 2 K. B. 674; 75 L. J. K. B. 980; *Paquin* v. *Beauclerk* (H. L.), (1906) A. C. 148; 75 L. J. K. B. 395). A judgment against the wife must always be as to her separate property and not personal (45 & 46 Vict. c. 75, s. 15; see Form of Judgment, Form 151A). If the judgment is in respect of an antenuptial debt, it cannot be enforced by way of equitable execution against her separate property subject to a restraint against anticipation, unless the restraint is contained in a settlement made by herself of her own property (*Birmingham Excelsior Money Society* v. *Lane*, (1904) 1 K. B. 35; 73 L. J. K. B. 28). In any action in which the husband is sought to be made liable, an inquiry may be directed to ascertain the nature, amount, or value of property acquired by him from or through his wife (45 & 46 Vict. c. 75, s. 14).

Executrix or Trustee.]—By sect. 18 a married woman who is sole or joint executrix or administratrix, or trustee, may sue or be sued without her husband, as if she were a *feme sole*.

When can sue alone apart from Act.]—Irrespective of the Married Women's Property Acts, a married woman can sue alone only where the husband is civilly dead, or legally presumed to be dead, and where she has a judicial separation or protection order (Dicey on Parties, 171; Daniell, Chan. Prac., 6th edit., pp. 119—135; Order V. r. 17). Where she enters a plaint without joining her husband, she must state his name, and, as far as she can, his address and description (Order V. r. 17).

When can be sued alone apart from Act.]—Irrespective of these Acts, a married woman can be sued alone only where her husband is civilly dead, or legally presumed to be dead, or where she has a judicial separation or protection order, and perhaps in some minor cases (Daniell, Chan. Prac., 6th edit., p. 185; Dicey on Parties, p. 296).

When Husband to be joined as Defendant.]—A husband is not a necessary co-defendant in actions for wrongs independent of contract committed by the wife after marriage, but the plaintiff may join both if he pleases (*Seroka* v. *Kattenburg*, (1886) 17 Q. B. D. 177; 55 L. J. Q. B. 375; *Earle* v. *Kingscote*, (1900) 2 Ch. 585; 69 L. J. Ch. 725); if he does, the husband

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cannot pay into court and the wife deny liability (*Beaumont* v. *Kaye*, (1904) 1 K. B. 292; 73 L. J. K. B. 213). He is liable for torts committed by his wife during marriage, but not for such torts as arise out of a contract made with the wife (*Cole* v. *De Trafford*, (1917) 1 K. B. 911; 86 L. J. K. B. 764), or where she has obtained a judicial separation in the course of the action, but before judgment (*Cuenod* v. *Leslie*, (1909) 1 K. B. 880; 78 L. J. K. B. 695). He is a necessary defendant in actions to charge his wife's separate estate, where she has a settlement (see 45 & 46 Vict. c. 75, s. 19; and see *Roberts* v. *Evans*, (1878) 7 Ch. D. 830; 47 L. J. Ch. 469), or where her property is made separate otherwise than by the Married Women's Property Acts. Where she has a settlement the trustees should be made defendants also (*Atwood* v. *Chichester* (C. A.), (1878) 3 Q. B. D. 722; 47 L. J. Q. B. 300).

Before the Act of 1882, the High Court, under a similar rule, held that a married woman who had no visible means ought not to be allowed to sue alone without giving security; otherwise, if she had separate property available for costs (*Brown* v. *North* (C. A.), (1882) 9 Q. B. D. 52; 51 L. J. Q. B. 365).

Where the Married Women's Property Act, 1882, applies, a married woman may sue alone without leave, and without giving security (*Threlfall* v. *Wilson*, (1883) 8 P. D. 18; *Jacob* v. *Isaac* (C. A.), (1885) 30 Ch. D. 418; 54 L. J. Ch. 1136); in other cases the question of security depends on whether the wife has or has not separate estate available for costs (see as to plaintiffs, *Martano* v. *Mann* (C. A.), (1880) 14 Ch. D. 419; 49 L. J. Ch. 510; *Kingsman* v. *Kingsman* (C. A.), (1880) 6 Q. B. D. 122; 50 L. J. Q. B. 81; *Brown* v. *North*, *supra*; as to defendants, *Noel* v. *Noel*, (1880) 13 Ch. D. 510).

The application for leave may be *ex parte* or on notice (Order XII. r. 11). Should the action be commenced without leave, an application for security should be made promptly *ex parte* or on notice in accordance with Order XII. r. 11.

If an order be made, the married woman cannot escape it by discontinuing and then bringing an action by a next friend (*In re Payne*, (1883) 23 Ch. D. 288; 52 L. J. Ch. 544).

As to the joinder of claims by husband and wife, see Order IV. r. 4.

As to entry of the plaint, Order V. r. 17.

Form of Judgment.]—The form of judgment against a married woman, as well as against a widow or divorced woman, in respect of a contract or tort before or during coverture, is given by Order XXIII. r. 2, and is to be according to Form 151, with the addition of such one of the paragraphs in Form 151A as is applicable to the circumstances of the case.

If a woman during coverture, whose estate is subject to restraint against anticipation, incurs a liability, and is sued after her husband's death, the judgment will be in the form of *Scott* v. *Morley* (*Softlaw* v. *Welch*, (1899) 2 Q. B. 419; 68 L. J. Q. B. 940).

Enforcing Judgment for Costs.]—As to enforcing judgment for costs when, being sued alone, she obtains judgment on the ground of coverture, see Order XXV. r. 4.

Where a married woman is liable for costs, to be paid out of her separate estate, the court has jurisdiction by injunction or by the appointment of a receiver to protect the fund out of which the costs are payable (*Cummins* v. *Perkins*, (1899) 1 Ch. 16; 68 L. J. Q. B. 57); the onus is upon her to show why a receiver should not be appointed (*Pawley* v. *Pawley*, (1905) 1 Ch. 93; 74 L. J. Ch. 344). The appointment of a receiver is not necessary when a married woman, who is an unsuccessful plaintiff, is ordered, under sect. 2 of the Married Women's Property Act, 1893, to pay costs out of property settled to her separate use without power of anticipation (*Huntley* (*Marchioness of*) v. *Gaskell*, (1905) 2 Ch. 656; 75 L. J. Ch. 66).

If the object of an order made against a married woman is to secure a fund

or to compel payment into court of money belonging to the estate in her hands, the order should be in the common form and may be enforced by attachment; semble, if to make good her devastavit the order should be as in *Scott* v. *Morley* (*In re Turnbull*, (1900) 1 Ch. 180; 69 L. J. Ch. 187). A married woman against whom judgment has been obtained in respect of her separate estate may have an order made against her under Order XXV. r. 71 (1) for attendance and oral examination as to debts owing to her and for production of books and documents (Order XXV. r. 71 (4)).

A husband cannot sue his wife in tort (see sect. 12 of Married Women's Property Act, 1882), and, consequently, a husband cannot obtain an injunction against his wife to restrain her from pledging his credit, as such an unauthorised act is a tort (*Webster* v. *Webster*, (1916) 85 L. J. K. B. 691).

Lunatics and persons of unsound mind.

12. In cases in which before the first day of November, 1875, lunatics or persons of unsound mind not so found by inquisition might respectively have sued as plaintiffs or would have been liable to be sued as defendants in any action, they may respectively sue as plaintiffs in any action by their committees or next friends according to the practice of the Chancery Division of the High Court, and may in like manner defend any action by their committees or guardians appointed for that purpose.

Lunatics and other Insane Persons.]—In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before November 1st, 1875, have sued as plaintiffs or would have been liable to be sued as defendants in any action, they may respectively sue as plaintiffs in any action by their committee or next friend according to the practice of the Chancery Division of the High Court of Justice; when suing by a next friend the provisions of Order V. r. 16 as to an infant suing by a next friend apply (Order V. r. 18); and they may in like manner defend any action by their committees or guardians appointed, as presently mentioned, for that purpose (Order III. r. 12).

When necessaries suitable to his condition are provided for a lunatic, under circumstances which negative the idea that they were provided gratuitously, there is an implied obligation on the part of the lunatic to pay for them (*Re Rhodes* (C. A.), (1890) 44 Ch. D. 94; 59 L. J. Ch. 298).

The rule as to the consent of infants (Order III. r. 13) applies also to actions in which persons of unsound mind, whether so found by inquisition or not, are parties; but no consent by the committee of a lunatic will be valid as between him and the lunatic without the consent of the Lord Chancellor or lords justices sitting in lunacy.

As to service of notice of a judgment or order on a lunatic not so found by inquisition, see Order III. r. 29; and as to service of summons generally, see Order VII. r. 14.

As to payment into court and investment of moneys awarded to or recovered by persons of unsound mind, see Order IX. rr. 24, 25.

Appointment of Guardians ad litem to Defendants who are Infants or Persons of unsound mind.—When fact of Infancy, etc., appears on Proceedings.]—Where on the face of the proceedings it appears that any defendant is an infant or person of unsound mind not so found by inquisition, at any time after service of the summons, and not less than six clear days before the return day (twelve clear days before that day in cases under the Act of 1903), the registrar, on application made on behalf of the infant or person of unsound mind on an affidavit (Form 50) accompanied by a written consent of the proposed guardian to act as such (Form 51), may appoint a guardian *ad litem* (Order VII. r. 50 (1); Order XXIIA. r. 7); where such appointment is made, the registrar must forthwith send notice of the appoint-

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ment to the plaintiff (Order VII. r. 50 (2); Form 52). Where no application for the appointment of a guardian *ad litem* is made on behalf of the infant or person of unsound mind within the time before mentioned, the registrar must on the sixth day (the twelfth day in cases under the Act of 1903) before the return day send notice by post to the plaintiff or his solicitor that no such application has been made (Order VII. r. 50 (3); Order XXIIA. r. 7; Form 53). The plaintiff is thereupon, before taking further proceedings, to apply to the judge for an order that some proper person be assigned as guardian *ad litem*, by whom the defendant may appear and defend, and for a postponement of the trial if necessary (Order VII. r. 50 (4)). Such application (Form 54) is to be made on affidavit (Form 55), and notice thereof, together with a copy of such affidavit, must, three clear days at least before the day named for hearing the same, be served upon or left at the dwelling-house of the person with whom or under whose care such defendant was when the summons was served, and must also (in the case of an infant not residing with or under the care of his father or guardian) be served upon or left at the dwelling-house of the father or guardian of such infant, provided that the registrar may, on the application of the plaintiff, dispense with such last-mentioned service (Order VII. r. 50 (5)). The judge, if satisfied with the proposed guardian, may make the appointment (Form 56), but if not, may appoint any other person willing to act, or in default of such person, the registrar; and the action or matter proceeds as if a guardian had been appointed on behalf of the defendant. If necessary, the judge on the hearing of the application may postpone the trial (Order VII. r. 50 (6)). In the case of an infant sued for a debt or liquidated demand, pars. 4, 5, and 6 of Order VII. r. 50 do not apply, nor is the notice required by par. 3 to be sent unless directed by the judge or registrar (Order VII. r. 50 (7)).

When the fact of Infancy, etc., does not appear on Proceedings.]—Where it does not appear on the face of the proceedings that the defendant is an infant or person of unsound mind not so found by inquisition, when on such defendant appearing at the trial it is apparent that he is an infant, and he names a guardian who assents to act, such person is to be appointed guardian accordingly; but if the defendant does not name a guardian, the judge may appoint as guardian anyone in court willing to act, or in default of any such person he may appoint the registrar, and the action or matter proceeds as if the infant had named a guardian, and the name of the guardian appointed is to be entered accordingly (Order VII. r. 51 (1); Forms 57, 58). In any other case, on its being made to appear that any defendant is an infant or a person of unsound mind, not so found by inquisition, the action or matter is not to proceed against such defendant until a guardian *ad litem* has been appointed (Order VII. r. 51 (2)). Such appointment may be made any time within six days of its being made to appear that such defendant is an infant or person of unsound mind on application made on behalf of such defendant, in accordance with Order VII. r. 50 (1), (2), and after six days in accordance with (3), (4), (5) and (6) of the same rule as already explained in the last paragraph. The provisions of par. 7 of Order VII. r. 50 apply to cases falling within this rule (Order VII. r. 51 (3)).

Entry of appointment of Guardian.]—Where a guardian has been so appointed such appointment must be entered on the summons, in the minute book, and on all subsequent proceedings (Order VII. r. 52).

Liability of Guardian for Costs.]—A guardian *ad litem* to an infant or person of unsound mind, not so found by inquisition, is not personally liable to any costs not occasioned by his personal negligence or misconduct (Order VII. r. 53).

Power to set aside Judgment where no Guardian appointed.]—Where judgment has been obtained or an order made against an infant defendant or a person of unsound mind, not so found by inquisition, without a guardian *ad litem* having been appointed, the judge may set aside such judgment or

order, and order a new trial or make such other order as may be just (Order VII. r. 54). O. III. r. 12. Notes.

The provisions of Order VII. rr. 50—54 include petitions (Order VII. r. 55). During the proceedings under a judgment or order the judge may at any time require the appointment of a guardian *ad litem* for an infant or person of unsound mind not so found by inquisition, who has been served with notice of the judgment or order (Order VII. r. 56).

13. In any action or matter to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure given by the next friend, guardian, committee, or other person acting on behalf of the person under disability shall, with the consent of the court, have the same force and effect as if such party were under no disability and had given such consent. Provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Lord Chancellor or lords justices sitting in lunacy. Persons under disability, how consents for can be given.

Agreement not to Appeal.]—A next friend cannot bind an infant by an agreement not to appeal (*Rhodes* v. *Swithenbank* (C. A.), (1889) 22 Q. B. D. 577; 58 L. J. Q. B. 287).

Partners.

14. (1) Any two or more persons claiming or being liable as co-partners, and carrying on business within England and Wales, may sue or may be sued in the names of the respective firms, if any, in which such persons were co-partners at the time of the accruing of the cause of action. Co-partners may sue and be sued in the name of their firm.

(2) Where the plaintiffs sue or the defendants are sued in the name of their firm in accordance with this rule, the affidavit (if any) required before the entry of the plaint, and the præcipe, summons, and all subsequent proceedings, shall state that the plaintiffs are suing or the defendants are sued as a firm.

(3) In any such case, on application by any party to the action, the court may order a statement of the names and places of residence of the persons who were at the time of the accruing of the cause of action co-partners in any such firm to be furnished in such manner, and verified on oath or otherwise, as the court may direct.

15. Where an action is brought by partners in the name of their firm, the plaintiffs shall, on demand made in writing by or on behalf of any defendant, forthwith send by post to the defendant so applying and to the registrar the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the judge may Application for names of firm in action by firm.

O. III. r. 15.

direct, or the judge at the trial may adjourn the hearing on such terms as he may think fit. And when the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the summons. But all the proceedings shall, nevertheless, continue in the name of the firm.

Where co-partners sue or are sued otherwise than in the name of their firm.

15A. (1) Where an action is brought by or against any two or more named persons claiming or being liable as co-partners, and carrying on business in England or Wales, such action shall not be deemed to be an action in the name of the firm within the meaning of these Rules unless the plaintiffs sue or the defendants are sued in the name of their firm, and are stated to be suing or to be sued as a firm, but shall be deemed to be an action by or against the individuals named as plaintiffs or defendants; and service shall be effected, judgment entered, and execution issued accordingly.

Application of rules to actions between firm and any of its members.

16. The provisions of these rules as to actions by or against firms shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, provided such firm or firms carry on business within England or Wales; but no execution shall be issued in any such action without leave of the judge, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made, and directions given, as may be just.

Where one person carries on business in name other than his own.

17. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit, all the provisions of these rules relating to proceedings against firms shall apply.

When partners are sued under the above provisions, the judgment can only be entered in the name of the firm (*Jackson* v. *Litchfield* (C. A.), (1882) 8 Q. B. D. 474; 51 L. J. Q. B. 327). When so entered, an action apparently still lies against the individual partners on the judgment (*Clark* v. *Cullen*, (1882) 9 Q. B. D. 355), or the judgment creditor may apply for leave to issue execution pursuant to Order XXV. r. 11 (see *Davis* v. *Morris*, (1883) 10 Q. B. D. 436; 52 L. J. Q. B. 401; *Munster* v. *Railton* (C. A.), (1883) 11 Q. B. D. 435; 52 L. J. Q. B. 409; see further Annual Practice, notes to Order XLVIIIA. R. S. C.).

Under sect. 97 of the Act as already shown the plaintiff may sue one or more partners in their own names for a joint debt, and is not obliged to join all.

As to service on firms, see Order VII. r. 15. As to execution, Order XXV. r. 11; judgment summons, Order XXV. r. 27; and as to charging orders on partnership property for the separate debt of a partner, Order XXV. rr. 12, 13.

17A. To facilitate the issue of process in the proper form against persons carrying on business as co-partners, or against a person carrying on business in a name or style other than his own name, a notice according to the form in the Appendix shall be posted in a conspicuous place in the office of the registrar. O. III. r. 17a. Notice to be posted in office as to issue of process against partners, &c. Form 7A.

Administration and Execution of Trusts.

18. In any case in which the rights of an heir-at-law or customary heir or the next of kin or a class depend upon the construction which the judge may put upon an instrument, and it is not known or is difficult to ascertain who is or are such heir-at-law or customary heir or next of kin or class, and the judge considers that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such heir-at-law, customary heir, next of kin, or class have been ascertained by means of inquiry or otherwise, the judge may appoint some one or more proper person or persons appearing to him on such evidence as he thinks sufficient to have a presumptive or *primâ facie* claim to be regarded as heir-at-law, customary heir, or one of the next of kin or other class in question, to represent such heir-at-law, customary heir, next of kin, or class ; and the judgment or order of the judge in the presence of such person or persons shall be binding upon the heir-at-law, customary heir, next of kin, or class so represented. Heir-at-law, next of kin, or a class, when unknown, how represented.

19. In any case in which an heir-at-law or customary heir or any next of kin or a class is or are interested in any proceedings, the judge may, if, having regard to the nature and extent of the interest of such persons or any of them, it appears expedient on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more person or persons to represent such heir, or to represent all or any of such next of kin or class ; and the judgment or order of the judge in the presence of the person or persons so appointed shall be binding upon the persons so represented. (R. S. C. Ord. XVI. r. 32 (6).) Power to appoint person to represent absent parties.

20. Any residuary legatee or next of kin entitled to a judgment or order for the administration of the personal estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin. When residuary legatees or next of kin need not be served.

21. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate. Legatee entitled to judgment need not serve other legatees.

O. III. r. 22.

Co-residuary need not be served.

22. Any residuary devisee or heir entitled to the like judgment or order may have the same without serving any co-residuary devisee or co-heir.

Other *cestuis que trust* need not be served.

23. Any one of several *cestuis que trust* under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other *cestui que trust*.

Waste or protection of property.

24. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest. (R. S. C., Ord. XVI. r. 37.)

Judgment for administration by executor against one legatee, etc.

25. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or *cestui que trust* for the administration of the estate or the execution of the trusts.

See *Re Peppitt*, (1877) 4 Ch. D. 230; 46 L. J. Ch. 95.

Judge may order parties to be added, and give directions as to conduct of action.

26. The judge may require any person to be made a party to any action or matter, and may give the conduct of the action or matter to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

Notice of judgment when to be served. [Rule 24.]

27. Wherever, in any action for the administration of the estate of a deceased person or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or an order has been pronounced or made, the judge may direct that any persons interested in the estate or under the trust or in the hereditaments shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may at the next sitting of the court after such service, or by leave of the judge at any subsequent sitting, apply to the judge to discharge, vary, or add to the judgment or order.

Preparation of notice.

Form 317.

28. Where the judge directs that any person shall be served with the notice mentioned in the last preceding rule, the notice shall be prepared by the registrar, who shall annex thereto a copy of the judgment or order, and issue the same to the bailiff for service, and shall also make and deliver to the bailiff a copy of the notice.

O. III. r. 29.

Service of notice.

29. Notice of a judgment or order under the two last preceding rules shall, whether the person to be served is or is not an infant or a person of unsound mind not so found by inquisition, be served in the same manner as a summons in an action is required to be served on such person; and the bailiff shall make an indorsement on the copy of the notice delivered to him, showing the fact, mode, and place of service, in the same manner as on the service of a summons in an action.

Where service of notice of judgment or order may be dispensed with.

30. Where it appears to the judge that by reason of absence or for any other sufficient cause the service of the notice of the judgment or order mentioned in the last preceding rules upon any person cannot be made or ought to be dispensed with, the judge may, if he thinks fit, wholly dispense with such service, or may at his discretion order any substituted service or notice by advertisement or otherwise in lieu of such notice. (R. S. C., Ord. LV. r. 35.)

Power to bind persons service on whom is dispensed with.

31. Where service of notice of a judgment or order for accounts and inquiries is dispensed with, the judge may, if he thinks fit, order that the persons as to whom service is dispensed with shall be bound as if served, and they shall be bound accordingly, except where the judgment or order has been obtained by fraud or non-disclosure of material facts. (R. S. C., Ord. LV. r. 35A.)

The court has complete discretion over the costs in these as in other actions (51 & 52 Vict. c. 43, s. 113; *Plumb* v. *Craker*, (1885) 16 Q. B. D. 40; 55 L. J. Q. B. 116).

When heir-at-law need not be a party.

32. In any action or matter to execute the trusts of a will, it shall not be necessary to make the heir-at-law a party.

Where no legal representative.

33. If in any action or matter it appears to the judge that any deceased person who was interested in the matter in question has no legal personal representative, the judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some proper person to represent his estate for all the purposes of the action or matter, on such notice to such persons, if any, as the judge may think fit, either specially or generally by public advertisement; and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the action or matter.

Except by leave, only executor or administrator to appear

34. In any action or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the court, be entitled to appear either in court or in chambers on the claim of any person not a

O. III. r. 34. on claim of person not a party.

party to the action or matter against the estate of the deceased person in respect of any debt or liability. The court may direct or give liberty to any other party to the action or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as the court may think fit.

ORDER IV.

Joinder of Causes of Action.

What claims may be joined with action of ejectment.

1. No cause of action shall, unless by leave of the court, be joined with an action of ejectment, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed or any part thereof, or damages for breach of any contract under which the same or any part thereof are held, or for any wrong or injury to the premises claimed.

Joinder of claim for possession in action for foreclosure or redemption.

Provided that nothing in this order contained shall prevent any plaintiff in an action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption and for such delivery of possession shall not be deemed an action of ejectment within the meaning of these rules.

Provided also, that in case any mortgage security shall be foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may apply to the judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case may require. (R. S. C., Ord. XVIII. r. 1.)

As to joinder of claims by trustee in bankruptcy.

2. Claims by a trustee in bankruptcy as such shall not, unless by leave of the court, be joined with any claim by him in any other capacity.

Joinder of causes of action generally.

3. Subject to the two preceding rules a plaintiff may unite in the same action several causes of action without leave of the court.

Claims by or against husband and wife.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

By Married Woman.]—Where a married woman enters a plaint in an action to which her husband is not a party, she must state the name, and, so far as she can, the address and description of her husband (Order V. r. 17).

In an action for damages for personal injuries to a wife, her husband may join a separate claim in his own right for consequential damage to himself.

O. IV. r. 5.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator. Claims by or against executor or administrator.

It was held in the High Court that a plaintiff cannot under a rule in the same words join a purely personal claim with a claim as executor, and if he does so he will not be assisted by rule 5 of this order (*Tredegar* (*Lord*) v. *Roberts and Another*, (1914) 1 K. B. 283; 83 L. J. K. B. 159).

A plaintiff who is administrator, although shown to be insolvent, will not be ordered to give security for the defendant's costs of the action (*Rainbow* v. *Kittoe*, (1916) 1 Ch. 313).

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. Joint and separate claims by plaintiffs.

7. If at any time it appears or is made to appear to the judge that any causes of action united or claims joined in any action cannot be conveniently tried and disposed of together, he may order separate trials, or may exclude any such cause of action or claim, and may order the proceedings to be amended accordingly, and may make such order as to costs as may be just. Separate trials may be ordered.

ORDER V.

Commencement of Action.

1. All proceedings authorised to be commenced in a county court by or under the Act shall, except when otherwise provided by the Act or these rules, be commenced by the entry of a plaint, and shall be called actions. Actions to be commenced by plaint.

2. Where the parties, in pursuance of section sixty-four of the Act, agree to try any action in a county court, a plaint shall be entered, and a summons shall be issued thereon as in other cases, and all the rules and practice of the court shall apply in such cases, so far as the same are applicable. The plaintiff on entering the plaint shall file with the registrar the memorandum of consent required by the Act. Trials by agreement under 51 & 52 Vict. c. 43, s. 64. Form 13.

If both plaintiff and defendant in any action assigned to the King's Bench Division of the High Court (*i.e.*, such as might have been brought at common law (see 36 & 37 Vict. c. 66, s. 34, and note to that section in Annual Practice)) agree, by a memorandum signed by them or their solicitors (Form 13), that the court shall have power to try any action, the court will have jurisdiction (51 & 52 Vict. c. 43, s. 64).

3. Actions brought to recover possession of tenements under the provisions of section one hundred and thirty-eight or section one hundred and thirty-nine of the Act shall be distinguished as actions for the recovery of possession, and actions brought under section fifty-nine of the Act shall be distinguished as actions of ejectment. Where an action of ejectment is brought in a case in which, in the opinion of the judge, an action should have been Actions to recover possession of tenements, and actions of ejectment, 51 & 52 Vict. c. 43, ss. 138, 139, 59.

O. V. r. 3.

brought for the recovery of possession, the plaintiff shall not be entitled to any further relief or to any further costs than he would have been entitled to in an action for the recovery of possession.

Nature of Action of Ejectment and Jurisdiction of Court.]—The action of ejectment, before the passing of the Common Law Procedure Act, 1852, was a mere fiction of law, by means of which the right to the specific recovery of real property was tried in an action carried on between a nominal plaintiff and a nominal defendant (see Cole on Ejectment). By that Act, however, all fiction was abolished and provision was made for a simple writ, so framed as to raise the question at issue in a true and concise form (15 & 16 Vict. c. 76, ss. 168, 169).

Jurisdiction of Court.]—Before the County Courts Act, 1867, the county courts had no jurisdiction in ejectment except by agreement, although a landlord could in certain cases recover possession of a tenement which was wrongfully withheld by his tenant. They have now jurisdiction over all actions of ejectment, where neither the value of the lands, tenements, or hereditaments, nor the rent payable in respect thereof, exceeds the sum of 100*l.* by the year (51 & 52 Vict. c. 43, s. 59; 3 Edw. VII. c. 42, s. 3). The action is now called "an action of ejectment."

Præcipe on entry of plaint.

Forms 6, 7.

4. No plaint shall be entered without the party desiring to enter the same filing at the office of the registrar a præcipe for that purpose.

Such præcipe shall contain—

(*a*) the full names, occupation or description, and residence or place of business of the plaintiff, and, if the plaintiff is an infant required to sue by a next friend, the particulars required by Rule 16 of this Order;

(*b*) the surname of the defendant, his general occupation or description, and, subject to the provisions of Rule 13 of this Order, his residence or place of business, and (where known) his full names, the name of the street in which his residence or place of business is situate, and the number of the house;

(*c*) a statement whether the defendant is a male or a female, and, if known, whether of full age or not, and if a female, whether she is married, single, or a widow; provided that if these facts are not known, the plaint may be issued and the summons served without their being stated;

(*d*) a short statement of the cause of action, or remedy or relief sought, and the amount of the debt or damages claimed.

See Form 6.

Where the intended plaintiff is illiterate and unable to furnish the required information in writing, the præcipe shall be filled up by the registrar's clerk.

If the plaint is entered by a solicitor, he shall state in the præcipe his name and place of business.

O. V. r. 4a.

Where partners sue or partners or person carrying on business, etc., are sued in firm name.

4A. Where co-partners sue or are sued in the name of their firm, or a person carrying on business in a name or style other than his own name is sued in such name or style, pursuant to Ord. III. r. 14 or r. 17, it shall be stated in the præcipe that the plaintiffs are suing or the defendants are sued as a firm.

Præcipe where registered company is defendant. 8 Edw. VII., c. 69, s. 116.

5. Where a company registered under the Companies (Consolidation) Act, 1908, is a defendant, the præcipe shall give an address for service, described as "being the registered office of the company."

Capacity in which plaintiff sues or defendant is sued to be stated in præcipe.

6. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, it shall be stated in the præcipe and particulars in what capacity the plaintiff sues or the defendant is sued.

Particulars to be stated in præcipe, etc., where assignee sues.

7. Where an assignee of a debt or other legal chose in action sues, the fact that he is such assignee, and the name, address, and description of the assignor, shall be stated in the præcipe and summons, and in the particulars (if any).

Assignee not entitled to issue default summons. 51 & 52 Vict. c. 43, s. 86.

8. An assignee of a debt or other legal chose in action shall not be entitled to issue a default summons under section eighty-six of the Act.

See *Reg.* v. *Pontypool C. C. Judge*, (1894) 63 L. J. Q. B. 702.

Default summons. Præcipe to state how service to be made.

9. Where the issue of a default summons is desired, and the plaintiff wishes the same to be served otherwise than by a bailiff, he shall so request in the præcipe required to be filed before the entry of the plaint.

Security for or undertaking as to costs, where plaintiff not resident in England or Wales. Form 16. Form 17.

10. Where it appears, on an application for the entry of a plaint, that the plaintiff does not reside in England or Wales, the summons shall not be issued until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the registrar: Provided that where the plaint is entered through a solicitor, an undertaking by him, according to the form in the Appendix, to be responsible for the costs shall be sufficient. If the plaintiff fails in or discontinues his action or proceeding, and does not pay the amount of costs ordered to be paid by him to the defendant, proceedings may be taken for the recovery of such amount from him or from his solicitor, if he has given the undertaking, as for the recovery of a judgment debt.

When the plaint is entered by a solicitor, it is sufficient if he gives an undertaking to pay the costs of the defendant.

Security by person temporarily

11. A person ordinarily resident out of England and Wales may be ordered to give such security or undertaking as in the

O. V. r. 11.

preceding rule mentioned, though he may be temporarily resident in England or Wales. (R. S. C., Ord. LXV. r. 6*a*.)

resident in England.

Entry of plaint by letter.

12.—(1) Where a plaintiff desires to enter a plaint in a court within the district of which he does not reside or carry on business, he or his solicitor (if the solicitor has no office within the district) may, instead of attending at the office of the court, transmit, by prepaid post, to the registrar—

(*a*) A præcipe containing the information required to be given under Rules 4, 4A, and 5 of this Order;

(*b*) Where the summons is to be served by a solicitor, the summons and all necessary copies thereof;

(*c*) Where particulars are required under Ord. VI. r. 1, as many copies of the particulars of demand or cause of action as are required by that rule:

(*d*) Where an affidavit is required by the Act or these rules before the entry of the plaint, such affidavit, and where a copy of the affidavit is to be annexed to the summons and served therewith, a copy for each defendant to be served:

(*e*) Where a plaintiff desiring a default summons does not desire the order upon the judgment to be for payment forthwith, the notice and copies required by Rule 19 of this Order:

(*f*) A money order for the fees payable upon the entry of the plaint, including the fees payable on any affidavit required before the entry of the plaint, payable to the registrar at the post office of the town or place in which the court is held: and—

(*g*) An envelope addressed to himself, with sufficient postage stamps thereon:

And upon receipt of the above the registrar shall examine the documents transmitted to him, and shall (subject, where leave to enter the plaint is required, to the provisions of these rules as to such leave being granted) enter the plaint, and issue the summons, and forward in the addressed envelope—

(i.) if the summons is to be served by a bailiff, the plaint note; or

(ii.) if the summons is to be served otherwise than by a bailiff, the plaint note, and the summons and all necessary copies thereof, completed and sealed, with the documents annexed thereto respectively which are required to be so annexed under Ord. II. r. 4A.

(2) For the purposes of this rule the several districts of the metropolitan courts shall be considered *inter se* as one district only.

It follows from the last-mentioned provision that a plaintiff living in one district of the metropolis cannot of right enter a plaint through the post

against a defendant living in another district of the metropolis; but it is believed that where so applied for the plaint is generally entered. O. V. r. 12. Notes.

This rule was amended by Rule 12, 1914.

13.—(1) Where leave to enter a plaint under section seventy-four of the Act is required, an application shall be made upon the affidavit of the proposed plaintiff or of some person on his behalf who has knowledge of the facts, setting forth the facts on which the application is grounded, according to such one of the forms in the Appendix as shall be applicable to the case. How leave under 51 & 52 Vict. c. 43, s. 74, may be obtained.

(2) The affidavit on an application for leave to enter a plaint and issue an ordinary summons shall be according to the form 8 (1) in the Appendix. Ordinary summons. Form 8 (1).

(3) The affidavit on an application on behalf of an assignee of a debt for leave to enter a plaint and issue an ordinary summons shall be according to the form 8 (1) in the Appendix, with the addition of a paragraph according to the form 8 (2) in the Appendix, stating the name, address, and description of the person with whom the debt was originally contracted, and that such debt has been absolutely assigned to the proposed plaintiff, and that express notice in writing of such assignment has been given to the debtor. Where proposed plaintiff is an assignee. Forms 8 (1), 8 (2).

(4) The affidavit on an application for leave to enter a plaint and issue a default summons under section eighty-six of the Act shall, where the amount claimed exceeds five pounds, be according to the form 9 in the Appendix, and shall, where such amount does not exceed five pounds, be according to the form 10 in the Appendix. Default summons. Forms 9, 10.

(5) The affidavit shall be lodged with the registrar, together with a copy of the same for each defendant.

(6) The judge or registrar shall duly consider the facts disclosed by the affidavit, and shall exercise his discretion in each case as to the grant or refusal of leave in accordance with the circumstances.

(7) Where the proposed plaintiff is the assignee of a debt, the judge or registrar shall in particular consider whether the proposed place of trial will be less convenient to the proposed defendant than the place at which he might have been sued if the debt had not been assigned, and if he shall be of opinion that it will, he shall refuse leave.

(7A) Where the receipt of an order or a letter within the district is relied on as the cause of action or a part thereof, the receipt of such order or letter shall not be considered a sufficient ground for granting leave unless it appears in the affidavit that such order or letter was Where receipt of order or letter relied on.

O. V. r. 13.

addressed to the proposed plaintiff, and purported to be signed by the proposed defendant, or on his behalf by some member of his household or some person in his employ; and the receipt of a letter from an agent of the proposed plaintiff purporting to transmit an order given to him by or on behalf of the proposed defendant shall not be considered as a sufficient ground for granting leave.

(8) Every order granting leave under this rule shall be signed by the judge or registrar in his own handwriting at the foot of the affidavit.

Where address of proposed defendant not known.

(9) Subject to the provisions of this rule, leave may be granted, and the summons may be issued, although the proposed plaintiff cannot give the present place of residence or of business of the proposed defendant; but in that case the proposed defendant shall be served personally, wherever in England or Wales he may be met with. Service of an ordinary summons in such case may, if so requested in the præcipe, be effected by any person by whom a default summons may be served under Ord. VII. r. 33. Where service is effected otherwise than by a bailiff, an affidavit of service according to the form in the Appendix must be lodged with the registrar seven clear days before the return day.

Form 37.

Where proposed defendant is a domestic servant, labourer, etc.

(10) Where the proposed defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, leave shall not be granted unless—

(*a*) it appears by the affidavit that the proposed defendant was residing in the district when the debt or part thereof was contracted, or the cause of action wholly or in part arose; or

(*b*) it appears by the affidavit that the proposed defendant or some person on his behalf was personally present in the district when the debt or part thereof was contracted, or that the proposed defendant or some person for whose acts or defaults he is alleged to be responsible was personally present in the district when the cause of action wholly or in part arose; or

(*c*) the judge or registrar is satisfied that the proposed place of trial will not be less convenient to the proposed defendant than the court in which he could be sued without leave;

(*d*) or it appears by the affidavit that the proposed plaintiff has reason to believe that the proposed defendant admits the claim, and that the proposed plaintiff has not more

than 20 and not less than 10 clear days before the filing of the affidavit given or caused to be given to the proposed defendant notice in writing of his intention to apply for leave, and has by such notice required the proposed defendant to state whether he disputes the claim, and that the proposed defendant has either admitted the claim or failed to give notice that he disputes it; O. V. r. 13.

and in such cases the forms of affidavit numbered 8A and 10A in the Appendix shall be used in lieu of the forms numbered 8 (1), 9, and 10, such paragraphs only of the said forms being used as are applicable to the circumstances. Forms 8A, 10A.

(11) Subject to paragraph 9 of this Rule, no leave shall be granted under this Rule unless the occupation or description of the proposed defendant is fully set out in the affidavit filed for the issue of the summons. Occupation of proposed defendant to be stated.

14. The affidavit to be filed for the issue of a default summons under section eighty-six of the Act for service in the district shall, where the amount claimed exceeds five pounds, be according to the form 11 in the Appendix, and shall where such amount does not exceed five pounds, be according to the form 12 in the Appendix; and such affidavit shall contain the particulars as to the name, residence, or place of business, and occupation or description of the proposed defendant required by paragraphs (*b*) and (*c*) of Rule 4 of this Order. Affidavit under 51 & 52 Vict. c. 43, s. 86. Default summons in district. Forms 11, 12.

See Forms 9, 10, 11, 12; see Form 20 for plaint note.

15. Where pursuant to the proviso in section eighty-six of the Act, the leave of the judge or registrar is required for the issue of a default summons, no such leave shall be given unless the occupation or description of the proposed defendant is fully set out in the affidavit filed for the issue of the summons; and no such leave shall be given in cases where in the affidavit it appears that the defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour. Summons under 51 & 52 Vict. c. 43, s. 86, not to issue in certain cases. Form 12.

As to the meaning of the expression "any person engaged in manual labour," see Part IV., notes to sect. 8 of the Employers' Liability Act, 1880. See *Gordon* v. *Evans* (C. A.), (1894) 1 Q. B. 248; 63 L. J. Q. B. 329.

Leave must be obtained in every case where the defendant does not dwell or carry on business within the district in which the plaintiff proposes to enter the plaint (51 & 52 Vict. c. 43, s. 74). The affidavit, and a copy for each defendant, must be lodged; and the judge or registrar must exercise his discretion as to the grant of leave as in ordinary cases (*Reg.* v. *Turner*, (1897) 1 Q. B. 445; 66 L. J. Q. B. 417).

16.—(1) Where an infant desires to commence an action (other than for wages or piece-work, or for work as a servant), or is a Infant to sue by next friend.

O. V. r. 16.

claimant in an interpleader proceeding, he shall sue by a next friend, and the full names, occupation or description, and residence or place of business of the next friend shall be stated in the præcipe; and such next friend shall, at the time of entering the plaint or delivering the particulars of the goods and chattels alleged to be the property of the infant, either attend at the office of the registrar and give an undertaking, according to the form in the Appendix, to be responsible for costs, or transmit such an undertaking to the registrar: and if such undertaking is not given at the office of the registrar, it shall be attested by a solicitor, or by a clerk to a registrar nominated to take affidavits.

Form 15.

Liability of next friend for costs.

(2) The plaint shall not be entered or the particulars received until such undertaking has been given. On its being given it shall be filed with the registrar, and the action or interpleader proceeding shall proceed in the name of the infant by such next friend, but no order of the court shall be necessary for the appointment of the next friend. On entering into the undertaking the next friend shall be liable for costs in the same manner and to the same extent as if he were himself the plaintiff; and if the infant fails in or discontinues his action or proceeding, an order for payment of costs may be made against the next friend, whether any order for costs is or is not made against the infant; and proceedings may be taken on the order for the recovery of such costs as for the recovery of a judgment debt.

Where action, etc., remitted from High Court.

(3) Where any action or matter in which an infant is suing by a next friend is remitted or transferred from the High Court to a county court, the plaintiff shall lodge with the registrar, pursuant to Order XXXIII. Rule 1, the written authority for the use of the name of the next friend filed in the High Court, or a duplicate or copy thereof, and such authority shall be deemed to be an undertaking within the meaning of this rule.

(4) Where an infant commences as an adult without a next friend an action in which a next friend is required, the court may, on the application of either party, and on such terms as the court shall think just, appoint a next friend; or it may order the action to be struck out.

NOTE.—Rules of 1917, dated February 19th, 1917.

Married women suing. 45 & 46 Vict. c. 75.

17. Where a plaint is entered by a married woman in which her husband is not joined, she shall state the name, and, so far as she can, the address and description of her husband.

Person of unsound mind suing.

18. Where a plaint is entered or a claim in an interpleader proceeding is made by or on behalf of a person of unsound mind not so found by inquisition, he shall sue by a next friend; and the

provisions of Rule 16 as to an infant suing by a next friend shall apply to a person of unsound mind so suing. O. V. r. 18.

19. Where a plaintiff requiring a default summons does not desire the order upon the judgment to be for payment forthwith, he may at the time of the entry of the plaint file a notice of the time or times, and of the instalments, if any, at or by which he consents to accept payment, together with as many copies of such notice as there are defendants; and a copy of such notice shall be annexed to the summons and served therewith; and if he neglects to file such notice he may nevertheless give notice to the registrar to the like effect at the time of entering up judgment. Practice where plaintiff by default summons does not require payment forthwith. Form 24.

ORDER VI.

Particulars and Statement of Claim.

1. Subject to the provisions of these rules, the plaintiff shall at the time of the entry of the plaint in every action file particulars of his claim or demand, in which he shall specify the cause of action in respect of which the action is brought, as well as the pecuniary or other claim which he seeks to establish; but this rule shall not apply where the action is brought by ordinary summons for debt or damages only, and the amount claimed does not exceed forty shillings. Where the claim or demand exceeds one hundred pounds, and the plaintiff desires to abandon the excess, the abandonment of the excess shall be entered at the end of the particulars. O. VI. r. 1. Particulars when to be filed. Abandonment of excess of claim over 100*l.*

Where a claim is made against a married woman or a widow, the particulars shall state whether the claim is in respect of a contract or tort before coverture or during coverture, or (in the case of a widow) in respect of a contract or tort since the determination of the coverture. Where defendant is a female.

The plaintiff shall, when filing particulars, file a copy to be annexed to the summons to be served on the defendant; and where there are more defendants than one, he shall file two copies for each additional defendant. He shall also, where so required by any of these rules, file an additional copy for the use of the judge. Copies of particulars to be filed.

Abandonment of Excess.]—The abandonment of the excess whenever made must appear on the particulars (Order 14, r. 13).

Formerly there was no rule that the abandonment of excess should appear on the particulars, and the case of *Isaac* v. *Wyld*, (1852) 7 Ex. 163, decided that it was sufficient if abandoned at the trial. Now it can be abandoned at any time before the case is called on or during the opening, but this abandonment must be entered on the particulars (Order 14, r. 13).

O. VI. r. 1. Notes.

The general rule is, that a defendant is entitled to such particulars of the plaintiff's demand as will give him that information which a reasonable man would require respecting the matters against which he has to defend himself (*per* Alderson, B., *Rennie* v. *Beresford*, (1846) 15 M. & W. 78, 83; 15 L. J. Ex. 78; *Richardson* v. *Silvester*, (1873) L. R. 9 Q. B. 34; 43 L. J. Q. B. 1); the question in each case being, not whether every statement contained in the particulars is accurate, but whether the inaccuracy in them is such that the defendant could have been misled by it (see *per* Parke, B., in *Stancliffe* v. *Clarke*, (1853) 7 Ex. 439; 21 L. J. Ex. 129). In an action by an engineer who had employed other persons, the court held that the particulars of demand must be as specific as it was possible for the plaintiff to make them, and that a mere statement of aggregate sums claimed in respect of tavern bills, finding surveyors, meeting and arranging with solicitors, etc., would not suffice (*Prichard* v. *Nelson*, (1847) 16 M. & W. 772; 16 L. J. Ex. 207; 4 D. & L. 693). Although it was not formerly the case, it is believed that a plaintiff who gives credit for any amount in his particulars may be ordered to furnish particulars of it. In an action for a building account, the plaintiff gave credit for two sums, one for work not done, the other for building materials; he was ordered to give particulars (*Godden* v. *Corsten*, (1879) 5 C. P. D. 17; 49 L. J. C. P. 112). Particulars should give the information required with as little technicality as is consistent with brevity and precision (Forms of particulars are now prescribed in a few cases only, viz., actions and interpleaders sent for trial from High Court (Forms 280, 282, 284), actions in which title is in question (Form 279), interpleaders (Forms 211, 212), certain equity actions (Forms 311, 313, 324), and under the Bills of Exchange Act, 1855 (Form 26). A number of forms, including forms under the Employers' Liability Act, have been prepared by the late editor, and will be found in Appendix A. at p. 869.

If the particulars do not disclose a cause of action within the jurisdiction, the defendant may obtain a prohibition.

Particulars in cases of account.

2. Where the plaintiff in the first instance desires to have an account taken, the particulars shall contain a claim that such account be taken, and shall state the amount which the plaintiff claims subject to such account; and if such amount exceeds one hundred pounds, and the plaintiff desires to abandon the excess, the abandonment of the excess shall be entered at the end of the particulars. If no amount is stated in the particulars, the plaintiff shall be deemed to claim one hundred pounds.

Particulars in actions of ejectment.

3. In actions of ejectment the particulars shall contain a full description of the property sought to be recovered and of the annual value thereof, and of the rent, if there be any, fixed or paid in respect thereof.

As many copies of the particulars must be filed as there are defendants (Order LIV. r. 13).

Particulars in actions under 51 & 52 Vict. c. 43, s. 60.

4. Where an action is brought under section sixty of the Act, whatever the amount of damages claimed may be, the plaintiff shall, at the time of the entry of the plaint, file a concise statement in writing of his cause of action, and of the particulars thereof.

Form 279.

A copy of the statement, sealed with the seal of the court, must be annexed to the summons, and the statement will be deemed part of the summons Order II. r. 8).

O. VI. r. 5.

In action for administration plaintiff may ask that only certain questions may be decided and renounce right to general order for administration.

5. Where any person entitled to bring or maintain an action for the administration of the estate of any deceased person or the execution of any trust desires to submit for the determination of the court any of the following questions or matters :—

(*a*) any question affecting the rights or interests of any person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust :*

(*b*) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others :

(*c*) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts :

(*d*) the payment into court of any money in the hands of the executors or administrators or trustees :

(*e*) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees :

(*f*) the approval of any sale, purchase, compromise, or other transaction :

(*g*) the determination of any question arising in the administration of the estate or trust :

he shall in his particulars specify concisely the question or matter upon which the decision of the court is required ; and that he is willing to renounce his right to an order for a general administration of the estate or trust.

It is believed that, under Order X. r. 19, there is an obligation to state concisely the facts on which the defendant relies by way of defence in these, as in all equity actions, and that, in the event of his not doing so, he might be prevented from relying on such facts by way of defence, or an adjournment ordered to enable it to be done.

Particulars where more than one cause of action.

6. Where the plaintiff seeks to obtain payment or satisfaction, or relief, redress, or remedy upon more than one cause of action or claim, he shall in his particulars state the grounds of each claim separately, and shall also state separately the payment or satisfaction, relief, redress, or remedy he claims in respect of each.

Notice by defendant for further particulars.

7. In any action the defendant may, at any time not later than five clear days before the return-day, give notice to the plaintiff that he requires further particulars, and the plaintiff shall, within two clear days of the service of such notice, file full particulars of his claim, and of the relief or remedy to which he claims to be entitled, and shall within the same time deliver to the defendant a copy thereof. If the plaintiff fails to comply with such notice, or complies therewith insufficiently, the court, before or at the trial, if satisfied that the defendant is thereby prejudiced in his defence, may order the plaintiff to file and deliver full particulars,

O. VI. r. 7.

and may adjourn the action, and stay all proceedings therein until such order has been complied with, and may make such order as to costs as the court may think fit.

In actions under the extended jurisdiction given by the Act of 1903, the notice must be given not less than fifteen clear days before the return day (Order XXIIA. r. 6).

Fraction of a penny.

8. Where the amount claimed in any case includes a fraction of a penny, such fraction shall not be entered in the books of the court, and judgment shall not be given for any fraction of a penny.

Signature of particulars by solicitor or authorised clerk.

9. Where a plaintiff sues by solicitor, the particulars must be signed by the solicitor in his own name or that of his firm, and he shall state thereon his place of business and where he will accept service of proceedings in the action or matter on behalf of the plaintiff, otherwise the costs of entering the plaint by solicitor shall not be allowed. Provided that the clerk of a solicitor, if duly authorised, may sign the particulars on behalf of and in the name of his master.

If in the opinion of the court the particulars are insufficient, the costs of entering the plaint by solicitor shall not be allowed unless the court otherwise orders.

A lithographed signature will not suffice (*R.* v. *Cowper* (C. A.), (1890) 24 Q. B. D. 533; 59 L. J. Q. B. 265).

ORDER VII.

PLAINT NOTE AND SUMMONS. SERVICE. GUARDIANS *AD LITEM*.

Plaint Note.

Plaint note. Forms 18, 19, 20, 21.

1. At the time of entering a plaint the registrar shall give to the plaintiff a note under the seal of the court, according to such one of the forms in the Appendix as shall be applicable to the case, with a memorandum thereon according to the form in the Appendix. In the event of such note being lost or destroyed, a duplicate thereof may be given from time to time, upon proof by affidavit or otherwise, to the satisfaction of the registrar, that the person applying is the plaintiff, or his agent authorised in that behalf, and that the plaintiff is entitled to the money (if any) paid into court to his credit.

As to payment of money out of court on production of the plaint note, see Order IX. r. 21; see also Order LIV. r. 26.

Alteration of Form 18.

1A. The words "eight shillings" shall be substituted for the words "five shillings" in Form 18 in the Appendix.

This is the present fee payable for a jury, if required. It is payable in the first instance by the party requiring the jury.

Summons on Plaint. O. VII. r. 2.

2. A summons to appear to a plaint shall be according to one or other of the forms in the Appendix, and shall be dated of the day on which the plaint was entered, and the date thereof shall be the commencement of the action. Form and date of summons. Forms 22, 23, 25.

2A. The words "eight shillings" shall be substituted for the words "five shillings" in the indorsements on the back of Forms 22 and 23 in the Appendix. Alteration of Forms 22, 23.

This is for the fee for a jury, if required (*supra*).

2A. The words "ten clear days" (or, in actions under the Employers' Liability Act, 1880, "fifteen clear days") shall be substituted for the words "five clear days" in the paragraphs relating to juries in the prescribed form of plaint notes and summonses to appear to plaints.

There is apparently a mistake in the numbering of this rule.

Ordinary Summons and Service.

5. An ordinary summons may be made returnable either at the court for which plaints are then being entered, or at the request of the plaintiff at any subsequent court. Ordinary summons when returnable.

The day appointed for the appearance of the defendant, or any other day fixed for the trial, is called the return-day (see 51 & 52 Vict. c. 43, s. 186).

5A.—(1) Where an ordinary summons has not been served by reason of the plaintiff having mis-stated or insufficiently stated any of the particulars as to the name, residence, or place of business, and occupation or description of the defendant required by paragraphs (*b*) and (*c*) of Ord. V. r. 4, or of the defendant having before the entry of the plaint removed from the address given on the entry thereof, the summons may be amended as to such particulars at any time which will allow the summons to be served in sufficient time before the return day, on the plaintiff correcting and re-swearing the affidavit (if any) required by these rules before the entry of the plaint, or swearing a further affidavit, and on payment of such additional fee for service as may be prescribed. Amendment of summons as to name, etc., of defendant.

(2) Provided nevertheless that if the bailiff ascertains in sufficient time before the return day, and before notice of non-service has been sent, that the defendant has removed from the address given on the summons to some other address within the district of the court, it shall be his duty to effect service in accordance with Ord. II. r. 22, without such amendment as is provided for by the preceding paragraph; and the new address endorsed Service where defendant has removed to another address within the district.

O. VII. r. 5a.

on the copy of the summons retained by the bailiff shall be entered in the books of the court.

Service where defendant has removed to address outside the district.

(3) Provided also, that if the address of the defendant given on the entry of the plaint was within the district of the court, and the defendant has before the entry of the plaint removed to some other address outside the district of the court, an amendment of the summons as to such address shall only be allowed on the plaintiff swearing an affidavit and obtaining leave for the service of the summons outside the district in accordance with section 74 of the Act and Order V., Rule 13; and in any such case the words "to serve the summons in this action on the above named outside the district of this court" shall be substituted for the words "to enter a plaint against the above named" in the order giving leave to serve the summons outside the district.

51 & 52 Vict. c. 43, s. 74.

For the purposes of this paragraph the words "the district of the court" shall in the case of a summons issued under section eighty-four of the Act mean the district of any court mentioned in that section.

51 & 52 Vict. c. 43, s. 84.

Successive summonses.

6.—(1) Subject to the provisions of this rule, where an ordinary summons has not been served in sufficient time before the return day, successive summonses may be issued without entering a new plaint.

(2) A successive summons shall not be issued in any case in which the non-service has been caused by the fact of the plaintiff having mis-stated or insufficiently stated any of the particulars as to the name, residence, or place of business, and occupation or description of the defendant required by paragraphs (*b*) and (*c*) of Ord. V. r. 4, or of the defendant having, before the entry of the plaint, removed from the address given on the entry thereof, unless the plaintiff satisfies the court that the mis-statement or insufficient statement was made or given in good faith, and without any want of reasonable care on his part, or that he could not by the exercise of reasonable care have discovered the fact of such removal before the entry of the plaint, in either of which cases a successive summons, amended in accordance with the last preceding rule may, subject to paragraph 3 of that rule, be issued without entering a new plaint.

(3) Successive summonses shall bear the same date and number as the summons first issued, which date and number shall be written in red ink in the plaint book, and such summonses shall be a continuance of the first summons.

(4) No successive summons shall be issued on a plaint after three months from the date of entry.

O. VII. r. 7.

Successive summons where defendant removes from district after entry of plaint.

7. Where an ordinary summons, whether issued for service in or out of the district, has not been served by reason of the defendant having after the entry of the plaint removed out of the district in which such summons was required to be served, a successive summons may be issued under the last preceding rule for service on such defendant in any other district to which he has removed.

Delivery and service of summons in action of ejectment.

51 & 52 Vict. c. 43, s. 59.

8. The summons in an action of ejectment brought under section fifty-nine of the Act shall, in order to insure its service, be delivered to the bailiff forty clear days at least before the return day, and shall be served thirty-five clear days at least before the return day thereof.

The rule avoids the point raised in *Barker* v. *Palmer*, (1882) 8 Q. B. D. 9.

When ordinary summons is to be delivered for service.

Time of service.

9. An ordinary summons to appear to a plaint (except in an action of ejectment) shall, in order to insure its service, be delivered to the bailiff, where it is to be served in the home district, fifteen clear days at least, and where it is to be served in a foreign district eighteen clear days at least before the return day, and shall, in either case, be served ten clear days at least before the return day thereof: Provided that a summons may be issued and served at any time before the return day, on production by the plaintiff to the registrar of an affidavit showing that the defendant is about to remove out of the district of the court, or out of the district of the court in the district of which he resides; and the service of such summons may be deemed good service, if at the hearing the judge is satisfied, on the evidence on oath before him, that such party was about to remove out of the district of such court; but in every such case, whether such proof be given or not, the judge may in his discretion, and on such terms as he may think fit, adjourn the hearing.

Mode of service of an ordinary summons.

Form 29.

10.—(1) Subject to the provisions of this and the following rules, service of an ordinary summons shall be effected by delivering the same to the defendant personally, or to some person apparently not less than sixteen years old at the house or place of dwelling, or place of business, of the defendant.

(2) Provided, that service may be effected—

(*a*) in the cases mentioned in Rules 12 to 16 and 18 to 27 (both inclusive) of this order, in the manner prescribed by those rules; or

(*b*) under an order for substituted service as prescribed by Rule 40 of this order.

(3) For the purposes of this rule a place of business shall not be deemed to be the place of business of the defendant unless he is the master or one of the masters thereof.

O. VII. r. 11.

Where summons left at residence or place of business of defendant, and he does not appear.

11. Where by the indorsement on the copy of an ordinary summons it appears that service was effected by delivering the summons to some person apparently not less than sixteen years old at the house or place of dwelling or place of business of the defendant, and the defendant does not appear on the return day, the action shall not proceed if the court is satisfied, on the evidence before it, that the service of such summons did not come to the knowledge of the defendant before the return day.

In such case the court may either order the action to be struck out, or order a successive summons to issue, as to it may seem just; or, if the court is in doubt whether the service of the summons has come to the knowledge of the defendant before the return day, it may order the action to be struck out, or order a successive summons to issue, or may adjourn the action to a future day for further evidence; and may in that case direct notice of such adjournment, with a copy of the summons and particulars to be served on the defendant; and such notice and copy may be served by the high bailiff by post in accordance with the provisions of Ord. LIV. r. 2.

Form 93A.

See also Order II. r. 25.

Where solicitor represents that he is authorised to accept service.

12. Where a solicitor represents that he is authorised to accept service on behalf of a defendant, it shall be sufficient service to deliver the summons to him, provided that he shall at the time of such delivery indorse upon the copy of the summons retained by the bailiff, or, where the summons is served otherwise than by a bailiff, on the copy retained by the person serving the same, a memorandum that he accepts service thereof on behalf of such defendant.

NOTE.—Revised rule. Rules of 1917, dated February 19th, 1917.

Service on infant.

13. Where an infant is a defendant, service on his father or guardian, or (if none) on the person with whom the infant resides or under whose care he is, shall, unless the court otherwise orders, be deemed good service on the infant. Provided that the court may order that service made or to be made on the infant shall be deemed good service. (R. S. C., Ord. IX. r. 4.)

See R. S. C., Order IX. r. 4.

Service on a lunatic or person of unsound mind.

14. Where a lunatic or a person of unsound mind not so found by inquisition is a defendant, service on the committee (if any) of the lunatic, or (if none) on the person with whom the person of unsound mind resides or under whose care he is, shall, unless the court otherwise orders, be deemed good service on such defendant.

Service on partners.

15. Where persons are sued as partners in the name of their firm, the summons shall be served either upon any one or more of

the partners, or at the principal place of the partnership business within the district of the court in the district of which the summons is to be served upon any person having or appearing to have at the time of service the control or management of the business there, and, subject to these rules, such service shall be deemed good service on the firm so sued, whether any of the members thereof are out of England and Wales or not, and no leave to issue a summons against the members of the firm out of England and Wales shall be necessary; provided that in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the summons shall be served upon every person within England and Wales sought to be made liable. O. VII. r. 15

See *Baillie* v. *Goodwin*, (1886) 33 Ch. D. 604; 55 L. J. Ch. 849.

Service at a branch office at Middlesbrough has been held to be good service on a firm whose principal place of business was in Scotland (*Weatherley* v. *Calder*, (1890) 61 L. T. 508), but in this case the defendant appeared and made several applications in the action.

16. Where one person carrying on business in a name or style other than his own name is sued in such name or style as if it were a firm name, the summons may be served either upon such person, or at the principal place of business of such person within the district of the court in the district of which the summons is to be served upon any person having or appearing to have at the time of service the control or management of the business there; and, subject to these rules, such service shall be deemed good service on the person so sued. Service where person carries on business in name other than his own.

16A. Where a summons is served under either of the two last preceding rules, the indorsement or affidavit of service shall state whether the person served was served as a partner, or as the person carrying on the business, or as a person having or appearing to have the control or management of the business, or in both characters. Indorsement or affidavit of service under Rules 15, 16, to state in what capacity served.

(2) The indorsement or affidavit of service shall be according to such one of the forms in the Appendix as shall be applicable to the case. Form of indorsement or affidavit, Forms 29A, 37 (2).

NOTE.—New clause added by Rules of 1917, dated February 19th, 1917.

17. Where husband and wife are both defendants they shall both be served, unless the court otherwise orders. Where husband and wife are defendants.

18.—(1) Where a defendant is living or serving on board of any ship or vessel belonging to His Majesty's Navy, the summons shall be personally served. Service where defendant on board ship.

Provided that where a defendant so living or serving is a commissioned or warrant officer of His Majesty's Navy, the summons may be served by sending the same by registered post

O. VII. r. 18.

addressed to the defendant on board the ship or vessel; and in any such case the provisions of Order LIV. Rule 2, shall apply.

(2) Where a defendant is living or serving on board of any ship or vessel other than a ship or vessel belonging to His Majesty's Navy, it shall be sufficient service to deliver the summons to the person on board who is, at the time of such service, apparently in charge of the ship or vessel.

(3) Where service is to be effected on board of any ship or vessel, the bailiff shall on request produce a certificate of his appointment, to enable him to gain access to the ship or vessel for the purpose of effecting such service.

Service on soldier or marine.

19. Where a defendant is residing or quartered in any barracks, and serving His Majesty as a soldier or marine, it shall be sufficient service to deliver the summons at the barracks to the adjutant of the corps, or to any officer or serjeant of the company or troop to which such soldier or marine belongs: and the bailiff shall on request produce a certificate of his appointment, to enable him to gain access to the barracks for the purpose of effecting such service.

Service on prisoner.

20. Where a defendant is a prisoner in a gaol, it shall be sufficient service to deliver the summons at the gaol to the governor or any person appearing to be the head officer in charge thereof.

Service on miner.

21. Where a defendant is working in any mine or other works underground, it shall be sufficient service to deliver the summons at the mine or works, to the engine-man, banks-man, or other person apparently in charge of the mine or works.

Service where defendant employed in a public asylum or prison.

22. Where a defendant is employed and dwells in any lunatic or other public asylum, or in any common gaol or house of correction, it shall be sufficient service to deliver the summons to the gate-keeper or lodge-keeper of the asylum, gaol, or house of correction.

Where defendant keeps his house closed.

23. Where a defendant keeps his house or place of dwelling or place of business closed, so as to prevent a bailiff from serving a summons, it shall be sufficient service to affix such summons on the door of such house or place of dwelling or place of business.

Service in case of vacant possession.

24. Service of the summons in an action of ejectment, or for the recovery of possession of a tenement, may, in case of vacant possession, if it cannot otherwise be effected, be made by posting a copy of the summons upon the door of the dwelling-house or other conspicuous part of the property.

This rule does not make Order VII. r. 40 inapplicable to these actions.

O. VII. r. 25.

25. Where a bailiff is prevented by the violence or threats of the defendant, or of any other person in concert with him, from personally serving the summons, it shall be sufficient service to leave such summons as near to the defendant as practicable.

Service where violence threatened.

26.—(1) In the absence of any statutory provision regulating the service of process, service on a corporation aggregate may be made on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation; and when by any statute provision is made for service of any summons, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or unincorporate, a summons may be served in the manner so provided.

Service of summons on corporation, hundred, etc

The "head officer" must be the chief officer of the defendants, and not merely head of a separate place of business (*Golding* v. *La Sainte Union* (C. A.), (1892) 67 L. T. 605).

(2) The statutory provisions with respect to service contained in—

Statutory provisions as to service on companies. 8 & 9 Vict. c. 16, s. 135. 8 & 9 Vict. c. 18, s. 134. 8 & 9 Vict. c. 20, s. 138. 8 Edw. 7, c. 69, ss. 62, 116.

(*a*) the Companies Clauses Consolidation Act, 1845;
(*b*) the Lands Clauses Consolidation Act, 1845;
(*c*) the Railways Clauses Consolidation Act, 1845: and
(*d*) the Companies (Consolidation) Act, 1908,

are set forth in Part III. (1) of the Appendix. See p. 865.

Appendix, Part III. (1).

See *Pearks, etc., Ltd.* v. *Richardson*, (1902) 1 K. B. 91; 71 L. J. K. B. 18, *per* Lord Alverstone, C.J.

27. Service of a summons on a railway company may be effected by delivering the summons to a secretary, station master, or clerk of the company, at any station or office of the company within the district of the court in which the summons is to be served.

Service on railway company.

28. Where a summons has been served in one of the modes hereinbefore mentioned, but it appears that it has come to the knowledge of the defendant less than ten clear days before the return-day, the action may, at the discretion of the court, proceed or be adjourned, whether the defendant appears or not on such return-day.

Where summons has come to knowledge of defendant less than ten days before return-day.

29. Where a summons is issued under section eighty-four of the Act, it shall be served by a bailiff of the court within the district of which the defendant dwells or carries on business, unless the court otherwise specially orders: Provided that this rule shall not interfere with the general power now vested in the bailiff of the court from which a summons issues to serve the same within five hundred yards of the boundary of the district of such court.

Where summons issues under 51 & 52 Vict. c. 43, s. 84.

For the general power referred to, see 51 & 52 Vict. c. 43, s. 77.

O. VII. r. 29a.

When successive summons may be served otherwise than by bailiff.

29A.—(1) A successive summons may, by leave of the court, and subject to the provisions of this rule, be served—

(*a*) by the plaintiff, or some clerk or servant in his permanent and exclusive employ, or

(*b*) by the plaintiff's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve the summons who might be so employed to serve a writ in an action in the High Court.

(2) Where service of a successive summons is effected otherwise than by a bailiff, it shall be effected either—

(*a*) by delivering the summons to the defendant personally; or

(*b*) in the cases mentioned in Rules 12 to 22, 24, 26, and 27 of this Order, in the manner prescribed by those rules; or

(*c*) under an order for substituted service as prescribed by Rule 40 of this Order.

(3) Where service of a successive summons is effected otherwise than by a bailiff, a copy of the summons, with the date and place and mode of service indorsed thereon, and an affidavit of service according to the form in the Appendix, with such modifications as circumstances may require, shall within three clear days after the day of service, or such further time as may be allowed by the registrar of the court issuing the summons, be delivered or transmitted to such registrar by the plaintiff.

Form 37.

Default Summons and Service.

Service of default summons.

30. A default summons shall be personally served within a period of twelve months from its date; but if any defendant named in any such summons has not been served therewith, the plaintiff may, before the expiration of twelve months, apply to the registrar, and if the registrar is satisfied that reasonable efforts have been made to serve such defendant, or that there is some other good reason why service has been delayed, he may issue a successive summons for a further period of twelve months, and so from time to time during the currency of the successive summons, and such successive summonses shall be a continuance of the action on and from the day on which the plaint was entered.

Amendment of summons as to name, etc., of defendant.

30A. (1) Where a default summons has not been served by reason of the plaintiff having mis-stated or insufficiently stated any of the particulars as to the name, residence or place of business, and occupation or description of the defendant required by paragraphs (*b*) and (*c*) of Order V. Rule 4, or of the defendant having before the entry of the plaint removed from the address

given on the summons, the summons may at any time during its currency be amended as to such particulars on the plaintiff correcting and reswearing the affidavit required by these Rules before the entry of the plaint, or swearing a further affidavit, and on payment, where the summons is to be served by a bailiff, of such additional fee for service as may be prescribed. O. VII. r. 30a.

(2) Paragraphs 2 and 3 of Rule 5A of this Order, as to the amendment of ordinary summonses, shall apply to the amendment of default summonses under this Rule, with the omission of the words "in sufficient time before the return day, and" from paragraph 2.

NOTE.—Revised by Rules of 1917, dated February 19th, 1917.

31. Where a default summons is issued against partners in the name of the firm, it shall be deemed to be sufficiently served on the firm if served personally on any one of the partners; and the indorsement or affidavit of service shall state that the person served was served as a partner. Service on firm.

31A. Where a default summons is issued against a person carrying on business in a name or style other than his own name in such name or style, it shall be served personally on him, and the indorsement or affidavit of service shall state that the person served was served as the person carrying on business in that name or style. Service on person carrying on business in name other than his own.

31B. An indorsement or affidavit of service under the two last preceding Rules shall be according to such one of the forms in the Appendix as shall be applicable to the case. Form of indorsement or affidavit under Rules 31, 31A.

NOTE.—New clause added by Rules of 1917, dated February 19th, 1917.

32. Where a default summons is issued against a corporation, or against any other defendant or body of defendants mentioned in Rule 26 of this Order, it shall be deemed to be sufficiently served on such corporation or other defendant or body of defendants if served in accordance with the said rule. Forms 34A, 37 (2). Service on corporation, etc.

33. A default summons may be served in any district in which the defendant may be met with by— Default summons may be served in any district.

(*a*) a bailiff of a court;

or, when so requested on the entry of the plaint under Order V. r. 9— By whom service may be effected.

(*b*) by the plaintiff or some clerk or servant in his permanent and exclusive employ; or

(*c*) by the plaintiff's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of

O. VII. r. 33.

them, or some person employed by either of them to serve the summons who might be so employed to serve a writ in an action in the High Court.

Provided that, if in any case in which no request has been made on the entry of the plaint under Order V. r. 9, any difficulty is experienced by the bailiff in effecting service, the summons may by leave of the registrar be served in accordance with paragraph (*b*) or paragraph (*c*) of this rule.

Steps to be taken by bailiff to enable plaintiff to apply for leave to proceed. 51 & 52 Vict. c. 43, s. 86 (5)

33A.—(1) Where service of a default summons is to be effected by a bailiff, and personal service cannot be effected, it shall be the duty of the high bailiff, if so requested by the plaintiff or his solicitor, and on payment of a sum for his expenses as hereinafter provided, to take such steps as may be necessary to enable the plaintiff to apply under sub-section 5 of section 86 of the Act for liberty to proceed as if personal service had been effected, and to carry out any order made on such application.

(2) The sum to be paid for the expenses of the high bailiff under this rule shall be in addition to the fee for service, and shall, where the amount sued for exceeds forty shillings but does not exceed ten pounds, be two shillings and sixpence, and shall, where the amount sued for exceeds ten pounds, be equal to one half of the sum which may be allowed to a solicitor under item 17 of the scales of costs when substituted service is ordered.

(3) Such sum may be allowed as costs against the defendant, and if so allowed shall be entered on the summons when the order giving liberty to proceed is made; but it shall not be allowed in addition to the said item 17.

Where service effected otherwise than by bailiff.

Form 37.

34. Where a default summons has been served otherwise than by a bailiff, a copy of the summons, with the date and place of service indorsed thereon, and an affidavit of service according to the form in the Appendix, shall within three clear days after the day of service, or such further time as may be allowed by the registrar of the court issuing the summons, be delivered or transmitted to such registrar by the plaintiff.

Where leave given to proceed as if personal service had been effected.

Form 46.

And where an order is made giving liberty to proceed as if personal service had been effected, the plaintiff shall (unless the defendant gives notice of defence or files an admission of the debt), after the expiration of the time limited for giving notice of defence, but before or at the time of entering up judgment, deliver or transmit to the registrar the order giving liberty to proceed, and, where conditions are imposed by the order, an affidavit showing that such conditions have been complied with.

34A. Where a default summons has been entered by post pursuant to Order V. r. 12, and the defendant does not give notice of his intention to defend, the plaintiff or his solicitor (if the solicitor has no office within the district) may, instead of attending at the office of the court, transmit, by prepaid post, to the registrar— O. VII. r. 34a.

Entry of judgment on default summons by letter.

(*a*) The plaint note :

(*b*) A præcipe according to the form in the Appendix, requesting the registrar to enter up judgment, stating the amount of debt and costs for which judgment is to be entered, and the instalments, if any, which the plaintiff or his solicitor consents to take : Form 37A.

(*c*) A money order for the fees payable on entering up judgment, payable to the registrar at the post office of the town or place in which the court is held :

(*d*) An envelope addressed to himself, with a penny postage stamp thereon ;

And upon receipt of the above the registrar shall enter up judgment, and forward the plaint note, with the fee on signing judgment marked thereon, in the addressed envelope.

Where a defendant is a married woman, or a widow, the præcipe shall state that fact, and shall state whether judgment is to be entered against her in respect of a contract before coverture or during coverture, or (in the case of a widow) in respect of a contract since the determination of the coverture, according to the form in the Appendix. Form 37A. Form 37B.

34B. Where the defendant gives notice of his intention to defend, the registrar shall send by post to both plaintiff and defendant notice of the day upon which he shall have fixed that the trial shall take place at least ten clear days before the day so fixed.

Notice of trial, where defendant gives notice of intention to defend. 51 & 52 Vict. c. 43, s. 86 (3).

35. Where a default summons has not been returned to the registrar within twelve months from the date of its issue it shall be struck out of the plaint book, unless the time for its service has been extended.

When default summons to be struck out.

36. (1) Where after service of a default summons has been effected on any defendant no notice of intention to defend has been given by him, or leave to defend has not been obtained, and two months have expired from the date of service, judgment shall not be entered against such defendant; and the action shall be struck out as against him, notwithstanding anything contained in Order LIV. r. 12.

Limitation of time for signing judgment on default summons.

O. VII. r. 36.

Where judgment cannot be entered by reason of Proclamation under 4 & 5 Geo. 5, c. 11.

(2) Where a default summons has been issued in an action in respect of a claim to which any Proclamation issued under or confirmed by the Postponement of Payments Act, 1914, applies and notice of intention to defend has not been given or leave to defend has not been obtained, the period during which such Proclamation was or shall be in force shall be excluded in the computation of the time within which judgment may be entered.

(3) Where any such action has been struck out on default of judgment being entered, and the court is satisfied that the plaintiff was unable to have judgment entered by reason of any such Proclamation, or of any directions given for carrying any such Proclamation into effect, the court may, at any time before the expiration of the time limited for entering judgment (such time to be computed) in accordance with the preceding paragraph, order the action to be reinstated.

Where either party dies after service of summons to save statute.

37. Where a default summons has been served in due time to prevent the operation of a statute of limitations, and either party dies after the service and after the lapse of the period within which it is provided by the statute that an action may be brought, proceedings may be taken by or against the surviving party, or by or against the personal representative of the deceased party, within one year from the day of service of the summons.

Exchange of default for ordinary summons.

38. A default summons may, at the request of the plaintiff, be exchanged without fee for an ordinary summons, upon the default summons being filed in court within twelve months of its issue.

Substituted Service.

Order for liberty to proceed in actions under 18 & 19 Vict. c. 67; 51 & 52 Vict. c. 43, s. 86. Form 46.

39. The provisions of section eighty-six of the Act, as to where personal service can not be effected, shall apply to the failure of service of a summons issued under the Summary Procedure on Bills of Exchange Act, 1855.

Substituted service, and notice in lieu of service. Forms 43, 44, 45.

40. Where by reason of the absence of any party, or from any other sufficient cause, the service of any summons (other than a default or judgment summons, or a summons under the Summary Procedure on Bills of Exchange Act, 1855), petition, notice, proceeding, or document cannot be made, the court may, upon an affidavit showing grounds, make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as may be just.

For a form of notice by advertisement, see Form 12, Appendix. Where service is by solicitor, and the opposite party acts without one, service ought, it is believed, to be personal, or under an order for substituted service under this rule.

Service out of England and Wales.

[*Conf.* R. S. C. Order XI.]

O. VII. r. 41.

Service out of England and Wales, when allowed.

41. Service out of England and Wales of a summons or notice of a summons may be allowed by the court whenever—

(*a*) the whole subject-matter of the action is land situate within the district of the court (with or without rent or profits); or

(*b*) any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the district of the court is sought to be construed, rectified, set aside, or enforced in the action; or

(*c*) any relief is sought against any person residing or carrying on business within the district of the court, or sued in the court pursuant to leave granted under section seventy-four of the Act; or

(*d*) the action is for the administration of the personal estate of any deceased person who had his last place of abode within the district of the court, or for the execution (as to property situate within the district) of the trusts of any written instrument of which the person to be served is a trustee, which ought to be executed according to the law of England; or

(*e*) the action is founded on any breach or alleged breach within the district of the court of any contract wherever made which, according to the terms thereof, ought to be performed within England or Wales, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland; or

(*f*) any injunction is sought as to anything done or to be done in the district of the court, or any nuisance in such district is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or

(*g*) any person out of England and Wales is a necessary or proper party to any action properly brought (*a*) in the court against some other person duly served in England or Wales.

NOTE.—(*a*) See *John Russell & Co., Ltd.* v. *Cayzer Irvine & Co., Ltd.*, (1916) 2 A. C. 298; 85 L. J. K. B. 1152.

This procedure does not apply to default summonses; they cannot be issued for service out of England or Wales (Order VII. r. 44A).

How discretion to be exercised.

42. Where leave is asked from the court to serve a summons under the last preceding rule in Scotland or in Ireland, if it

O. VII. r. 42.

appears to the court that there may be a concurrent remedy in Scotland or Ireland (as the case may be), the court shall have regard to the comparative cost and convenience of proceeding in the district of the court or in the place of residence of the defendant or person sought to be served, and particularly to the powers and jurisdiction, under the statutes establishing or regulating them, of the Sheriff's Courts or Small Debts Courts in Scotland, and of the Civil Bill Courts in Ireland, respectively.

Probate actions.

43. In probate actions service of a summons or notice of a summons out of England and Wales may be allowed by leave of the court. *See* Part V. ("Probate Acts, 1857 and 1858," p. 2192.)

Application to be supported by evidence.

44. Every application for leave to serve a summons or notice of a summons on a defendant out of England and Wales shall be supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or may probably be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; and no such leave shall be granted unless it is made sufficiently to appear to the court that the case is a proper one for service out of England and Wales under these rules.

Default summons not to be issued for service out of England and Wales.

44A. Leave shall not be granted to serve a default summons or notice of a default summons on a defendant out of England and Wales.

Order to fix time for appearance.

Form 47.

45. Any order giving leave to effect such service or give such notice shall fix a day on which the action will be proceeded with, and on which the defendant is to appear, such day to be so fixed as to allow sufficient time after service for the defendant to appear, regard being had to the place or county where or within which the summons is to be served or the notice given.

Notice where summons to be served.

Form 48.

46. When the summons itself is to be served on the defendant, a notice according to the form in the Appendix shall be annexed to the summons and served therewith, and the summons and notice shall be served in the manner in which default summonses are required to be served.

Notice in lieu of summons.

Form 49.

47. When the defendant is neither a British subject nor in British dominions, notice of the summons according to the form in the Appendix, and not the summons itself, shall be served on him; and such notice shall be served in the manner in which default summonses are required to be served.

48. Where leave is given under these rules to serve a summons or notice of a summons on a defendant out of England and Wales, and such defendant does not appear on the day fixed for proceeding with the action, the plaintiff shall before proceeding file an affidavit of service of the summons or notice, as the case may be. (R. S. C., Ord. XIII. r. 2.) O. VII. r. 48. Proof of service.

48A. The powers of the court under Rules 41 to 48 of this Order shall be exercised only by the judge, or deputy judge, or by one judge acting for another under section nineteen of the Act. Powers to be exercised by judge or deputy only.

The words "or deputy judge" added by Rules of 1914, r. 43.

49. A defendant served with a summons or notice of a summons under this Order may apply, on notice, to the judge to set aside the service of such summons or notice upon him, or to discharge the order authorising such service. (R. S. C., Ord. XII. r. 30.) Application to set aside service.

Appointment of Guardians ad litem *to Infants or Persons of Unsound Mind.*

50. Where it appears on the face of the proceedings that any defendant to an action or matter is an infant or a person of unsound mind not so found by inquisition, the following provisions shall apply :— Appointment of guardian *ad litem* to defendant appearing on face of proceedings to be an infant or a person of unsound mind.

(1) At any time after the service of the summons, and not less than six clear days before the return day, a guardian *ad litem* to such infant or person of unsound mind may be appointed by the registrar, on application made to him on behalf of such infant or person of unsound mind, on affidavit according to the form in the Appendix, accompanied by a written consent of the proposed guardian to act as such guardian. Forms 50, 51

By Order XXIIA. r. 7, in actions under the extended jurisdiction "twelve clear days" are substituted for "six clear days."

(2) Where such appointment is made, the registrar shall forthwith send notice by post of such appointment to the plaintiff, according to the form in the Appendix. Form 52.

(3) Where no application for the appointment of a guardian *ad litem* is made on behalf of the infant or person of unsound mind within the time hereinbefore limited, the registrar shall on the sixth day before the return day send notice by post to the plaintiff that no such application has been made, according to the form in the Appendix. Form 53.

By Order XXIIA. r. 7, in actions under the extended jurisdiction the words "twelfth day before the return day" are substituted for the words "sixth day before the return day."

O. VII. r. 50.

(4) The plaintiff shall thereupon, before proceeding further with the action or matter against such infant or person of unsound mind, apply to the judge for an order that some proper person be assigned guardian *ad litem* of such defendant, by whom he may appear and defend, and, if necessary, for a postponement of the trial.

(5) Such application shall be made on affidavit according to the form in the Appendix ; and notice of such application, together with a copy of such affidavit, shall three clear days at least before the day in such notice named for hearing the application be served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of service of the summons, and shall also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) be served upon or left at the dwelling-house of the father or guardian (if any) of such infant : Provided that the registrar may, on the application of the plaintiff, dispense with such last-mentioned service.

Forms 54, 55.

(6) On the hearing of the application the judge, if satisfied with the proposed guardian, may appoint him to act as such guardian ; but if not so satisfied, the judge may appoint any other person willing to act as guardian ; or in default of such person, the judge may appoint the registrar to act as guardian ; and the action or matter shall thenceforth proceed as if a guardian had been appointed on behalf of the defendant. The judge may, if necessary, on the hearing of such application, postpone the trial.

Form 56.

(7) Provided, that where an infant is sued for a debt or other liquidated demand, the notice required by paragraph (3) of this rule need not be sent, nor shall paragraphs (4) to (6) of this rule apply, unless in any case the registrar thinks it necessary for the protection of such infant that such notice should be sent, or the judge directs such notice to be sent.

Appointment of guardian *ad litem* to defendant ascertained to be an infant or a person of unsound mind.

51. Where it does not appear on the face of the proceedings, but is made to appear in the course of the proceedings, that any defendant to an action or matter is an infant or a person of unsound mind not so found by inquisition, the following provisions shall apply :—

(1) If on any defendant appearing at the trial it appears that such defendant is an infant, and such defendant names a person as his guardian who then assents so to act, such

Forms 57, 58.

person shall be appointed guardian accordingly: but if the defendant does not name a guardian, the judge may appoint as guardian any person in court who is willing to act as such guardian; or in default of any such person the judge may appoint the registrar to act as guardian; and the action or matter shall thenceforth proceed as if the infant had named a guardian, and the name of the guardian appointed shall be entered according to one or other of the forms in the Appendix. O. VII. r. 51.

(2) In any other case, on its being made to appear that any defendant is an infant or a person of unsound mind not so found by inquisition, a guardian *ad litem* to such defendant may be appointed at any time within six days of its being made to appear that such defendant is an infant or a person of unsound mind, on application made on behalf of such defendant in accordance with paragraphs (1) and (2) of the last preceding rule; and if no such application is made within such period of six days, the registrar shall send notice to the plaintiff in accordance with paragraph (3) of the same rule; and thereupon the plaintiff shall, before proceeding further with the action or matter against such defendant, apply for such appointment in accordance with paragraphs (4) to (6) of the same rule. And the trial shall, if necessary, be postponed to allow an application for the appointment of a guardian to be made.

(3) Provided, that paragraph (7) of the last preceding rule shall apply to cases falling within this rule.

52. Where a guardian is appointed under either of the two preceding rules, such appointment shall be entered on the summons and in the minute book, and on all subsequent proceedings. Entry of appointment on summons, etc.

53. A guardian *ad litem* to an infant or a person of unsound mind not so found by inquisition shall not be personally liable to any costs not occasioned by his personal negligence or misconduct. Limitation of liability of guardian for costs.

54. Where judgment has been obtained or an order made against a defendant who was at the time an infant or a person of unsound mind not so found by inquisition, without a guardian *ad litem* having been appointed to such defendant, the judge may set aside such judgment or order and order a new trial, or make such other order as may be just. Power to set aside judgment against infant or person of unsound mind where no guardian appointed.

O. VII. r. 55.

Application of preceding rules to petition.

55. In the five preceding rules "summons" includes "petition," "plaintiff" includes "petitioner," "defendant" includes "respondent," and "trial" includes "hearing."

Guardians *ad litem* with reference to proceedings under judgment or order.

56. At any time during the proceedings under any judgment or order, the judge may, if he thinks fit, require a guardian *ad litem* to be appointed for any infant or person of unsound mind not so found by inquisition who has been served with notice of such judgment or order. (R. S. C., Ord. LV. r. 27.)

ORDER VIII.

Consolidation of Actions or Stay of Proceedings. Transfer.

O. VIII. r. 1.

Consolidation of separate actions which might have been joined in one.

Form 59.

1. Where several actions are brought by the same plaintiff against the same defendant in the same court for or in respect of different causes of action which might in accordance with the provisions of Order IV. have been joined in one action, the defendant may apply to the judge that the said actions may be consolidated.

A plaintiff may not divide a cause of action for the purpose of bringing two or more actions (51 & 52 Vict. c. 43, s. 81). But he may bring different actions in respect of different causes of action. An order to consolidate such actions might cause the jurisdiction to be exceeded as to amount, and it is therefore doubtful whether, if the effect of consolidation would be to make the consolidated action one which could not have been commenced in a county court, any order could be made.

It should be noticed that an application under this rule must be made to the judge.

Stay of proceedings in actions brought in respect of same matter, till judgment given in selected action.

Form 60.

Form 61.

2. Where several actions are brought by different plaintiffs against the same defendant in the same court for or in respect of causes of action arising out of the same breach of contract, wrong or other circumstances, the defendant may, on filing an undertaking to be bound so far as his liability in the said several actions is concerned by the decision in such one of the said actions as may be selected by the judge, apply to the judge for an order to stay the proceedings in the actions other than the one so selected, until judgment is given in such selected action.

Note that the application must be made to the judge. For application of rules 2 - 6 to proceedings under the Workmen's Compensation Act, see Workmen's Compensation Rules, r. 16.

Applications under preceding rules.

3. Applications under the two preceding rules shall be made upon notice to the plaintiffs to be affected by any order made thereon.

These applications cannot be made *ex parte*.

O. VIII. r. 4.

Judge may impose terms.

4. Upon the hearing of any application for consolidation of actions or for stay of proceedings the judge may impose such terms and conditions and make such order in the matter as may be just.

Where judgment in favour of defendant in selected action.

Form 62

5. If judgment in a selected action under Rule 2 of this Order is given in favour of the defendant, the defendant shall be entitled to his costs up to the date of the order staying proceedings against every other plaintiff whose action is stayed, unless such plaintiff gives the registrar within one month from such judgment notice in writing to set down his action for trial. On such judgment being given, the registrar shall send to every other plaintiff a notice according to the form in the Appendix, and if any such plaintiff gives notice to the registrar to set down his action for trial, the registrar shall appoint a day for the trial, and send by post to both plaintiff and defendant notice of the day so appointed at least eight clear days before such day.

See *Doyle* v. *Anderson*, (1834) 1 A. & E. 635; 40 R. R. 381; *Doyle* v. *Douglas*, (1833) 4 B. & Ad. 544; *Amos* v. *Chadwick*, (1877) 4 Ch. D. 869; 47 L. J. Ch. 871.

Where judgment given against defendant in selected action.

Form 62.

6. If judgment in a selected action is given against the defendant, the plaintiffs in the actions stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their debts or damages and costs. On such judgment being given the registrar shall send to each such plaintiff a notice according to the form in the Appendix, and a plaintiff desiring to proceed shall within one month from the date of such notice give to the registrar notice in writing to set down his action for trial, and on receipt of such notice the registrar shall appoint a day for the trial, and send by post to both plaintiff and defendant notice of the day so appointed at least eight clear days before such day.

Stay of actions for same cause against several defendants, till judgment given in selected action.

7. Where several actions of contract are brought by the same plaintiff against several defendants in the same court, and the event of the said actions depends on the finding of the judge or jury on some question common to all the said actions, the judge may at any time select one of such actions for trial, and stay the proceedings in all the other actions until the judgment in the action so selected is given; but after judgment in such selected action, unless the plaintiff and the defendants in the other actions, or any of them, submit to have judgment passed and entered therein in accordance with the judgment in the action so selected, such other actions shall proceed in the same manner as if they had not been stayed; and on receipt of notice from the plaintiff or defendant in any such action to set down the action for trial the

O. V. III. r. 7. registrar shall appoint a day for the trial, and shall send by post to both plaintiff and defendant notice of the day so appointed at least eight clear days before such day.

Transfer of actions commenced in different courts.

8. Where actions are commenced in different courts by parties in the same interest, upon application by any of the parties they shall be transferred to the court in which the first plaint was entered, and shall there be proceeded with in the same way in all respects as if they had been commenced in that court.

For the practice, see Rule 9, *infra*.

Application for transfer under last rule or 51 & 52 Vict. c. 43, s. 85, or Order XXXIII. r. 19.

Forms 120, 121.

Costs before or occasioned by transfer.

Transmission of certified copy of proceedings.

9. Where application is intended to be made for the transfer of any action, matter, or proceeding under section eighty-five of the Act, or under the last preceding rule, or under Order XXXIII. Rule 19, three clear days' notice in writing of such intended application shall be given by the applicant to the registrar of the court in which such action, matter, or proceeding is pending, and to all parties who may be affected by such application; but the judge may at any time, by consent of all parties, or without such consent if he thinks fit, order a transfer, although this rule has not been complied with. When a transfer is ordered the judge may make such order as to the costs incurred before or occasioned by such transfer as he may think fit; and a certified copy of the proceedings shall be transmitted in accordance with section eighty-five of the Act, and the provisions of that section shall apply. The costs of such copy and the costs of transmission shall be paid for in the first instance by the party on whose application the transfer has been made, or, if the transfer is made by the judge without any application to transfer being made to him, such costs shall be paid for in the first instance by the plaintiff in the action, matter, or proceeding: but such payment shall be without prejudice to any question as to the party by whom such costs are ultimately to be borne.

ORDER IX.

Discontinuance, Confession, Admission, and Payment into or out of Court.

Discontinuance of action or withdrawal of part of claim.

Forms 63, 253.

Costs.

Form 64.

1.—(1) If the plaintiff desires to discontinue any action or matter against all or any of the parties thereto, or to withdraw any part of his alleged cause of complaint, he shall give notice in writing thereof to the registrar, and to every party as to whom he so desires to discontinue or withdraw; and after the receipt of such notice any such party may, unless the judge on the application of the plaintiff otherwise orders, tax his costs incurred

before the receipt of the notice, or if the action or matter be not wholly discontinued, his costs incurred before the receipt of the notice in relation to the matter so withdrawn, and may enter judgment for such costs in case the same are not paid within fourteen days after taxation, and on entering up judgment item 62 in the scale of costs may be allowed. Provided that if the action is not wholly discontinued as against the party entering up judgment, execution shall not issue on the judgment before the action is disposed of except by leave of the court. O. IX. r. 1.

A discontinuance or withdrawal is not a defence to a subsequent action; but if a subsequent action is brought for substantially the same cause of action, it may be stayed by the judge until payment of the costs of the discontinued action (Order IX. r. 1 (2)).

In the High Court it has now been held that the only way a plaintiff can without leave withdraw his action is by means of the rules provided for discontinuance (*Fox* v. *Star Newspaper*, (1898) 1 Q. B. 636 (C. A.); 67 L. J. Q. B. 454; affirmed, House of Lords, (1900) A. C. 19; 69 L. J. Q. B. 117).

(2) Discontinuance or withdrawal under this rule shall not be a defence to any subsequent action; but if after such discontinuance or withdrawal a subsequent action is brought for the same or substantially the same cause of action before the payment of the costs in this rule mentioned, the judge may, if he thinks fit, order a stay of such subsequent action until such costs have been paid. Stay of subsequent action till costs of action discontinued or claim withdrawn are paid.

2. Confessions under section ninety-eight of the Act shall be delivered to the registrar five clear days at least before the return day: Provided that at any time before an action is called on the defendant may confess and admit the claim according to the form in the Appendix subject, however, to an order by the court to pay such costs as the plaintiff has incurred in consequence of the defendant not having delivered such confession as herein before required. Confessions under 51 & 52 Vict. c. 43, s. 98. Forms 65—68.

In actions under the extended jurisdiction, "ten clear days" is substituted for "five clear days" (see Order XXIIIA. r. 8).

3. Where a defendant does not appear on the return day, and has not signed a confession under section ninety-eight of the Act, the court may accept as an admission of the claim or any part thereof any letter addressed to the court containing such an admission, and purporting to be written by or on behalf of the defendant, if the court is satisfied that such letter was in fact written by or by the authority of the defendant; and a note of such letter having been accepted as an admission shall be entered in the minute book. Admission by letter addressed to court.

O. IX. r. 4.

Consents under 51 & 52 Vict. c. 43, s. 99.

Forms 69, 70.

4. In cases of consent under section ninety-nine of the Act, the defendant may confess the amount of the plaintiff's costs besides the court fees, and judgment may be entered accordingly, and the amount of the plaintiff's costs shall be stated separately.

Admission of truth of plaintiff's statement.

Form 71.

Form 72.

5. Where a defendant desires to admit the truth of the statements in the plaintiff's particulars, and to submit to the judgment of the court thereon, he may in the presence of any registrar, or of a clerk to a registrar, or of a solicitor, sign an admission according to the form in the Appendix; and the signature of the defendant thereto shall be verified by affidavit, unless the admission is signed in the presence of a registrar, or of a clerk to a registrar. Such admission shall be filed five clear days at least before the return day, and the registrar shall transmit a notice thereof by post to the plaintiff; and the plaintiff shall not, unless the judge otherwise orders, be allowed any costs incurred after the service upon him of notice of such admission in relation to the proof of the matter so admitted: Provided that the plaintiff shall be entitled, notwithstanding such admission, to his costs of attending on the day of trial to enter up judgment and tax his costs.

In actions under the extended jurisdiction, "ten clear days" is substituted for "five clear days" (see Order XXIIA. r. 8).

Admission by any party.

Form 71.

6. Any party to an action or matter may give notice in writing to any other party that he admits the truth of the whole or of any part of the case or claim of such other party, and no costs incurred after the receipt of such notice in respect of the proof of any matters admitted therein shall be allowed; but the costs of any steps taken prior to the receipt of such notice may be allowed if the registrar on taxation is of opinion that they were not taken unnecessarily or prematurely.

The admission must be specific and clear, and such a one as dispenses with any proof whatsoever (*Pincott* v. *Letts*, (1897) 77 L. T. 160).

Confession by defendant in action of ejectment or for recovery of possession.

Forms 256, 274.

7. Any defendant in an action of ejectment or for the recovery of possession of a tenement may at any time before the return day confess the action as to the whole or any part of the land by signing in the presence of any registrar or of a clerk to a registrar, or of a solicitor, an admission of the title of the plaintiff to the land or such part thereof, and of his right to the possession thereof, which admission shall be attested by the person in whose presence it is signed; and the registrar shall upon the receipt of such admission forthwith give notice thereof by post to the plaintiff; and the court may on the return day, upon proof of

the signature of the defendant to such admission, by affidavit or otherwise, in case the same is not attested by a registrar or a clerk to a registrar, and without any further proof of the plaintiff's title (if no defendant other than the defendant signing such admission defends for the said land or such part thereof), give judgment for the plaintiff for the recovery of possession and for costs. Provided that if the plaintiff receives notice of such admission before the return day, he shall not be entitled as against any defendant signing to any costs incurred subsequently to the receipt of such notice, except the costs of attending the court on the return day, unless the court otherwise orders. Provided also, that where the admission is not signed by all the defendants defending for the said lands or such part thereof, the action shall proceed against all the defendants who have not signed as if no admission had been signed.

O. IX. r. 7.

Form 275.

8. Any party may by notice in writing according to the form in the Appendix, at any time not later than six clear days before the return-day, call on any other party to admit, for the purposes of the action, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same by the delivery of a written admission of the fact or facts as aforesaid not less than three clear days before the return-day, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the action, matter, or issue may be, unless at the trial the court certifies that the refusal to admit was reasonable, or unless the court at any time otherwise orders. Provided that any admission made in pursuance of such notice shall be deemed to be made only for the purposes of the particular action, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving notice: Provided also, that the court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

Notice to admit specific facts.

Form 113.

Form 114.

In actions under the extended jurisdiction, "twelve clear days" and "six clear days" are substituted for "six clear days" and "three clear days" respectively (Order XXIIA. r. 9).

9. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of this order, shall be sufficient evidence of such admissions, if evidence thereof be required.

Evidence of admissions.

Forms 66, 70, 72.

Rules 10, 11.—"Partition Acts," which see, Part V., *post*, p. 2175.

O. IX. r. 12.

Payment into court.

51 & 52 Vict. c. 43, s. 107.

12.—(1) A defendant who desires to pay money into court pursuant to section one hundred and seven of the Act shall pay the same five clear days at least before the return day. Every such payment shall be taken to admit *pro tanto* the claim or cause of action or complaint in respect of which the payment is made, unless the defendant at the time of paying the money into court files with the registrar a notice according to the form in the Appendix, stating his name and address, and further stating that notwithstanding such payment the defendant denies his liability ; but no such payment with a denial of liability shall be permitted in any action or counter-claim for libel or slander. The defendant must also pay into court, in respect of the court fees and solicitor's costs (if any) entered on the summons, a sum proportionate to the amount paid in in respect of the claim, unless the payment into court is made under a defence of tender, in which case he may make such payment without costs.

Form 75.

When without Denial of Liability.]—A payment without denial of liability admits *pro tanto* the claim or cause of action or complaint in respect of which it is made ; though if the claim is for a debt composed of several items, a general payment will not admit that something is due under each item (*Hennell* v. *Davies*, (1893) 1 Q. B. 367 ; 62 L. J. Q. B. 220). The payment ought to be made at least five clear days (ten clear days in cases under the Act of 1903) before the return-day (see *Stevens* v. *Hounslow*, (1889) 38 W. R. 236 ; 61 L. T. 839), with court fees proportionate to the amount paid in, and a proportionate amount of solicitor's costs, if any, unless the payment into court be made under a defence of tender, when the defendant may make the payment without costs. If the defendant claims to be entitled to a set-off or counterclaim, he may pay in the residue, but must pay into court court fees and solicitor's costs proportionate to the amount paid in (Order IX. r. 17). The money may be paid in any day when the office is open, during office hours (Order II. r. 9). An acknowledgment of the payment will be given in all cases (Order II. r. 11).

Within twenty-four hours from the time of such payment, the registrar must give notice of the payment to the plaintiff (see as to default of officer, *Francis* v. *Dowdeswell*, (1874) L. R. 9 C. P. 423, 432 ; 43 L. J. C. P. 248) by post, or by causing the notice to be delivered at his usual place of abode or business (51 & 52 Vict. c. 43, s. 107 ; Order IX. r. 12 (2) ; Forms 73, 74).

If the plaintiff elects to accept the sum paid into court in satisfaction of his claim, whether the same has been paid in in due time or not, or with or without costs, or with or without a notice of denial of liability, and sends to the registrar and to the defendant by post, or leaves at the registrar's office and at the defendant's dwelling or place of business, a written notice (Form 76), stating such acceptance, within such reasonable time before the return day as the time of payment by the defendant permits, the action will abate, and the plaintiff will not be liable for any costs incurred by the defendant after receiving the notice (Order IX. r. 13 (1) (2)). In default of acceptance the action may proceed, but the plaintiff may accept the money at any time before the case is called on and opened, subject to the payment of any costs reasonably incurred by the defendant since payment into court, which may be allowed by the court (Order IX. r. 13 (5) (6)). If the plaintiff claims too small a sum, and the amount claimed is paid into court without denial of liability and taken out by the plaintiff, the latter cannot bring a fresh action for the larger amount, and give credit for the sum paid into and taken out

of court; the matter is *res judicata* (*Sanders* v. *Hamilton*, (1907) 96 L. T. 679). O. IX. r. 12. Notes.

Where Costs Insufficient.]—The statute (sect. 107) gives the plaintiff the "costs incurred," and the court may in its discretion order the defendant to pay such fees and costs beyond the fees and costs (if any) paid into court, as the plaintiff may have properly incurred for work done, before the receipt of notice of payment into court, and in attending the court to obtain the order for the same, including, in the judge's discretion, any items which might have been allowed at the trial, but no hearing fee is to be charged (Order IX. r. 13 (3)).

Notice of Application for Costs.]—When the plaintiff intends to apply for such costs, he must give notice of his intention in his notice of acceptance of the sum paid in, unless the time of payment into court does not permit of notice of acceptance being given, in which case the plaintiff may apply for costs without giving the notice (Order IX. r. 13 (1) (4); Form 76).

Where Plaintiff Proceeds.]—If the plaintiff proceeds, and recovers no more than was paid into court, he must pay the costs incurred by the defendant after the payment into court; such costs to be settled by the court, and an order made for payment of them by the plaintiff (51 & 52 Vict. c. 43, s. 107).

The defendant may also, at *any* time less than five clear days (ten clear days in actions under the Act of 1903) before the return day, pay money into court, with costs, as above-mentioned, and notice will be given of the payment as above; but the defendant may not, except by leave of the court, give a notice denying liability at the time of such payment. If it is so paid, or in any case where it is paid in without costs, the plaintiff may elect to accept in satisfaction the sum paid in, and send the written notice (Form 76), and claim costs or further costs as above mentioned. If the plaintiff does not accept money so paid in in satisfaction, he may proceed as if there had been no such payment, and will be entitled to his costs on the amount recovered by him, unless the court otherwise orders (Order IX. r. 12 (3) (4); Order XXIIA. r. 10). If nothing is paid in for costs, and the judge finds the sum paid in sufficient and gives judgment for the defendant, he may give the plaintiff his costs up to the payment into court, and the subsequent costs to the defendant (*Sykes* v. *Wesleyan and General Assurance Society*, (1907) 76 L. J. K. B. 626).

Money may be taken out.]—When money is paid into court without a denial of liability the plaintiff may take it out at once whether he accepts it in satisfaction or not (sect. 107). It has been held that if a High Court action abates by reason of the death of the defendant after paying money into court without a denial of liability, the money should be paid out to the plaintiff and not to the executors of the defendant (*Brown* v. *Feeney*, (1906) 1 K. B. 563; 75 L. J. K. B. 494).

Payment with Denial of Liability.]—In order that payment shall not operate as an admission, the defendant, at the time of paying money into court, must file with the registrar (with the copies required by Order LIV. r. 13) a notice (Form 75) stating his name and address, and that notwithstanding such payment he denies his liability. Payment into court with a denial of liability cannot be made in any action or counterclaim for libel or slander. A proportionate part of the court fees and solicitor's costs, if any, must be paid in, as in other cases, unless the payment into court is made under a defence of tender (Order IX. r. 12 (1)). The registrar, with the notice of payment above-mentioned, must send to the plaintiff a copy of the notice denying liability (Order IX. r. 12 (2); Forms 74, 75).

In an action of negligence a defendant may under this rule file a notice that he admits negligence but denies the alleged damage, and pay into court a sum of money in satisfaction of the claim. This is a denial of liability, as a denial of damage is a denial of liability. If plaintiff only

O. IX. r. 12. Notes.

recovers the amount so paid into court, the defendant is entitled to his costs (*J. R. Munday, Ltd.* v. *London County Council*, (1916) 2 K. B. 331; 85 L. J. K. B. 325; on appeal, (1916) 85 L. J. K. B. 1509. Comp. *Critchell* v. *London and South Western Rail. Co.*, (1907) 76 L. J. K. B. 422).

Time for Payment.]—The payment must be made five clear days (ten clear days in actions brought under the Act of 1903) at least before the return day (Order IX. r. 12 (1); Order XXIIA. r. 10); and, except by leave of the judge or registrar, cannot be made afterwards with a notice denying liability (Order IX. r. 12 (3); Order XXIIA. r. 10).

If the plaintiff then accept the money in satisfaction, he must give notice as provided and the action will abate (Order IX. r. 13 (1) (2); Form 76); and the money may be taken out of court at once (*Wood* v. *Leetham*, (1892) 61 L. J. Q. B. 215).

If not accepted in satisfaction, the money will be retained in court until after the trial, and if the plaintiff recovers less than the amount paid into court, the balance will be repaid to the defendant, unless the court otherwise orders. The court may order any costs awarded to the defendant to be set against the amount recovered by the plaintiff. If the defendant succeeds, the whole amount will be repaid to him, unless the court otherwise orders (Order IX. r. 19). In either case, judgment should be entered for the defendant, with, subject to the general discretion of the judge, costs (*Wood* v. *Leetham, supra*).

Where an executor or administrator is defendant, and he admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he must pay it into court under the above rules (Order XXX. r. 11).

The rules also apply to payment into court in actions of libel remitted from the High Court (Order IX. r. 14). A plaintiff may, in answer to a counterclaim, pay money into court under the same conditions (Order IX. r. 16). The above provisions do not apply to payments into court in equity actions or matters under order of the court (Order IX. r. 23).

Taxation: Costs of Issues.]—Where in an action for negligence the defendant paid money into court with a denial of liability, and the trial resulted in a verdict for an amount less than that so paid in, it was held that the judge's order giving the defendant the general costs of the action and the plaintiff the costs of the issues found in his favour was right (*Wagstaffe* v. *Bentley*, (1902) 1 K. B. 124; 71 L. J. K. B. 55), and it is immaterial that the issue on which the plaintiff succeeds is not an issue going to the whole cause of action (*Hubback* v. *British North Borneo Co.*, (1904) 2 K. B. 473; 73 L. J. K. B. 654), but plaintiff, though perhaps he may not recover the costs of issues on which he succeeds, ought not to be made to pay the defendant's costs of such issues (*Davies* v. *Edinburgh Life Assurance Co.*, (1916) 85 L. J. K. B. 1662). Under similar circumstances, the plaintiff having been non-suited, a new trial was ordered, the costs of the first trial to abide the event. At the second trial the plaintiff obtained a verdict for the sum paid into court, and it was held that the defendants were entitled to the general costs of the action, but that the county court judge had a discretion as to giving the plaintiff the costs of the issue of negligence, on which he had succeeded (*Dunn* v. *South Eastern Rail. Co.*, 1903) 1 K. B. 358; 72 L. J. K. B. 127).

Tender.]—If the money is paid into court with the defence of tender, no court fees or costs need be paid in (Order IX. r. 12 (1)). The plaintiff may accept the money in satisfaction, but is not entitled to take it out of court, or to any costs, without an order of the court, which may make such order as to the costs of either party as may be just, and may order any costs awarded to the defendant to be deducted from the amount paid into court and to be paid to the defendant (Order IX. r. 18).

Money is obtained out of court on production of the plaint note, just as when it has been paid in under a judgment.

As to payment into court by officers of court, as amends, see p. 26; under a default summons, p. 437; when assignment of *chose in action* disputed, p. 591; when defendant sets up lien on specific property, p. 458; when money found due to infant or person of unsound mind, p. 441; in replevin, p. 159; under Trustee Acts, p. 2332. O. IX. r. 12. Notes.

Neither the fact that money has been paid into court, nor the amount paid in, is to be communicated to a jury, who must find their verdict without reference to any payment into court (Order IX. r. 26).

When payment into court is made, and an apology tendered in actions for libel (see *Jones* v. *Mackie*, (1867) L. R. 3 Ex. 1; 37 L. J. Ex. 1), it is believed that the payment is only conditional, and does not admit the cause of action (Order IX. r. 26).

(2) The registrar shall, within twenty-four hours from the time of any payment made pursuant to the last preceding paragraph, send to the plaintiff notice thereof; and when such payment is made with a denial of liability, he shall also send therewith a copy of the notice prescribed by the last preceding paragraph. Forms 73, 74.

(3) The defendant may also at any time less than five clear days before the return-day pay money into court, and notice thereof shall be given by the registrar to the plaintiff in accordance with the last preceding paragraph; but the defendant shall not be permitted, except by leave of the court, to give a notice denying liability at the time of such payment.

(4) Where money is paid into court less than five clear days before the return-day, or where it is in any case paid in without costs, if the plaintiff does not elect to accept the money so paid in satisfaction, he may proceed as if no such payment had been made, and, unless the court otherwise orders, he shall be entitled to costs on such sum as he may recover, whether such sum be less than the sum paid into court or not.

In actions under the extended jurisdiction, "ten clear days" is substituted for "five clear days" in this and the preceding paragraph.

13.—(1) If the plaintiff elects to accept in satisfaction of his claim the money paid into court by the defendant, whether the same has been paid in in due time or not, or with or without costs, or with or without a notice of denial of liability, he shall send to the registrar and to the defendant by post, or leave at the registrar's office and at the defendant's dwelling or place of business, a written notice according to the form in the Appendix, stating such acceptance, within such reasonable time before the return day as the time of payment by the defendant has permitted. Acceptance of amount paid in in satisfaction of claim. Form 76.

(2) Thereupon the action shall abate, except as herein provided, and the plaintiff shall not be liable to any costs incurred by the defendant after receiving such notice.

If the plaintiff claims too small a sum, and the amount claimed is paid into court without denial of liability and taken out by the plaintiff, the latter cannot bring a fresh action for the larger amount and give credit for the

O. IX. r. 13. Notes. sum paid into and taken out of court; the matter is *res judicata* (*Sanders* v. *Hamilton*, (1907) 96 L. T. 679).

Provision as to costs.

Form 77.

(3) In any such case the court may in its discretion order the defendant to pay such fees and costs, beyond the fees and costs (if any) paid into court by the defendant, as the plaintiff may have properly incurred for work done before the receipt of notice of payment into court, and in attending the court to obtain the order for the same (including, if the judge on consideration of the facts of the case so orders, any of the items which might have been allowed by order of the judge at the trial), but no hearing fee shall be charged.

Form 76.

(4) If the plaintiff intends to apply for such costs, he shall give notice of his intention in his notice of acceptance of the sum paid in, according to the form in the Appendix, or where the time of payment into court by the defendant does not permit of notice of acceptance being given, the plaintiff may apply for such costs without giving such notice.

(5) Where the plaintiff has not given notice of acceptance in accordance with paragraph 1 of this rule, he may nevertheless accept the money paid into court at any time before the case is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the defendant since the date of payment into court, and which may be allowed by the court.

(6) In default of acceptance by the plaintiff the action may proceed.

(7) Where money is paid into court without a denial of liability, or under a defence of tender, and the action proceeds, the sum paid into court shall be included for the purpose of calculating the amount on which the hearing fee and any costs allowed to the plaintiff are to be charged: but if the plaintiff recovers more than the sum so paid judgment shall be entered only for the additional amount recovered and the fees and costs so allowed; and in any such case the words "in addition to the sum of £ paid into court by the defendant"

Form 151.

shall be added to the first paragraph of the form of judgment in the Appendix.

Payment into court by one or some of several defendants sued jointly.

13A. Where in an action against two or more defendants money is paid into court by one or some but not all of them, in respect of a cause of action for which the defendants are sued jointly, and the plaintiff elects to accept the sum so paid in, he shall in addition to giving the notice required by Rule 13 of this Order give notice to the other defendants of his having accepted the money so paid in; and thereupon all further pro-

ceedings in respect of the joint cause of action, except as to costs, shall be stayed, and the judge may upon application by any party make such order as may appear to be just as to the costs of the plaintiff and of the defendants (other than the defendant or defendants who has or have made the payment into court) incurred in respect of the cause of action satisfied by such payment. If the plaintiff does not accept the money so paid in by one or some but not all of several defendants in respect of a joint cause of action, but proceeds to trial and recovers no more than the amount paid into court, the judge may make such order as may appear to be just in respect of the costs of the joint cause of action as between the plaintiff and the defendants other than the defendant or defendants who has or have made the payment into court. O. IX. r. 13.

14. Where a defendant, in an action of libel remitted under section sixty-six of the Act, pays money into court under section two of the Libel Act, 1843, the rules of this Order shall apply to and be observed with reference to such payment into court, so far as they are applicable. Payment in remitted action of libel. 51 & 52 Vict. c. 43, s. 66. 6 & 7 Vict. c. 96, s. 2. Form 87.

The transmission to the county court of money paid into the High Court or a district registry before the action was transferred or remitted, is provided for by Order XXXIII. r. 3A.

15. Where a notice of defence under section eighty-six of the Act, has been given, and the defendant, before notice of the day fixed by the registrar for the trial has been sent to the plaintiff, pays into court the amount or a portion of the amount claimed, together with a sum in respect of the court fees and solicitor's costs (if any) entered on the summons proportionate to the amount paid in in respect of the claim, he shall not be liable to any further costs if the plaintiff accepts the money paid in in satisfaction of his claim. Where payment into court is made after notice of trial has been so sent, the provisions of Rule 13 of this Order shall apply. Where payment made after notice of defence given under 51 & 52 Vict. c. 43, s. 86.

16. A plaintiff may, in answer to a counter-claim, pay money into court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into court by a defendant. Payment by plaintiff in answer to counter-claim.

It will be paid out, pursuant to Order II. r. 10, on proof to the registrar's satisfaction that the person applying is entitled or authorised to receive it (see Order IX. r. 21).

17. Where a defendant pays into court any sum admitted by him to be due, after deducting any amount claimed by him as a set-off or counter-claim, he must pay into court in respect of the court fees and solicitor's costs (if any) entered on the summons a Fees and costs on payment of amount admitted after

O. IX. r. 17.

sum proportionate to the amount paid in in respect of the plaintiff's claim.

deducting set-off or counter-claim.

Acceptance of money paid into court under defence of tender. Costs.

18. Where a defendant pays money into court under a defence of tender, the plaintiff may accept the same in satisfaction of his claim in accordance with Rule 13 ; but he shall not be entitled to take out of court the amount so accepted, nor to any costs, without the order of the court ; and the court may make such order as may be just as to the costs of either party, and may order any costs awarded to the defendant to be deducted from such amount and paid to the defendant.

Money paid in with denial of liability.

Payment to plaintiff instead of into court.

Form 76.

19. Where a defendant pays into court a sum less than the sum claimed, with a notice of denial of liability, and the plaintiff does not accept the same in satisfaction of his claim, the money shall not be paid out until after the trial and judgment ; and if the plaintiff recovers less than the amount paid into court, the balance of such amount shall be repaid to the defendant, unless the court otherwise orders, and the court may order any costs awarded to the defendant to be set off against the amount recovered by the plaintiff ; and if the defendant succeeds, the whole amount paid into court shall be repaid to him, unless the court otherwise orders.

In either case, judgment should be entered for the defendant, with, subject to the general discretion of the judge, costs (*Wood* v. *Leetham*, (1892) 61 L. J. Q. B. 215).

20. Where money is paid to the plaintiff instead of being paid into court, the following provisions shall apply :—

(1) If the plaintiff accepts the money so paid in satisfaction of his claim, he shall send to the registrar and to the defendant notice of such acceptance in accordance with Rule 13 of this Order.

(2) Thereupon the action shall abate, except as herein provided, and the plaintiff shall not be liable to any costs incurred by the defendant after receiving such notice.

Form 77.

(3) In any such case the court may, in its discretion, order the defendant to pay such fees and costs, beyond the fees and costs (if any) paid to the plaintiff by the defendant, as the plaintiff may have properly incurred for work done before the receipt of the money so paid, and in attending the court to obtain the order for the same (including, if the judge on consideration of the facts of the case so orders, any of the items which might have been allowed by order of the judge at the trial), but no hearing fee shall be charged.

(4) If the plaintiff intends to apply for such costs, he shall give notice of his intention according to the form in the Appendix, in accordance with Rule 13 of this Order, or where the time of payment to the plaintiff by the defendant does not permit of notice of acceptance being given, the plaintiff may apply for such costs without giving such notice. O. IX. r. 20. Form 76.

(5) Where the plaintiff has not given notice of acceptance in accordance with paragraph 1 of this Rule, he may nevertheless accept the money paid to him at any time before the case is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the defendant since the date of payment, and which may be allowed by the court.

(6) In default of acceptance the action may proceed.

(7) If the action proceeds, the sum paid to the plaintiff shall be included for the purpose of calculating the amount on which the hearing fee and any costs allowed to the plaintiff are to be charged; but if the plaintiff recovers more than the sum so paid, judgment shall be entered only for the additional amount recovered and for the fees and costs so allowed to the plaintiff: and if the plaintiff recovers no more than the sum so paid, the judge may order him to pay to the defendant the costs incurred by him after such payment. [*Hughes* v. *Justin*, 1894, 1 Q. B. 667.]

21. Money paid into court, whether under a judgment or order, or otherwise, shall be paid out to plaintiffs pursuant to Order II. Rule 10, on production of the plaint note or the duplicate mentioned in Order VII. Rule 1, and to defendants on production of the summons issued in the action, or the duplicate mentioned in Order LIV. Rule 26. Money paid into court by plaintiffs in replevin or under Rule 16 of this Order shall be paid out pursuant to Order II. Rule 10, on proof to the satisfaction of the registrar that the person applying for the same is entitled or authorised to receive the same. Payment of money out of court.

How obtained out of Court.]—Money is obtained by plaintiffs out of court, whether paid under a judgment or otherwise, upon production of the plaint-note, or duplicate, as provided below, and by defendants on production of the summons. In the event of the original being lost or destroyed, on proof, by affidavit or otherwise, to the satisfaction of the registrar that the person applying is the plaintiff or his duly authorised agent, and that he is entitled to the moneys in court, the registrar may, from time to time, issue a duplicate (Order VII. r. 1). Money paid into court by plaintiffs in replevin, or in answer to a counterclaim, will be paid out on proof that the person applying is entitled or authorised to receive it.

Upon an application by the plaintiff for payment out of court, the defen-

O. IX. r. 21 Notes.

dant's trustee in bankruptcy cannot claim the money on behalf of the bankrupt's estate (*London Fancy Box Co.* v. *Berkeley*, (1906) 96 L. T. 727).

If the person entitled to the money does not reside or carry on business in the district of the court in which the money has been paid, he may send by prepaid post to the registrar of the court in which the money has been paid, the proof of title required by the last preceding rule and a receipt signed by the party (duly stamped where necessary), with a request that the money may be transmitted to him by post; and a stamped envelope addressed to himself. The registrar must examine the documents sent, and when satisfied that the applicant is entitled or authorised to receive the money, shall return the documents, and send to such person a crossed cheque or crossed post-office order in the addressed envelope. The remittance will be at the risk of the person to whom, and at whose request, it is made. The registrar on a written request from any such party or his solicitor (if his solicitor has no office within the district) enclosing stamped and addressed envelope for reply, shall give information as to the money (if any) paid into court. If information in more than twenty actions is called for the solicitor may be required to attend at the court. The several districts of the metropolitan courts are to be considered *inter se* as one district only for the purposes of this rule (Order IX. r. 22). Hence a person residing or carrying on business in one district of the metropolis cannot obtain payment through the post of money paid to his credit in the court of another district of the metropolis (Order IX. r. 22, *infra*).

If money be paid out of court by mistake to the wrong person, the judge may order him to refund, and in default execution may issue (*Aspey* v. *Jones*, (1884) 54 L. J. Q. B. 98).

Money due to suitors must be paid out of court in cash, if required, on three days, at least, in each week, the days being fixed by the registrar from time to time, with the approbation of the judge, and being printed or written on the plaint-note. During one week in the year, of which due notice must be fixed a month beforehand in some conspicuous place in the office of the registrar, no payments will be made out of court (Order II. r. 10).

The above rules do not apply to payment out of court in equity actions or matters (Order IX. r. 23).

See, as to money unclaimed for six years, 51 & 52 Vict. c. 43, s. 173, *ante*, p. 206.

Payment to parties out of the district by cheque or money order.

22. (1) Where money has been paid into court to the credit of any party to any proceeding who neither resides nor carries on business within the district of the court, such party may transmit by prepaid post to the registrar the proof of title required by the last preceding rule, with a request for the transmission of the money by post, and a receipt for the same (duly stamped where necessary) signed by such party, and an envelope addressed to himself, with sufficient postage thereon; and the registrar shall examine the documents transmitted to him, and when satisfied that the applicant is entitled or authorised to receive the money shall return the documents and forward the amount, less the cost of remittance, by crossed cheque or crossed money order, in the addressed envelope, payment by post being in all cases at the risk of the party requesting the same.

Information as to money in Court.

(2) For the purposes of this Rule the registrar shall on receipt of a written request from any such party or his solicitor (if the solicitor has no office within the district), together with a stamped

and addressed envelope for reply, forward to the party or his solicitor in the addressed envelope information as to the amount (if any) paid into court. Provided that if a party or his solicitor requests such information in more than twenty actions at the same time, the registrar may require him to attend at the office of the court. O. IX. r. 22.

(3) For the purposes of this Rule the several districts of the Metropolitan Courts shall be considered *inter se* as one district only.

NOTE.—Revised by Rules of 1917, dated February 19th, 1917.

23. The rules of this Order as to payment into or out of court shall not apply to any payment into or out of court in pursuance of any order or direction made under the provisions of sections sixty-seven to seventy-one of the Act, or the Partition Acts, 1868 and 1876, or otherwise under the equitable jurisdiction of the court. When rules of this order not to apply. 51 & 52 Vict. c. 43, ss. 67—71. 31 & 32 Vict. c. 40. 39 & 40 Vict. c. 17.

24. In any action or matter in which money or damages is or are claimed by or on behalf of an infant, or a person of unsound mind not so found by inquisition, no settlement or compromise or acceptance of money paid into court, whether before or at or after the trial, shall be valid without the sanction of the judge, and no money or damages recovered or awarded in any such action or matter, whether by settlement, compromise, payment into court, or otherwise, before or at or after the trial, shall be paid to the next friend of the plaintiff or to the plaintiff's solicitor unless the judge shall so direct. All money or damages so recovered or awarded shall, unless the judge shall otherwise direct, be paid into court to the credit of an account intituled in the action or matter; and any sum so paid into court may either be invested (*a*) or be paid from time to time out of court to such person as the judge may direct, to be held and applied for the maintenance and education or otherwise for the benefit of such infant or person of unsound mind in such manner as the judge may from time to time direct. Settlement of claims on behalf of infants or persons of unsound mind. Payment into court and application of moneys recovered or awarded.

The provisions of this rule shall apply to all actions in which damages are claimed or awarded or recovered by, to, or on behalf of an infant or person of unsound mind not so found by inquisition under the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93). 9 & 10 Vict. c. 93.

Nothing in this rule shall prejudice the lien of a solicitor for costs.

This rule shall not apply to any case in which an infant sues as if he were of full age for money due to him for wages or piece- Proviso as to infants suing

O. IX. r. 24. work, or for work as a servant, pursuant to section ninety-six of the Act.

under 51 & 52 Vict. c. 43, s. 96.

NOTE.—(*a*) See County Courts (Investment) Act, 1900 (63 & 64 Vict. c. 47), *ante*, p. 223, and War Loan Trustees Act, 1915 (5 & 6 Geo. 5, c. 56), "Emergency Legislation," p. 1019.

Orders as to moneys in court or invested under last rule.

25. When any moneys have been paid into court or invested pursuant to the order of the judge under the last preceding rule, it shall not be necessary that applications in regard to them shall be made by petition. Any person interested may apply in person to the judge, and he, on such evidence of right and identity as he may think necessary, may make such order as he may think fit.

Payment into court not to be communicated to jury.

26. Where an action or matter is tried with a jury, no communication to the jury shall be made until after the verdict is given, either of the fact that money has been paid into court, or of the amount paid in. The jury shall be required to find the amount of the debt or damages, as the case may be, without reference to any payment into court.

ORDER X.

SPECIAL DEFENCES.

Where plaintiff sues on behalf of others.

1. Where a plaintiff sues on behalf of or for the benefit of others having the same interest, the defendant may avail himself of any defence in respect of each of the persons in whose behalf or for whose benefit the plaintiff so sues which he would have had against such person if he had been plaintiff.

See Forms 96, 97, 98.

Set-off and counter-claim.

2. A defendant in an action may set-off, or set up by way of counter-claim against the claims of the plaintiff, any right or claim whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim.

See *Winterfield* v. *Bradnum* (C. A.), (1878) 5 Q. B. D. 324, 326; 47 L. J. Q. B. 270, *per* Brett, L.J.; *Sykes* v. *Sacerdoti* (C. A.), (1885) 15 Q. B. D. 423; 54 L. J. Q. B. 561.

Objection by plaintiff under 47 & 48 Vict. c. 61, s. 18.

3. Where the plaintiff objects in writing under the powers given by section eighteen of the Supreme Court of Judicature Act, 1884, to the court giving any relief on any counter-claim exceeding that which the court would have jurisdiction to give independently

of that section, he shall give notice in writing of his objection to the registrar and to the defendant, according to the form in the Appendix, within two clear days after the receipt of notice of the counter-claim. The plaintiff may at the time of giving notice of objection also give notice that he will on the day fixed for the trial apply to the judge to adjudicate upon the original claim (if not admitted), subject to such order as the judge may make for the stay of execution or otherwise in reference thereto. O. X. r. 3. Form 78.

The notice of objection will cut down the jurisdiction to the point at which it stood prior to the Act above cited, *i.e.*, the judge will not be able to give effect to the counterclaim for any purpose other than that of defeating the plaintiff's claim (47 & 48 Vict. c. 61, s. 18; *Davis* v. *Flagstaff Co.* (C. A.), (1877) 3 C. P. D. 228; 47 L. J. C. P. 503); and the defendant will be compelled to sue for the residue in the High Court, but the plaintiff will there be estopped from litigating the questions, except as to amount, over again (*Webster* v. *Armstrong*, (1885) 54 L. J. K. B. 236). At the time of giving notice of objection, the plaintiff may give notice that he will on the day fixed for the trial apply to the judge to adjudicate on the original claim (Order X. r. 3).

Removal into High Court.]—It appears that whether any such notices be given or not, the court may of its own motion or on the application of either party, at or before the trial, adjourn the trial to enable either party to apply for the removal of the whole proceedings into the High Court (under the provisions of sect. 126), or it may give judgment on the plaintiff's claim and stay execution for such time as may be necessary to enable the defendant to establish his counterclaim by action in a court of competent jurisdiction. If, however, after such adjournment, neither party applies to remove the proceedings, or if the defendant does not bring his action within the time named, the court will then have complete jurisdiction over the whole matter as if the parties had consented to the jurisdiction (47 & 48 Vict. c. 61, s. 18. The above paragraphs are submitted as the effect of the provisions just cited. They are open, however, to much discussion. It is not absolutely certain, for example, that the powers of the last paragraph can be exercised if the plaintiff has objected to the jurisdiction. Moreover, this singular result might happen. A plaintiff might object to the jurisdiction, and the judge might give judgment for him on his claim, but stay proceedings for three months to enable the defendant to bring an action. At the end of the three months, if defendant had not brought his action, the judge would have jurisdiction, although plaintiff objected and had no control over the defendant).

Prohibition will not lie before the trial merely because a defendant raises by counterclaim matters which would not be within the jurisdiction of the court if raised by original action (*Davis* v. *Flagstaff Co.* (C. A.), (1877) 3 C. P. D. 228).

4. In an action of ejectment or for the recovery of possession of a tenement any person not named as a defendant in the summons may by leave of the court be allowed to appear and defend on filing, in an action of ejectment twelve clear days, and in an action for the recovery of possession five clear days at least before the return day an affidavit, together with as many copies thereof as there are plaintiffs and defendants, showing that he is in possession either by himself or his tenant of the property or some part thereof mentioned in the particulars (such part being described in the In action of ejectment or for recovery of possession, any person not named as a defendant may, by leave, appear.

O. X. r. 4.
Form 254.

affidavit with reasonable certainty); and upon such affidavit being filed and leave given, the registrar shall enter the name, address, and description of the person filing the affidavit in the plaint book as a defendant in addition to the name of every person originally made defendant, and shall in an action of ejectment ten clear days, and in an action for the recovery of possession three clear days at least before the return day give notice, according to the form in the Appendix, by post or otherwise, to the plaintiffs and the original defendants, that the person filing the affidavit has filed the same, and will appear and defend at the trial of the action, annexing to each notice a copy of the affidavit. In all subsequent proceedings in the action, the person filing the affidavit shall be named as a defendant.

In cases under the extended jurisdiction, "twenty clear days" is substituted for "twelve clear days," "ten clear days" for "five clear days," "eighteen clear days" for "ten clear days," and "eight clear days" for "three clear days" (Order XXIIA. r. 11).

In action of ejectment or for recovery of possession, defendant may give notice that he will limit his defence to part of the property.
Form 255.

5. In an action of ejectment or for the recovery of possession of a tenement any defendant may, in an action of ejectment twelve clear days, and in an action for the recovery of possession five clear days at least before the return-day, file with the registrar a notice in writing, together with a copy for the plaintiff, according to the form in the Appendix, that he intends to limit his defence to a part only of the property mentioned in the particulars, describing that part in such notice with reasonable certainty; and the registrar shall in an action of ejectment ten clear days, and in an action for the recovery of possession three clear days at least before the return day send the copy of such notice by post to the plaintiff.

See Order LIV. rr. 13, 14.

In cases under the extended jurisdiction, "twenty clear days" is substituted for "twelve clear days," "ten clear days" for "five clear days," "eighteen clear days" for "ten clear days," and "eight clear days" for "three clear days" (Order XXIIA. r. 11).

Objection to jurisdiction of court.
51 & 52 Vict. c. 43, s. 62.
Form 79.
Form 82.

6. A defendant intending to avail himself of the power given by section sixty-two of the Act, to object to an action being tried in the court, shall give notice in writing to the registrar and to the plaintiff five clear days at least before the return-day, by post or otherwise, according to the form in the Appendix, and shall therein name the parties whom he proposes to be his sureties, or state therein his willingness to deposit money in lieu of giving security, and if he fails to give such security or make such deposit before the return day, or fails to give such notice of his intention to object as aforesaid, he shall not be entitled to object to the

action being tried in the court. He shall also after giving such notice as aforesaid apply *ex parte* to the judge on affidavit for his certificate that in his opinion some important question of law or fact is likely to arise in the action, and if the certificate is granted notice thereof shall be sent by the registrar to the plaintiff by post or otherwise. The affidavit above referred to shall specify any important questions of law or fact which are likely to arise in the action; and in the case of a question of law, shall further specify the facts which are relied on as likely to raise such question. O. X. r. 6. Form 80 Form 81.

In actions under the extended jurisdiction, the notice must be given ten clear days at least before the return day (Order XXIIA. r. 12).
For form of bond, see Form 82.

7. Where a plaintiff avails himself of the provisions of section ninety-seven of the Act, and does not proceed against all of several persons jointly answerable, every defendant sued may avail himself of any defence or counter-claim to which he would have been entitled if all the persons liable were made defendants. Where one of several persons jointly answerable is sued. 51 & 52 Vict. c. 43, s. 97.

It should be remembered that it is a principle of law that a judgment against one of several joint contractors is a bar to an action against the others (*King* v. *Hoare*, (1844) 13 M. & W. 494; 14 L. J. Ex. 29; 67 R. R. 694; *Kendall* v. *Hamilton*, (1879) 4 App. Cas. 504); and that the provision of the County Courts Act above-mentioned does not prevent the principle from applying in the county courts, so as to estop the plaintiff from maintaining another action. In a remitted action two defendants were represented by the same solicitor, and, judgment with costs having been given for one and against the other, the successful defendant was held entitled to recover from the plaintiff half the costs of the defence (*Beaumont* v. *Senior*, (1903) 1 K. B. 282; 72 L. J. K. B. 141).

One defendant cannot counterclaim against another. If there be any right to enforce in the action any claim against a co-defendant, it must be under the provisions stated in the next section in reference to contribution (*Furness* v. *Booth* (M. R.), (1877) 4 Ch. D. 586; 46 L. J. Ch. 112). A third party brought in by a defendant under a claim for contribution or indemnity cannot counterclaim the plaintiff (*Eden* v. *Weardale Co.* (C. A.), (1885) 28 Ch. D. 333; 54 L. J. Ch. 384). A third party brought in as defendant to a counterclaim cannot counterclaim the defendant who brings him in, nor the plaintiff (*Alcoy, etc., Co.* v. *Greenhill* (C. A.), (1896) 1 Ch. 19; 65 L. J. Ch. 99; following *Street* v. *Gover*, (1877) 2 Q. B. D. 498; 46 L. J. Q. B. 582).

8. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a set-off or counter-claim, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon. Misjoinder of plaintiffs not to defeat counter-claim.

9. A defendant in any action or matter may file a statement disclaiming any interest in the subject matter thereof, or admitting Disclaimer, admission and other

O. X. r. 9.

statements by defendant. Form 83.

or denying any of the statements in the plaintiff's particulars, or raising any question of law on such statements without admitting the truth thereof; or he may state concisely any new fact or document upon which he intends to rely as a defence, or which he intends to bring to the notice of the court; and a copy of such statement shall be filed therewith, and such copy shall be transmitted by the registrar to the plaintiff: Provided always, that in exercising his discretion as to costs the judge shall consider the fact of a defendant having or not having availed himself of the powers given by this rule. This rule shall apply to a plaintiff who is defendant by counter-claim.

As to confession of judgment, see Order IX. r. 5, and for notice of admission of facts, Order IX. r. 6.

Notice to be given of special defences. Forms 84, 85.

10. Where a defendant intends to rely on any of the grounds of defence mentioned in Rules 12, 13, 14, 15, 16, 17, 18, 19, and 20 of this Order (*a*), or upon any set-off or counter-claim, he shall file in duplicate a notice stating thereon his name and address, together with a concise statement of his grounds of defence, or of his set-off or counter-claim, five clear days at least before the return day; and the registrar shall thereupon, within twenty-four hours after receiving the same, transmit by post one copy of such notice and statement to the plaintiff: Provided that in case of non-compliance with this and the above-mentioned rules, and of the plaintiff's not consenting at the trial to permit the defendant to avail himself of such defence, set-off, or counter-claim, the judge may, on such terms as he may think fit, adjourn the trial of the action to enable the defendant to give such notice.

In cases under the extended jurisdiction, and in remitted actions where the claim exceeds £50 or is for damages, the notice must be filed ten clear days at least before the return day instead of five clear days. (Order XXIIa, r. 13; Order XXXIII., r. 3b).

NOTE.—(*a*) And see now rr. 21 and 21A of this order.

Special Defences.]—The special defences are Infancy, Coverture, any Statute of Limitations, Bankruptcy, truth of a libel or slander, mitigating circumstances or character of the plaintiff in action of libel or slander, defence under any Act of Parliament, equitable defence, tender, fraud or misrepresentation (r. 21A). Similar notice, or notices, must be given where plaintiff relies on any such defence as an answer to a counterclaim set up by the defendant (see rr. 11, 21, 21A, 22). The Gaming Acts need not be specially pleaded (r. 18 (2)).

"**Set-off.**"—To a claim for the price of goods sold, the defence that the goods were warranted and that there was a breach of such warranty is not a "set-off" or "statutory defence" within the meaning of this rule (*Bright* v. *Rogers*, [1917] 1 K. B. 917; 86 L. J. K. B. 804).

Set-off or counter-claim. Form 84

11. Where a defendant intends to rely on a set-off or counter-claim against any of the claims of the plaintiff, his statement shall contain particulars of such set-off or counter-claim, and *mutatis*

mutandis the provisions of Order VI. shall apply to such particulars. O. X. r. 11.

If a defendant gives an imperfect notice, and is thereby precluded from proving his set-off at the trial, he may still enforce it by subsequent original action (*Stanton* v. *Styles*, (1850) 5 Ex. 578; 19 L. J. Ex. 336; and see *Hindley* v. *Haslam*, (1878) 3 Q. B. D. 481).

12. Where a defendant intends to rely on the defence of infancy, he shall in his statement set forth, so far as he is able, the place and date of his birth. Infancy. Form 85.

An infant who has obtained loans by fraudulent misrepresentation that he was of full age cannot be made liable to repay them on attaining full age, either as damages for fraudulent misrepresentation, or as money had and received, or on equitable grounds (see *R. Leslie, Ltd.* v. *Shiell*, (1914) 3 K. B. 607; 83 L. J. K. B. 1145).

13. Where a female defendant intends to rely on the defence of coverture, she shall in her statement set forth, so far as she is able, the place and date of her marriage, together with the Christian name and surname of her husband, and his address and description so far as known. Coverture. Form 85.

14. Where a defendant intends to rely on the defence of any statute of limitations, his statement shall be according to the form in the Appendix. Statute of limitations. Form 85.

The inclusion of a debt in an affidavit for probate is not a sufficient acknowledgment of the same to take it out of the statute (*Lloyd* v. *Coote*, (1915) 1 K. B. 242; 84 L. J. K. B. 567).

See *Eaton* v. *Tapley*, (1899) 1 Q. B. 953; 68 L. J. Q. B. 638.

The Public Authorities' Protection Act, 1893, s. 1, is a statute of limitations, and should be so pleaded (*Gregory* v. *Torquay Corporation*, (1912) 1 K. B. 442; 80 L. J. K. B. 981). See also *Parson* v. *Nesbitt*, (1916) 85 L. J. K. B. 654.

15. Where a defendant intends to rely on the defence of a release under any statute relating to bankrupts, he shall in his statement set forth the date of his discharge, and the court by which such discharge was granted. Bankruptcy. Form 85.

16. Where in any action for libel or slander the defendant relies as a defence on the fact that the libel or slander is true, he shall in his statement set forth that the libel or slander complained of is true in substance. Defence that libel or slander is true. Form 85.

If he relies upon an apology, or payment into court and apology under the provisions of sects. 1 and 2 of the Libel Act, 1843, he must give notice in writing (Forms 86, 87), signed by himself or his solicitor, five clear days at least before the day fixed for the trial (Order XXXIII. r. 4).

17. Where in any action for libel or slander the defendant does not rely as a defence on the fact that the libel or slander is true, Facts in mitigation of damages

O. X. r. 17. in libel or slander. Forms 86, 87.

but relies in mitigation of damages on the circumstances under which the libel or slander was published, or on the character of the plaintiff, he shall in his statement give particulars of the matters relating thereto as to which he intends to give evidence.

These cases can only arise where the parties agree to give the court jurisdiction, or where an action is remitted by the High Court for trial.

Statutory defence. Form 85.

18. When in any action the defendant relies on any statutory defence, or on any defence of which he is required by the Act or any statute to give notice, he shall in his statement (except in the case provided for by Rule 14 of this Order) set forth the year, chapter, and section of the statute, or the short title thereof, and the particular matter on which he relies, or otherwise sufficiently indicate the nature of the defence on which he relies.

But this rule does not entitle a plaintiff to maintain an action contrary to the provisions of the Gaming Acts, 1845 or 1892, by reason of the Acts not having been pleaded as a defence (Order X. r. 18 (2)).

The defence afforded to county court bailiffs by sect. 54 of the County Courts Act, 1888, is such a defence (*Denny* v. *Bennett*, (1896) 44 W. R. 333).

The rule clearly covers those cases in which the general issue by statute can be pleaded. In an action against a local board it was held that the board could not, at the trial, object to the sufficiency of a notice of action given under the Public Health Act, 1875, no notice of such defence having been given under the rule (*Kay* v. *Atherton Loc. Bd.*, (1878) 42 J. P. 792. Overruled in *Graham* v. *Mayor of Newcastle*, (1893) 1 Q. B. 643; 62 L. J. Q. B. 315, but on another point). So in an action against a police officer, where notice of action had not been given in time, but no notice of defence had been given, it was held that the judge was wrong in nonsuiting the plaintiff (*Allwright* v. *Perks*, (1893) 9 T. L. R. 235). So want or insufficiency of a notice of injury under the Employers' Liability Act (*Conroy* v. *Peacock*, (1897) 2 Q. B. 6; 66 L. J. Q. B. 425); no memorandum in writing under sect. 4 of the Sale of Goods Act (*Brutton* v. *Branson*, (1898) 2 Q. B. 219; 67 L. J. Q. B. 827); no signed bill of solicitor's costs (*Lewis* v. *Burrell*, (1898) 77 L. T. 626); a defence under the Gaming Act, 1892 (*Willis* v. *Lovick*, (1901) 2 K. B. 195; 70 L. J. K. B. 656; and see *Renton* v. *King*, (1905) 93 L. T. 10), are all statutory defences, though the plaintiff can no longer avail himself of the omission to plead the last-named Act as a defence (Order X. r. 18 (2)). The notice of objections to the plaintiff's title under the Copyright Act, 1842, s. 16 (5 & 6 Vict. c. 45, s. 16), would, it is believed, be within the rule (*Harris* v. *Sheldon*, W. N. (1889) 92, 128, was decided before the new rule). The rule applies to actions of contract.

A defence of breach of warranty in an action for the price of goods is not a special statutory defence, for though the Sale of Goods Act, 1893, sects. 10—14, define and deal with contracts of warranty, such a defence does not owe its validity to the statute. *Semble:* A statutory defence is one which has its origin only in a statute (*Bright* v. *Rogers*, (1917) 1 K. B. 917).

Proviso as to Gaming Acts, 8 & 9 Vict. c. 109, s. 18; 55 & 56 Vict. c. 9.

(2) Nothing in this rule shall entitle a plaintiff to maintain an action contrary to the provisions of the Gaming Acts, 1845 or 1892, by reason of those Acts not having been pleaded as a defence.

A partner with a bookmaker may sue his partner for an account, though he cannot recover anything which represents the profits of the business (*Keen* v. *Price*, (1914) 2 Ch. 98; 83 L. J. Ch. 865). O. X. r. 18. Notes.

19. Where a defendant claims to be entitled as matter of defence to any equitable estate or right, or to relief on any equitable ground against the claim of the plaintiff, or any part thereof, he shall in his statement show concisely the circumstances which give rise to such defence, and set forth separately each of the grounds of equitable defence. Equitable relief. Form 85.

Equitable Defence.]—That is to say, where a defendant has to rely on facts which would formerly have entitled him to relief in equity against the plaintiff's claim, he must concisely state them (see *Heap* v. *Marris*, (1876) 2 Q. B. D. 630; 46 L. J. Q. B. 761).

A defence of this kind must not be confounded with counterclaim. Where the facts relied on go to *defeat* the claim of the plaintiff, whether by way of denial of the claim or by way of admission—that, *e.g.*, something was due, the right to recover which has been avoided—then such facts constitute a proper matter of defence. But if they go to show a claim of a different nature, not merely denying or avoiding the plaintiff's claim, such facts constitute a ground for a counterclaim, and not a defence on equitable grounds. The defendant may, in the way of defence, rely on any equitable matter; and, so far as it goes to defeat the plaintiff's claim, the judge has power to entertain any defence whatsoever (see *Davis* v. *Flaystaff Co.* (C. A.), (1877) 3 C. P. D. 228; 47 L. J. C. P. 503), whether he would or would not have jurisdiction if the matter came before him by way of original claim or counterclaim. A defendant might set up as a defence to an action upon a deed, that its terms had been, by mutual mistake of the parties, wrongly expressed. The court might then for the purposes of the action treat the deed as reformed, though it could not go further and actually reform it on a mere defence (see *Breslauer* v. *Barwick*, (1876) 36 L. T. 52; 24 W. R. 901; *Mostyn* v. *West Mostyn Coal Co.*, (1875) 1 C. P. D. 145; 45 L. J. C. P. 401).

This provision apparently obliges a defendant to give notice of the facts relied on by way of defence in all equitable actions, as if the relief claimed by the plaintiff be equitable, the defence will probably also be so.

20. Where the defence is a tender, such defence shall not be available unless, at the time of filing the notice of such defence, the defendant makes payment into court (which may be without costs) of the amount alleged to have been tendered. Tender. Form 85

Tender.]—If the defendant has, at any time before the commencement of the action, tendered to the plaintiff the amount claimed, or what he considers to be due to the plaintiff, he may set it up as a defence; and if he succeeds in establishing it, and no further sum is awarded to the plaintiff, the defendant will generally obtain all the costs of the action. The defence is not available unless, with notice of defence, the defendant pays into court (the payment may be made without costs) the amount alleged to have been tendered. Notice of the defence and payment into court will be given by the registrar to the plaintiff in accordance with Order X. r. 10. The plaintiff may accept the money in satisfaction; he will not, however, be entitled to take it out of court or to any costs without an order of the court, which may make such order as to the costs of either party as may be just, and may order any costs awarded to the defendant to be deducted from the amount paid into court and to be paid to the defendant (Order IX. r. 18).

When available.]—The defence of tender cannot be raised to a claim for unliquidated damages (*Dearle* v. *Barrett*, (1834) 2 A. & E. 82; *S. C.*, nom.

O. X. r. 20. Notes.

Searle v. *Barrett*, 4 N. & M. 200), except in some cases of wrong, as when by statute a tender of amends is permissible, and may be relied on at the trial. These cases, however, differ from tender in its ordinary sense.

A tender need not be made by the debtor in person, it may be made by a third person on his behalf (Bac. Abr., *Tender A*). Nor is it necessary to make it to the creditor personally; it may be made to an agent authorised to receive the money for him (*per* Parke, B., *Kirton* v. *Braithwaite*, (1836) 1 M. & W. 310, 313; 15 L. J. Ex. 165). A tender of part of an entire demand is bad (*Dixon* v. *Clark*, (1849) 5 C. B. 365; 16 L. J. C. P. 237; 75 R. R. 747). A tender of a larger amount than is due is good (*Wade's Case*, (1601) 5 Rep. 115a; *Dean* v. *James*, (1832) 4 B. & Ad. 546), unless objected to for want of change (*Bevans* v. *Rees*, (1839) 5 M. & W. 306, 308; 8 L. J. (N. S.) Ex. 263; 52 R. R. 727, *per* Lord Abinger, C.B.; *Betterbee* v. *Davis*, (1811) 3 Camp. 70; 13 R. R. 755). So a tender of 2*l.* by a debtor who owed 1*l.* 13*s.* (*Cadman* v. *Lubbock*, (1824) 5 D. & R. 289; 3 L. J. (O. S.) K. B. 41), and a tender of 20*l.* 19*s.* 6*d.* in notes and silver by a debtor who owed 20*l.* (*Dean* v. *James*, *supra*), have been held good. Bank of England notes are a good legal tender for all sums above 5*l.* (3 & 4 Will. IV. c. 98, s. 6), and so for any amount now are Currency notes issued by the Treasury, "Currency and Bank Notes Act, 1914" (4 & 5 Geo. V., c. 14, s. 1). There must be an actual production of the money, or its production must be expressly or impliedly dispensed with (*Thomas* v. *Evans*, (1808) 10 East, 101; *Finch* v. *Brook*, (1834) 1 Scott, 70, 76, *per* Tindal, C.J.; 1 Bing. N. C. 253; 4 L. J. (N. S.) C. P. 1; 41 R. R. 595); and the tender must be made unconditionally (*Laing* v. *Meader*, (1824) 1 C. & P. 257; *Ford* v. *Noll*, (1842) 12 L. J. C. P. 2); but it is believed that merely demanding a stamped receipt for the amount offered to be paid would not now make a tender bad (*Richardson* v. *Jackson*, (1841) 8 M. & W. 298; 10 L. J. Ex. 303; 54 & 55 Vict. c. 39, s. 103). A cheque sent by post in a letter and objected to merely as to amount was held to be a good tender (*Jones* v. *Arthur*, (1840) 8 Dowl. 442; 59 R. R. 833, *per* Coleridge, J.).

Notice of defence to counter-claim.

21. Where in answer to a counter-claim the plaintiff intends to rely on any of the defences mentioned in Rules 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of this Order, he shall file notice thereof in accordance with the said rules. All the provisions of Rule 10 of this Order, *mutatis mutandis*, shall apply to such notice, except that the provision as to the time for giving such notice shall not apply unless the plaintiff, after receipt of notice of counter-claim, might, if he had used reasonable expedition, have filed his notice five clear days before the return day.

In cases under the extended jurisdiction "ten clear days" is substituted for "five clear days" (Order XXIIA. r. 13 (2)).

The provisions of this rule apply to a person made defendant to a counter-claim in the same manner as to a person made defendant to an action, or to a plaintiff made defendant to a counterclaim (Order X. r. 22).

Notice of fraud or misrepresentation as defence to claim or counterclaim.

21A. Where a defendant, or a plaintiff in answer to a counterclaim, intends to rely on alleged fraud or misrepresentation, he shall file a notice in accordance with Rule 10 or Rule 21 of this Order, and shall in his statement set forth concisely the particulars of the fraud or misrepresentation on which he intends to rely.

As to what constitutes fraud or misrepresentation, see *Derry* v. *Peek*, (1889) 14 A. C. 337; 58 L. J. Ch. 864, and *Nocton* v. *Ashburton* (*Lord*), (1914) A. C. 932; 83 L. J. Ch. 784. O. X. r. 21a. Notes.

Where counter-claim affects other persons.

22. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person, he may apply to the court, under Order XIV. Rule 2, to add the name of such person as a party to the counter-claim; and that rule, and the other provisions of Order XIV., and Rule 21 of this Order, shall apply to a person made defendant to a counter-claim in the same manner as to a person made defendant to an action, or to a plaintiff made defendant to a counter-claim.

The cause of action must be joint, not alternative (*Times Cold Storage Co.* v. *Lowther*, (1911) 2 K. B. 100; 80 L. J. K. B. 901).

ORDER XI.

Claim for Contribution or Indemnity.

Notice of claim to contribution or indemnity. Filing and service. Form 88.

1.—(1) Where a defendant claims to be entitled to contribution or indemnity against any person not a party to the action, he shall, five clear days at least before the return day, file in duplicate a notice of his claim, according to the form in the Appendix, and the registrar shall seal such notices and deliver one of them to the defendant, who shall forthwith serve the same, together with a copy of the summons in the action and of the particulars annexed thereto, on the person against whom such claim is made, according to the rules relating to the service of default summonses.

In actions under the extended jurisdiction "ten clear days" is substituted for "five clear days" (Order XXIIA. r. 14).

An alien enemy who is defendant in an action cannot bring in a third party for the purpose of claiming contribution or indemnity. See *Halsey* v. *Lowenfeld* (*Leigh & Curzon* third parties), (1916) 1 K. B. 143; 2 K. B. 707.

(2) Where the original action has been commenced by default summons, the defendant shall not be entitled to serve a notice under this rule before he gives notice of intention to defend, or, if the plaint is entered under the Summary Procedure on Bills of Exchange Act, 1855, before he obtains leave to defend; and where after notice of intention to defend or leave to defend has been given the defendant files a notice under this rule, the registrar shall on the filing of such notice seal and deliver to the defendant a duplicate of the notice of the day on which the action will be tried, and the defendant shall serve the same with the notice of his claim. 18 & 19 Vict. c. 67.

(3) Where, if the defendant desired to enter a plaint and issue a summons against the person against whom he claims to be en- Leave, when required. 51 & 52 Vict. c. 43, s. 74.

O. XI. r. 1.

titled to contribution or indemnity, leave to enter such plaint would be required under section seventy-four of the Act, the defendant shall not be entitled to serve a notice under this rule without leave of the court, to be obtained in the manner in which leave to enter a plaint is obtained.

Appearance of third party.

2. If any person served with a notice under the last preceding rule (hereinafter called the third party) desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, he must appear at the court on the return-day mentioned in the summons (or in case the original action is commenced by default summons on the day mentioned in the notice of trial), or on any day to which he may have received notice from the registrar that the trial has been adjourned or postponed; and in

Default of appearance

default of his so doing he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the said notice.

Provided that if it appears to the court that the notice of claim has not been served on the third party in time to enable him to appear on the day hereinbefore mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the court may adjourn the proceedings against the third party, or the original action and the proceedings against the third party, on such terms, as to costs and otherwise, as may be just.

Proceedings on default of appearance by third party.

3. Where a third party fails to appear on the day mentioned in Rule 2 of this Order, or, if the proceedings are adjourned under that rule, on the day to which the proceedings are adjourned, then

(*a*) if judgment in the original action is given in favour of the plaintiff on default of appearance by the defendant, the defendant may at any time after satisfaction of the judgment against himself, or before such satisfaction by leave of the court, apply to the judge to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice, and the judge may enter judgment accordingly: or

(*b*) if the original action is tried, and results in favour of the plaintiff, the judge may, on the application of the defendant, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party; provided that execu-

tion thereon shall not be issued without leave of the judge until after satisfaction by such defendant of the judgment against him . or O. XI. r. 3.

(c) if the original action is finally decided in favour of the plaintiff otherwise than by trial, the judge may, on application by the defendant, order such judgment as the nature of the case may require to be entered for the defendant giving the third party notice against the third party, at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him.

Provided that the judge may set aside or vary any judgment entered against the third party under this rule upon such terms as may be just. (See R. S. C., Order XVI. rr. 50, 51.)

4. Any third party, or the defendant in the action, may apply at or before the trial to the judge for directions ; and the judge, upon the hearing of the application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability as between the third party and the defendant giving the notice to be tried in such manner at or after the trial of the action as the judge may direct, and if not so satisfied may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party; or the judge may, if it appears desirable so to do, give the third party leave to defend the action upon such terms as may be just, or to appear at the trial and take such part therein as may be just, or he may order such person to be substituted for, or to be joined with, the defendant in the action, upon such terms as to security or otherwise as may be just, and generally may direct such proceedings to be taken or amendments to be made and give such directions as he may think proper for having the question most conveniently determined, and as to the mode or extent in or to which the third party shall be bound or made liable by the judgment in the action.

Application for directions.

What directions may be given.

For the practice in an application for directions, see Order XII. r. 11.

Object of Provisions.]—The object of these provisions is to enable a party primarily liable to bring in a person against whom he has a remedy over, and so bind him as to prevent him from afterwards disputing the propriety of the result of the action. But they do not enable a defendant against whom a claim is made to give notice to a third party whom he alleges to be liable instead of himself. Thus in an action for personal injuries the defendants were not allowed to bring in a third party who was alleged to have done the act complained of (*Horwell* v. *Lon. Gen. Omn. Co.* (C. A.), (1877) 2 Ex. D. 365 ; 46 L. J. Ex. 700).

O. XI. r. 4. Notes.

When available.]—If there is a *bonâ fide* claim for indemnity, leave ought to be given without then trying the question whether the case is one for indemnity (*Carshore* v. *N. E. Rail. Co.* (C. A.), (1885) 29 Ch. D. 344; 54 L. J. Ch. 760); but if it is plain that it is not a case for indemnity the leave should not be given (*Speller* v. *Bristol Co.* (C. A.), (1884) 13 Q. B. D. 96; 53 L. J. Q. B. 322); and in this case it appears to have been held that there could be no valid claim for indemnity without a contract, express or implied, between the defendant and the third party (see also *Birmingham Land Co.* v. *L. & N. W. Rail. Co.* (C. A.), (1887) 34 Ch. D. 261; 56 L. J. Ch. 956).

Costs.

5. The judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other or others, or give such direction as to costs as the justice of the case may require.

Taxation of Costs ordered to be paid by or to Third Party.]—Where an order for costs is made, any costs, fees to counsel, and allowances to witnesses reasonably incurred or paid in addition to the costs of the original action by reason of the third party being brought in, in respect of the trial of the question of the third party's liability, as in preparing for trial, may be allowed; these costs are to be taxed as if the third party were a defendant and the party to or by whom they are ordered to be paid were a plaintiff, and as if the third party notice were a summons with particulars attached (Order LIII. r. 18A).

Claim to contribution or indemnity against co-defendant.

6. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall thereupon be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party: but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action.

Provided that leave of the court shall not be required for the issue of a notice to be served on a person who is already a defendant to the action.

See *Towse* v. *Loveridge*, (1883) 25 Ch. D. 76; 53 L. J. Ch. 499; see further on the subject of contribution and indemnity, Annual Practice, notes to Order XVI. r. 55, R. S. C.

ORDER XII.

Interlocutory and Interim Orders and Proceedings.

Rule 1.

Where defence is an alleged right to be relieved of a *primâ facie* case of liability.

1. When by any contract a *primâ facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the court may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured.

O. XII. r. 2.

Order for sale of perishable articles, etc.

2. The court may, upon the application of any party to any action or matter, make any order for the sale by any person named in such order, and in such manner and on such terms as the court may think desirable, of any goods, wares, or merchandise, which may be of a perishable nature or likely to injure from keeping, or which incur charges for food or keep, or which for any other just and sufficient reason it may be desirable to have sold at once.

See *Lumb* v. *Beaumont*, (1884) 27 Ch. D. 356; 53 L. J. Ch. 1111, where an order was made to enter on land and dig for purpose of inspection.

Shares in a company may be ordered to be sold under this rule (*Evans* v. *Davies*, (1893) 2 Ch. 216; 62 L. J. Ch. 661).

Order for detention, preservation, etc.

3. The court may upon the application of any party to an action or matter, and upon such terms as may be just, make any order for the detention, preservation, inspection, surveying, measuring, or weighing of any property or thing, being the subject of such action or matter, or as to which any question may arise therein, and may for all or any of the purposes aforesaid authorise any persons to enter upon or into any land or building in the possession of any party to such action or matter, and authorise any samples to be taken, or any observation, plan, or model to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

Inspection cannot be obtained under this rule by one defendant against another when no right is in question as between them (*Shaw* v. *Smith* (C. A.), (1887) 18 Q. B. D. 193; 56 L. J. Q. B. 174).

An order cannot be made under this rule to inspect the property of several tenants in common, some of whom are not before the court (*Coomes and Son* v. *Hayward*, (1913) 1 K. B. 150; 82 L. J. K. B. 117; and see *Kearsley* v. *Phillips* (1883), 10 Q. B. D. 465; 52 L. J. Q. B. 269).

Under rules similar to the above, in an action in the High Court for breach of warranty of a horse, the court ordered the horse to be sold without reserve (*Bartholomew* v. *Freeman* (C. A.), (1877) 3 C. P. D. 316); and in an action to recover possession of jewellery, ordered it to be deposited at a master's office (*Velati* v. *Braham*, (1877) 46 L. J. C. P. 415; see Annual Practice, notes to Order L. rr. 1, 3, R. S. C.).

Order for registrar to take deposition of person ordered to weigh, inspect, etc

4. Where an order is made for inspecting, surveying, measuring, weighing, or making any experiment, or for taking any sample, or making any plan or model, by any person to be named therein, such order may include an order for the registrar or some other person to be named therein, to examine upon oath and take the deposition of the person so named, as to such measure, weight, or inspection, or the correctness of such survey, or the result of such experiment, or the fairness of such samples, or the accuracy of such plan or model, and such order may also empower any or

O. XII. r. 4.

either party to give the deposition so taken in evidence upon any trial or proceeding.

Any deposition so ordered must be taken, it is believed, in the mode prescribed by Order XVIII. r. 18.

Any of the above orders may be obtained from the judge or registrar *ex parte* or on notice (Order XII. r. 11); or possibly under a notice for directions (Order XV. r. 1).

Order for inquiries or accounts. Form 304.

5. The judge may at any stage of the proceedings in an action or matter direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought or some special issue to be tried, as to which it may be proper that the action or matter should proceed in the ordinary manner.

Accounts and Inquiries.]—An order for taking accounts or making inquiries may be obtained in all actions to which it is an appropriate remedy (*Rex* v. *Selfe*, (1908) 2 K. B. 121; 77 L. J. Q. B. 697). The general power is derived from sect. 89 of the Judicature Act, 1873, although, as equity judges, county court judges had previously the same power in equity proceedings (Besides this equitable power, the judges have express power by 51 & 52 Vict. c. 43, s. 92, to refer mere matters of account to the registrars for inquiry and report). If on taking accounts or making inquiries in any action under the 51 & 52 Vict. c. 43, s. 67, it appears that the subject-matter of the action exceeds the jurisdiction, the action will be transferred to the High Court, pursuant to sect. 68 of the Act and Order XXXIII. r. 6.

The claim to have accounts taken or inquiries made should generally be included in the particulars of demand, but the order may be made whether so claimed or not (Order XII. r. 6; Form 304).

An order for taking accounts or making inquiries may be made by the judge before the trial (Order XII. r. 6; Form 304). He may make it at any stage of the proceedings in any action or matter, notwithstanding that it may appear that there is some special or further relief sought, or some special issue to be tried, as to which it may be proper that the action or matter should proceed in the ordinary manner (Order XII. r. 5; Form 304).

The order may, as will be seen hereafter, be also made at the trial, and the judge may make such order or give such direction as he may consider necessary, to enable him to give final judgment upon a day to which the trial may be adjourned (Order XXII. r. 13).

Where a judgment or order directs any account to be taken or inquiry made, the account must be taken and inquiry made by the registrar, and he has for that purpose all the powers of a master of the Chancery Division of the High Court, and all parties have the same power of summoning witnesses, including as witnesses any parties in the action, and of examining them on the accounts or inquiries and compelling the production of documents, as they would have upon the trial of an action; and the rules as to the summoning, swearing, and examining of witnesses and the production of documents at the trial are applicable to taking accounts and prosecuting inquiries (Order XXIV. r. 1). The registrar is to issue a summons (Form 318), returnable not less than seven days from the date of the order, addressed to all parties entitled to attend, directing them to attend at his office or at the court, for the purpose of proceeding with the inquiries or accounts. In all cases in which advertisements are ordered, the return-day must not be less than twenty-one days after the date of the order, and the registrar must forthwith prepare and insert advertisements in conformity with the order, stating the time, place, and purpose of the proceedings, and insert them fourteen days previously to the day appointed (Order XXIV. r. 2). Upon

O. XII. r. 5. Notes.

the day appointed, or at any adjourned sitting, the registrar must sit at the time and place appointed, and hear all parties interested, their counsel or solicitors (Order XXIV. r. 3).

If at the hearing it appears that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for leaving the accounts in chambers, but the adjudication on the claims and accounts will not be proceeded with, nor any other proceeding taken, except for ascertaining the parties to be served, until all necessary parties have been served and are bound, or service has been dispensed with (Order XXIV. r. 4). At any time during the proceedings the judge may, if he thinks that the interests of the parties can be classified, require the parties constituting each class to be represented by the same solicitor, and in default of agreement by the parties may nominate the solicitor; any party insisting upon being represented by a different solicitor must pay his own costs and also any further costs occasioned to any of the other parties by his being so represented (Order XXIV. r. 5). Where the same solicitor is employed for two or more parties, the judge may require any party to appear separately in person or to be represented by a distinct solicitor, and may adjourn the proceedings for the purpose (Order XXIV. r. 6). Claimants not coming in to prove their claims within the time fixed by advertisement will be excluded from the benefit of the judgment or order (Order XXIV. r. 7).

In taking accounts under an order, any books of account in which the accounts required to be taken have been kept will, unless the judge otherwise directs, be taken as *primâ facie* evidence, with liberty to the parties interested to take objections (Order XXIV. r. 8). Accounts, unless otherwise directed by the court, must be verified by the affidavit of the accounting party; the items on each side of the account are to be numbered consecutively, and the account is to be made an exhibit and left at the registrar's office (Order XXIV. r. 9). Notice of an intention to surcharge must be given to the accounting party, stating shortly and succinctly the amount sought to be charged and the particulars of it (Order XXIV. r. 10). A judgment or order for a general account of personal estate must, unless the court otherwise directs, contain a direction for an inquiry as to what parts of the estate are outstanding or undisposed of (Order XXIV. r. 11). Each direction to take accounts or make inquiries must be numbered, so that, as far as possible, each account and inquiry may be designated by a number (Order XXIV. r. 12). Every advertisement for creditors or other persons having any claim upon or interest in the distribution of any assets to be administered by the court, issued pursuant to an order, must direct every such creditor or other person, within a time thereby limited, to send to the registrar his name and address, and the full particulars of his claim or interest, and a statement of his account, and the nature of the security (if any) held by him; and at the time of directing such advertisement a time must be fixed for adjudicating on the claims (Order XXIV. r. 13). The court must order in what newspaper any advertisements are to be inserted; and the expense of them must be paid to the registrar by the party requiring them before they are inserted (Order LIV. r. 9). All advertisements in the *London Gazette*, except as to proceedings under Order XXXIX. or Order XLI. r. 12, must be transmitted by the registrar for insertion to the registrar of county court judgments in London (Order LIV. r. 10). No creditor or other person need make any affidavit, or attend in support of his claim, except to produce his security, unless he is served with notice requiring him to do so (Order XXIV. r. 14). Every creditor must produce or transmit to the registrar any security held by him, at such time as is specified in the advertisement for that purpose as being the time appointed for adjudicating on the claims; and every creditor must, if required, by notice in writing given by the registrar, produce or transmit to the registrar all other deeds and documents necessary to substantiate his claim before the registrar at his office at the time specified in the notice (Order XXIV. r. 15). Every person claiming as heir-at-law,

O. XII. r. 5. Notes.

devisee, next of kin, or legatee must, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar any pedigree or proof mentioned in such notice within the time therein specified (Order XXIV. r. 16). If any creditor or other person neglects or refuses to produce any security, pedigree or proof when so required, he will not be allowed any costs of proving his claim, unless the registrar otherwise directs (Order XXIV. r. 17).

Allowance of Claims.]—At the time appointed for adjudication upon the debts or claims, the registrar must take the evidence of the executor, administrator, or other accounting party upon them, and may allow any of the debts or claims without further proof, and may direct such investigation of all or any of those not allowed, and require such further particulars, information, or evidence relating thereto as he thinks fit, and may, if he thinks fit, require any creditor or other person to attend and prove his claim, or any part thereof (Form 319); and the adjudication on such claims as are not then allowed may be adjourned to a time to be then fixed (Order XXIV. r. 18).

Application for interlocutory injunction or order.

Form 344.

Form 345.

6. Where any party desires, before the trial, an immediate order upon any of the matters following (that is to say), an order in the nature of an injunction, or for the appointment of a receiver, or for taking any accounts (whether the particulars pursuant to Order VI. Rule 2, claim such accounts, or the claim in the particulars involves taking such accounts), or for making any inquiries, he may file an application for such order, and apply to the judge, either in or out of court, upon affidavits setting forth the facts rendering such order immediately necessary; and the judge may upon such application make such order, and upon such terms, as he may think fit.

If the powers conferred by sect. 89 of the Judicature Act, 1873, are conferred on judge and registrar, this rule takes away the registrar's power to grant injunctions.

Where specific property other than land is sought to be recovered, but is claimed to be retained under lien or as security.

7. Where an action is brought to recover, or a defendant in his defence seeks, by way of counter-claim, to recover, specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the judge, upon being satisfied by affidavit or otherwise of the existence of such lien or security, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the judge may direct, and that upon such payment into court being made the property be given up to the party seeking to recover it.

Generally, as to the circumstances where a lien, in respect of work done on goods, exists, see *Cassils (Charles W.) & Co. and Sassoon & Co.* v. *Holden Wood Bleaching Co., Ltd.*, (1915) 112 L. T. 373.

The sum for which the lien is claimed must be ordered to be brought into court, even though it exceeds the value of the property (*Gebruder Naf* v. *Ploton* (C. A.), (1890) 25 Q. B. D. 13; 59 L. J. Q. B. 371). O. XII. r. 7 Notes.

The draft order must be prepared, sealed and filed as prescribed by the following rule.

8. The draft of any order applied for under any of the preceding rules of this Order shall be prepared beforehand by the party making the application, and shall be settled by the registrar. Where the application is made to and heard by the registrar, he shall sign the draft order settled by him, and shall seal and file the same, and shall issue a copy thereof under the seal of the court to the bailiff or the applicant's solicitor for service; and, where the application is made to the judge, the applicant shall present the draft order settled by the registrar to the judge for his approval, and the judge shall sign the same if he approves thereof, or shall make such alterations as he may deem necessary, and sign the draft as so altered; and the draft so signed shall be transmitted by the applicant to the registrar, who shall seal and file the same, and issue a copy thereof under the seal of the court to the bailiff or the applicant's solicitor for service. Settlement, signing, sealing, filing, and service of orders under preceding rules.

9.—(1) Where the residence or place of business of a defendant is more than twenty miles distant from the court in which the plaint is entered, he may file with the registrar an affidavit disclosing a good defence upon the merits of the action. Deposit by plaintiff may be ordered where defendant resident more than twenty miles from court shows defence on merits.

(2) The affidavit may be given or sent to the office of the registrar by hand on behalf of the defendant, or may be forwarded to the office by registered post; but in either case it shall (unless in the case of a default summons it is sent with the notice of the defendant's intention to defend the action) be sent so as to be delivered within office hours seven clear days at least before the return day of the summons.

(3) The registrar shall duly consider the facts disclosed by the affidavit, and

(*a*) if he is satisfied that the affidavit does not disclose a good defence, he shall send notice to the defendant according to the form in the Appendix; but Form 89.

(*b*) if he is satisfied that the affidavit does disclose a good defence, he shall forthwith send notice to the plaintiff by post according to the form in the Appendix, calling upon him to deposit in court within three clear days from the date of the notice such a sum as the registrar may, having reference to all the circumstances of the case, direct. Form 90.

(4) Where a deposit is ordered, then

O. XII. r. 9.

(*a*) if the deposit is duly made, the registrar shall send notice to the defendant according to the first paragraph in the form in the Appendix ;

(*b*) if the deposit is not duly made, the registrar shall send notice to the defendant according to the second paragraph of the form in the Appendix, and in that case the action shall be struck out.

Form 91.

The judge has no power to review the registrar's act, which is not an order within the meaning of Order XII. r. 11 (8) ; the registrar is there acting as a *persona designata* (*Porter* v. *London and Manchester Insurance Co.*, (1909) 2 K. B. 30 ; 78 L. J. K. B. 673).

Application for order that loss of bill shall not be set up.

45 & 46 Vict. c. 61, s. 70.

10. An application under section seventy of the Bills of Exchange Act, 1882, in an action or proceeding upon a bill, for an order that the loss of an instrument shall not be set up, may be made to the court at any time before the hearing of the action, on notice in writing in accordance with the next following rule, supported by affidavit, a copy of which shall be served with the notice. If not so made, it may, by leave of the judge, be made at the hearing. In dealing with any such application, the court shall take into consideration any offer of indemnity proved to have been made on behalf of the applicant, and may grant the application upon such terms as to payment of costs by the applicant, postponement of the trial, and otherwise, as may be just.

The offer of indemnity should be made before action, otherwise the applicant may be made to pay the costs as a term of the order under the above provisions (*King* v. *Zimmerman*, (1871) L. R. 6 C. P. 466 ; 40 L. J. C. P. 278).

The fact of the loss should be shown to be a defence in the affidavit for leave to defend (see *Charnley* v. *Grundy*, (1854) 14 C. B. 608 ; 23 L. J. C. P. 121 ; 98 R. R. 782).

If the plaintiff does not, after notice of such defence, obtain relief under the section, the loss of the instrument may be set up and the claim defeated.

Practice on interlocutory applications.

11. Where by any statute or by these rules any interlocutory application is expressly or by reasonable intendment directed to be made to the court, or to the judge, or to the judge or registrar, or to the registrar, then, subject to the provisions of the particular statute or of the particular rule applicable thereto, and so far as the same shall not be inconsistent therewith, the following provisions shall apply :—

(1) The application may be made either in or out of court, and either *ex parte* or on notice in writing ; when made on notice, the notice shall be served on the opposite party two days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

(2) No affidavit in support shall be necessary, but the judge or

registrar, as the case may be, may, if he thinks fit, adjourn the hearing of the application and order affidavits in support to be filed. O. XII. r. 11.

(3) The judge or registrar upon the hearing or adjourned hearing of the application may make an order absolute in the first instance, or to be absolute at any time to be ordered by him, unless cause be shown to the contrary, or may make such other order or give such directions as may be just.

(4) The allowance of the costs of and incident to the application shall be in the discretion of the judge or registrar; and no such costs shall be allowed on taxation without special order.

(5) The taxation of costs, when allowed, shall not take place until the general taxation of the costs of the action or matter in which the application is made, or the action or matter is determined, unless the judge or registrar on the hearing of the application for good cause otherwise orders.

(6) When an earlier taxation is ordered, the word "recovered," wherever it occurs in the scales, shall be deemed for the purposes of taxation to mean "claimed," and column B shall apply to all cases exceeding twenty pounds to the exclusion of column C.

When the application may, under the particular statute or rule, be made to the registrar, and is so made, the following additional provisions shall apply:—

(7) The registrar may, if in doubt as to the proper order to be made, refer the matter to the judge forthwith or at the next court day or at the trial.

(8) The judge may vary or rescind any order made by the registrar, and may make such order as may be just, and if necessary adjourn the trial.

General Practice.]—The general practice on interlocutory applications is governed by sect. 9 of the County Courts Act, 1888, by Order XII. r. 11, and by Order XV. Sect. 9 enables the judge, whether within his district or not, to make any order, or to exercise on an *ex parte* application any jurisdiction which, if the action or proceeding had been in the High Court, could have been exercised by a judge at chambers. This practically enables the judge to make any interlocutory order *ex parte*, and it is believed that no rule of practice can take away his power.

The practice to be followed in an *ex parte* application, whether the power of the judge or the registrar to make the order be derived from the County Courts Act, or from any other statute, or from any other rule, is now prescribed by Order XII. r. 11. The rule also supplements the practice when a statute or another rule has only partially prescribed it. In such a case, the statute and the rule or the two rules must be read together, and those parts (if any) of Order XII. r. 11, which are inconsistent with the statute

O. XII. r. 11. Notes.

or the particular rule, must give way before it. The result is that nearly every interlocutory order may be obtained *ex parte*, and that very few cases exist in which Order XII. r. 11 is so entirely inconsistent with the prescribed practice as to be inapplicable.

Orders on Notice.]—There are many cases, however, in which no judge, even though he have the power to do it, will make the order without hearing the other side; and parties have therefore the option, under Order XII. r. 11, of applying on notice to the other party. Discretion should be used; trivial and pressing matters should be dealt with *ex parte*, but where the other side ought fairly to be heard, the application should be on notice if possible.

The right of appeal to the High Court against interlocutory orders generally, for error of law, is now fully established, and appeals have been granted against some of the minor interlocutory orders made during the progress of an action (*Gilson* v. *Kilner*, (1894) 69 L. T. 310; see *Jonas* v. *Long*, (1888) 20 Q. B. D. 564; 57 L. J. Q. B. 298, as to interlocutory appeals in equity under the Act of 1865). Hence an appeal lies against an order granting a new trial (*Murtagh* v. *Barry*, (1890) 24 Q. B. D. 632; 59 L. J. Q. B. 388; *Bryant* v. *North Met. Trams Co.*, (1890) 6 T. L. R. 396; *How* v. *L. & N. W. Rail. Co.* (C. A.), (1892) 1 Q. B. 391; 61 L. J. Q. B. 368; or refusing one (*Dingor* v. *Matthews*, (1889) 65 L. T. 748, n.; *Pole* v. *Bright*, (1892) 1 Q. B. 603; 61 L. J. Q. B. 139); an order refusing to review a taxation of costs (*Wilson* v. *Statham*, (1891) 2 Q. B. 261; 60 L. J. Q. B. 725; and see *Goodman* v. *Blake*, (1887) 19 Q. B. D. 77; 56 L. J. Q. B. 441, under repealed Acts); an order refusing to order a better answer to interrogatories (*Meek* v. *Witherington*, (1892) 67 L. T. 122); and an order refusing attachment of the person (*Vallentin* v. *Woodley*, (1889) 5 T. L. R. 462). Assuming that the appeal will lie generally, it will clearly be subject to the same rules and limitations which affect appeals against final judgments. It will lie, therefore, in those actions or matters only in which an appeal could have been brought had the decision complained of been a final judgment, and doubtless on the same grounds only. Thus, in an action to recover a debt of 10*l.*, there could be no appeal against any interlocutory order made in it, without leave, and no appeal under any circumstances, in any case, except for error of law (see *Smith* v. *Baker* (H. L.), (1891) A. C. 325; 60 L. J. Q. B. 683).

There is no appeal against an order fining a person for assaulting an officer in the execution of his duty, such proceeding being of a criminal nature (*Lewis* v. *Owen*, (1894) 1 Q. B. 102; 63 L. J. Q. B. 233).

Every interlocutory application must be made to the court, or to the judge, or to the judge or registrar, or to the registrar, as provided by the particular statute or rule applicable to it; and subject to any provisions of the statute or rule inconsistent with them, the following provisions will apply to the application.

The application may be made either in or out of court, *ex parte*, or on notice in writing. If on notice, it must be served on the opposite party or his solicitor two days at least before the day of hearing, unless the judge or registrar gives leave for shorter notice.

No affidavit in support will be necessary, unless it is otherwise provided; but the hearing may be adjourned and affidavits in support ordered to be filed.

The order may be absolute in the first instance, or it may be ordered to be absolute at any time to be ordered, unless cause be shown to the contrary; or such other order may be made, or such directions given as may be just. Costs will be in the discretion of the judge or registrar, as the case may be; but no costs will be allowed on taxation without a special order, which must be obtained at the time unless the judge for good cause otherwise orders (Order LIII. r. 7).

No order need be drawn up or served unless the judge or registrar, as the case may be, so orders (Order XXIII. r. 5).

Where the application can be and is made to the registrar, he, if in doubt

as to the proper order to be made, may refer the matter to the judge forthwith, or at the next court day, or at the trial. And if the registrar makes an order, the judge may vary or rescind it, and make such order as may be just, and, if necessary, adjourn the trial. O. XII. r. 11. Notes.

The taxation of costs, when costs are allowed, may not take place until the general taxation of the costs of the action or matter, or the action or matter is determined, unless the judge or registrar, on the hearing of the application, for good cause, otherwise orders.

When an earlier taxation is ordered, the word "recovered," wherever it occurs in the scales, will be deemed, for the purpose of taxation, to mean "claimed," and column B will apply to all cases exceeding 20*l.*, to the exclusion of column C. It is believed that there is no power for either judge or registrar, on a mere interlocutory application, to certify under sect. 119 of the Act for costs on a higher scale than that applicable as above.

No counsel's fee can be allowed on any application without the order of the judge (item 91).

12. The court may at any time postpone the trial of any action or matter upon the joint application of the parties. Postponement of trial on joint application of parties.

No adjournment by the parties is operative (*Morgan* v. *Rees* (C. A.), (1881) 6 Q. B. D. 508).

13. Where in any action or matter interlocutory proceedings are contemplated or pending which cannot be concluded in time to enable the parties to prepare for the trial of such action or matter on the day fixed for the same, the court may, upon the application of any party, and upon being satisfied that such interlocutory proceedings are necessary and proper, make an order postponing such trial upon such terms as to costs or otherwise as may be just; and such order, if made in the absence of the other party, shall be served upon him. Postponement of trial pending interlocutory proceedings. Form 92.

14. Where it appears that from the course of proceedings in any action or matter the trial cannot be held on the return-day, the court may postpone the trial until such other day as the state of the proceedings may require, and notice of such postponement shall be given by the registrar to all parties and persons interested who are not present when the order is made. Postponement of trial by court. Form 93.

15. When anything required by the practice of the court to be done by either party, before or during the trial, has not been done, the court may, in its discretion, and on such terms as it shall think fit, adjourn the trial to enable such party to comply with the practice. Adjournment to enable party to comply with rules.

16. In any case not coming within the four preceding rules of this order, the court may, in its discretion, on the application of any party made on notice in accordance with Rule 11 of this Order, make an order postponing or adjourning for good cause the trial of any action or matter upon such terms, as to costs or otherwise, as may be just; and such order, if made in the absence of the other party, shall be served on him. Adjournment in other cases.

O. XII. r. 16. Note. —

Good Cause.]—The pendency in the High Court of an action involving practically the same issue as that raised in the county court action may be good cause entitling the county court judge, in the exercise of his discretion, to postpone the trial of the action in his court till after the hearing of the High Court action, even though such action may not be between the same parties (*Hammond Bros. and Champness* v. *Jackson*, (1914) 1 K. B. 241; 83 L. J. K. B. 380).

ORDER XIII.

RECEIVER.

Receiver may be appointed though not asked for.

1. Where before, at, or after the trial of any action it appears to the judge expedient that a receiver be appointed, such appointment may be made whether the same be asked as part of the relief in the plaint or not.

Forms 299, 300.

Receiver.]—County court judges, by virtue of the Judicature Acts, possess in all actions over which they have jurisdiction the same powers of appointing receivers which are possessed by the judges of the High Court (36 & 37 Vict. c. 66, s. 25 (8), and s. 89). The jurisdiction extends to the appointment of a receiver by way of execution against equitable interests in land (*Rex* v. *Selfe*, (1908) 2 K. B. 121; 77 L. J. K. B. 697). These powers enable them to make the appointment either at the trial or on an interlocutory application, and the appointment may be made whether asked for as part of the relief in the plaint or not.

It is better, however, to add a claim for a receiver, if it is a substantial object of the action (*Colebourne* v. *Colebourne*, (1876) 1 Ch. D. 690; 45 L. J. Ch. 749).

A court cannot appoint a receiver by way of equitable execution except where, by reason of the nature of the property, execution cannot be levied in the ordinary way (*Morgan* v. *Hart*, (1914) 2 K. B. 183; 83 L. J. K. B. 782).

Receiver to give security. Form 303.

2. Every receiver appointed by the judge, other than the high bailiff, shall, unless the judge otherwise orders, give such security to the registrar for the faithful discharge of his duties, and the payment over of money, as the judge shall direct.

For conditions as to security, see Form 303. But where a receiver is appointed by way of equitable execution, and the debt and costs do not exceed 50*l*., the judge may, instead of directing the receiver to give security, direct that the applicant for his appointment shall be answerable for his acts and defaults, and that the receiver shall not, without leave of the judge, receive more than the amount of the debt and costs, the allowance to the receiver, and the allowed fees and costs of obtaining the appointment of the receiver (Order XIII. r. 14 (4)).

Remuneration of receiver.

3. Every receiver appointed by the judge shall, unless otherwise ordered, be allowed a proper salary or allowance.

As to the audit of the receiver's accounts, see Rules 4, 6, 7, 8, and 9 of this order.

Audit of receiver's accounts at close of proceedings.

4. The receiver shall submit his accounts to the registrar, and the registrar shall audit the same, as soon as conveniently may be after the realisation of the assets, and immediately after such audit the receiver shall pay over to the registrar the balance found

thereby to be in his hands. The account shall be written on foolscap paper bookwise, and the items shall be numbered consecutively, and the account shall be verified by affidavit and be therein referred to as an exhibit. O. XIII. r. 4.

5. The registrar may require any receiver to produce any receipt, accounts, and vouchers necessary for verifying the account, and may disallow any item not proved to his satisfaction. Receiver to produce vouchers.

6. The receiver shall, at any time before the complete realisation of the assets, produce his accounts to be audited upon receiving seven days' notice in writing from the registrar so to do, and such notice may be sent by post or otherwise to the address of the receiver. Accounts may be ordered to be audited at any time. Form 301.

7. Where the duties of a receiver are continuous, no longer period than one year shall in any case be allowed to intervene between each audit. Interval between audits.

8. The registrar shall after each audit of a receiver's accounts make and sign a certificate stating the result of such audit. Certificate of result of audit.

9. In no case shall it be necessary for any party to attend at the audit of a receiver's account, but where a party is dissatisfied with a receiver's account he may apply to the judge for a revision of the registrar's allowances. Attendance of party not required at audit. Revision of allowances.

10. The judge may order the receiver to pay over, at such time or from time to time as he may think fit, to the party entitled to the beneficial interest therein, or to the guardian of any infant, any yearly or other accruing rents or interest, instead of paying the same into court, and to take credit for such payments in his accounts when audited. Judge may direct receiver to pay moneys received to party entitled. Form 302.

11. With respect to any receiver who neglects to submit his accounts to be audited or to pay over any balance in his hands, the judge may from time to time, when his subsequent accounts are produced to be audited, disallow the salary or allowance therein claimed by such receiver, and may also, if he thinks fit, charge him with interest at the rate of five per cent. per annum upon any balance so neglected to be paid by him during the time such balance shall appear to have remained in the hands of such receiver. Neglect of receiver.

12. In case of any receiver failing to leave any account or affidavit, or to pass any account, or to make any payment or otherwise, the receiver or the parties, or any of them, may be required to attend before the judge to show cause why such Consequence of default by receiver.

O. XIII. r. 12.

account or affidavit has not been left, or such account passed or such payment made, or any other proper proceeding taken; and thereupon the judge may give such directions and make such orders as may be proper, including directions for the discharge of any receiver and the appointment of another, and any order as to costs.

As to appointment of receiver by way of equitable execution.

13. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt and costs claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if he thinks fit, direct any inquiries on these or other matters before making the appointment.

Fees and costs on appointment of receiver by way of equitable execution.

14. Where a receiver is appointed by way of equitable execution, fees may be charged and costs may be allowed as on an interlocutory application in an equitable action or matter.

Provided that—

(1) Where the amount of debt and costs due to the applicant exceeds fifty pounds (*a*), but does not exceed one hundred pounds, the total amount to be allowed for fees and costs (exclusive of the allowance to the receiver, but including the costs of obtaining his appointment, completing his security, passing his accounts, and obtaining his discharge) shall not exceed two and a half per cent. of the amount of such debt and costs in respect of fees, or the like amount in respect of costs;

(*a*) In determining the amount of debt and costs due to the applicant for the purpose of ascertaining the proper costs, the expenses of obtaining an interim injunction to prevent the property, as to which a receiver is asked for, being parted with ought not to be included (*Carrington* v. *Deane*, (1917) 1 K. B. 717; 86 L. J. K. B. 743.

(2) Where the amount of such debt and costs exceeds twenty pounds, but does not exceed fifty pounds, the total amount to be allowed for fees and costs shall not exceed one pound five shillings in respect of fees, or the like amount in respect of costs;

(3) Where the amount of such debt and costs exceeds five pounds, but does not exceed twenty pounds, there may be allowed for fees and costs respectively such sums, not less than seven shillings and sixpence and not exceeding one pound in each case, as the judge may direct; and

(4) Where the amount of debt and costs does not exceed fifty pounds, the judge may, instead of directing the receiver to give security, direct that the applicant shall be answerable

for the acts and defaults of the receiver, and that the receiver shall not receive more than the amount of the debt and costs due to the applicant, and the allowance to the receiver and the allowed fees and costs of obtaining the order appointing the receiver, without the leave of the judge. O. XIII. r. 14.

15. The forms in the Appendix, with such modifications as may be necessary, may be used for interim or final orders for the appointment of a receiver by way of equitable execution. Forms of orders for appointment of receivers.

Forms 300A, 300B.

ORDER XIV.

AMENDMENT.

1. Where an action or matter has been commenced in the name of the wrong person as plaintiff or otherwise, or where it is doubtful whether it has been commenced in the name of the right person, the court, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff or otherwise upon such terms, as to notice and otherwise, as may be just. Change or addition of plaintiff.

A mistake of law will entitle a plaintiff to relief under this rule (*Duckett* v. *Gover*, (1877) 6 Ch. D. 82; 46 L. J. Ch. 407); but whether the mistake be of law or fact, it must be *bonâ fide* (*Clowes* v. *Hilliard*, (1877) 4 Ch. D. 413; 46 L. J. Ch. 271). Where the effect of the introduction of new plaintiffs would have been to make an entirely new case, leave to amend at the trial was refused (*New Brewery Co.* v. *Hannah* (C. A.), W. N. (1877) 35).

2. No action or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the judge may in every action or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before him. The court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties be added, whether as plaintiffs or defendants, who ought to have been joined, or whose presence before the judge may be necessary in order to enable him effectually and completely to adjudicate upon and settle all the questions involved in the action or matter. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability without his own consent in writing Action not to be defeated by misjoinder or nonjoinder of parties.

O. XIV. r. 2. Form 95.

thereto. Every person whose name is so added as defendant shall be served with a notice in manner hereinafter mentioned, and the proceedings as against such party shall be deemed to have begun only on the service of such notice.

See *Tryon* v. *National Institution*, (1886) 16 Q. B. D. 678; 55 L. J. Q. B. 236.

If the plaintiff has altogether mistaken the defendant, and sued the wrong person, or has omitted to join a material defendant, he will be in peril at the trial of being left to commence a new action; but the judge has power to amend under the above provisions, and might do so, and adjourn the trial on payment of costs (see *Hancocks* v. *Lablache*, (1878) 3 C. P. D. 197; 47 L. J. C. P. 514).

Where too few persons made plaintiffs.

3. Where it appears at the trial that a less number of persons have been made plaintiffs than by law required, the name of any omitted person may, at the instance of either party, be added, by order of the judge, on such terms as he may think fit, and thereupon the action shall proceed, in all respects, as if the proper persons had been originally made parties; and if such person, either at the trial or at some adjournment thereof, personally or by writing, consents to become a plaintiff in manner aforesaid, the judge may then pronounce judgment as if such person had originally been made a plaintiff; but if such person does not consent to become a plaintiff in manner aforesaid, either at the trial or at the adjournment thereof, the action or matter shall be struck out.

Change of defendant.

4. Where a person other than the defendant appears at the trial, and admits that he is the person whom the plaintiff intended to charge, or ought to have charged, his name may be substituted for that of the defendant, if the plaintiff consents; and thereupon the action shall proceed, in all respects, as if such person had been originally named in the summons; and the costs of the person originally named as the defendant shall be in the discretion of the court.

Where party wrongly sues or is sued in representative character.

5. Where a party sues or is sued in a representative character, but it appears that he ought to have sued or been sued in his own right, the court may, at the instance of either party, on such terms as may be just, amend the proceedings accordingly; and thereupon the action shall proceed, in all respects, as if the proper description of the party had been given in the summons.

Where party ought to have sued or been sued in representative character.

6. Where a party sues or is sued in his own right, but it appears that he ought to have sued or been sued in a representative character, the court may, at the instance of either party, on such terms as may be just, amend the proceedings accordingly; and thereupon the action shall proceed, in all respects, as if the proper description of the party had been given in the summons.

O. XIV. r. 7.

Amendment of name or description of plaintiff.

7. Where the name or description of a plaintiff in the summons is insufficient or incorrect, it may be amended at the instance of either party by order of the court, on such terms as may be just, and thereupon the action shall proceed, in all respects, as if the name or description had been originally such as it appears after the amendment has been made.

An action by a local authority, under the Contagious Diseases (Animals) Act, 1869, was brought in the name of J. M., who sued as, and was described in the summons as, "inspector appointed by the local authority," etc. The judge, at the trial, amended the summons by substituting "the local authority for," etc., as plaintiff, and this amendment was held to have been a proper amendment of the description of the plaintiff (*Mills* v. *Scott*, (1873) L. R. 8 Q. B. 496; 42 L. J. Q. B. 234).

Amendment of name or description of defendant.

8. Where the name or description of a defendant in the summons is insufficient or incorrect, it may be amended at the instance of either party by order of the court, on such terms as may be just; and thereupon the action shall proceed, in all respects, as if the name or description had been originally such as it appears after the amendment has been made; but if no objection is taken to the name or description the action may proceed, and in the judgment, and all subsequent proceedings founded thereon, the defendant may, subject to the provisions of Order XXV. Rules 7 and 25, be named and described in the same manner.

Where all defendants have not been served.

9. Where two or more persons are made defendants and some of them have not been served, the names of the defendants who have not been served may, at the instance of either party, be struck out by order of the court, on such terms as may be just; and thereupon the action shall proceed, in all respects, as if the parties whose names have not been struck out had alone been made defendants; or the action may be adjourned for service upon any defendant not served.

The right of a joint contractor to have all joint contractors joined as defendants still remains in the High Court (*Kendall* v. *Hamilton*, *per* Lord Blackburn, (1879) 4 App. Cas. 504, 544; 48 L. J. C. P. 705). As to county courts, see s. 97 of the Act of 1888.

Application to add or strike out parties.

10. Any application under any of the rules of this Order may be made before the trial to the court, or at the trial to the judge.

Notice to an added or substituted defendant.

Forms 94, 95.

11. Where a defendant is added or substituted, except where a defendant is substituted under Rule 4 of this Order, an order shall be drawn up; and such order shall be served on the defendant, together with a copy of the summons, and a notice according to the form in the Appendix as to the day upon which he is to attend at the court, according to the rules applicable to the service of the original summons in the action.

O. XIV. r. 12.

Amendment of particulars and notice of defence.

Increase of amount claimed or counter-claimed.

12. A plaintiff may file and deliver amended particulars of demand, and a defendant, whether by original action, counter-claim, or otherwise, may file and deliver an amended notice or particulars of any special defence set up or intended to be set up by him under Order X. Rule 10, at any time before the return day, without obtaining any order for the purpose; and either party may on such amended particulars increase the amount of his claim or counter-claim, as the case may be, on payment of the difference (if any) between the fees payable on the amount originally claimed and those payable on the larger amount claimed on such amendment; but the judge at the trial, if satisfied that the opposite party has not had a reasonable opportunity of preparing his case to meet any new matter introduced by such amendment, or for any sufficient cause, may disallow the amendment, or may adjourn the trial, and may make such order as to costs as he may think fit.

This does not take away the power of the judge to grant an amendment for some sufficient reason (see 51 & 52 Vict. c. 43, s. 87).

Abandonment of part of claim; amendment of particulars; costs.

13. The plaintiff may at any time before an action or matter is called on for trial, or in opening his case when called on, abandon any part of his claim, and such abandonment shall be entered on the particulars (if any), and in the minute book. Provided, that if the defendant succeeds the court may allow him costs on the scale which would have been applicable to the amount originally claimed; and in any case the court may allow the defendant any costs properly incurred by him in respect of that part of the plaintiff's claim which is abandoned.

See 51 & 52 Vict. c. 43, s. 81; 3 Edw. VII. c. 42, s. 3. The abandonment of the excess should always be entered at the end of the particulars attached to the summons (Order VI. r. 1).

The effect of the rules now in force seems to be that the excess may be abandoned at any time; by Rule 12 of this Order the plaintiff can amend his claim at any time before the return day, and now by the present rule he can, at any time before his case is called on, or in his opening, abandon any part of his claim. This alters the practice on this point laid down in *Avards* v. *Rhodes*, (1853) 8 Ex. 312; 22 L. J. Ex. 106; 91 R. R. 504, and *In re Hill*, (1855) 10 Ex. 726; 24 L. J. Ex. 137; 102 R. R. 793. It has long been held that, if the amount claimed in the particulars did not exceed 50*l.* [now 100*l.*], the plaintiff might abandon any excess which appeared on the trial (*Isaac* v. *Wyld*, (1852) 7 Ex. 163; 21 L. J. Ex. 46); *acc.* under the rule (*Bodger* v. *Nicholls*, (1873) 28 L. T. 441). A plaintiff may by amended particulars abandon any excess over 100*l.*, even after a summons for prohibition has been taken out (*Haddon* v. *Morton*, (1893) 37 S. J. 634).

On taking Accounts.]—Where upon taking an account it appears that the plaintiff is entitled to a larger amount than 100*l.*, and he has not abandoned the excess in his particulars, he may by leave of the court abandon the excess, and judgment may be thereupon entered for 100*l.*; if he does not abandon the excess the action will be struck out (Order XIV. r. 16).

Entering a plaint for a sum within the jurisdiction—part of a larger claim, the whole arising out of one cause of action—is not of itself an abandonment of the excess (*Vines* v. *Arnold*, (1851) 8 C. B. 632; 19 L. J. C. P. 98; 79 R. R. 653). O. XIV. r. 13. Notes.

The abandonment should be entered in the judgment; since, by the statute, "entry of the judgment" must "be made accordingly" (see 51 & 52 Vict. c. 43, s. 81).

14. The registrar when acting under the provisions of sections ninety and ninety-two of the Act shall have the same power as the judge has of amending the proceedings in any action or matter. Powers of registrar to amend when acting under 51 & 52 Vict. c. 43, ss. 90 and 92.

15. Where upon taking an account, or by the verdict of a jury, or otherwise, it appears that the plaintiff is entitled to recover an amount larger than that mentioned in the particulars, but not exceeding 100*l.*, he may, by leave of the court, and on payment of the difference (if any) between the fees payable on the amount so mentioned and those payable on the larger amount, amend his particulars so as to claim such larger amount, and thereupon judgment may be entered for the same. Amendment of particulars where plaintiff entitled to more than amount claimed.

16. Where upon taking an account it appears that the plaintiff is entitled to a larger amount than 100*l.*, and he has not by his particulars abandoned the excess over 100*l.*, he may, by leave of the court, abandon such excess, and thereupon judgment may be entered for 100*l.*: and if the plaintiff does not abandon such excess, the action shall be struck out. Where plaintiff in case of account found entitled to more than 100*l.*

ORDER XV.

Application for Directions.

1. In any action or matter any party may at any time apply to the court (*a*) for a postponement of the trial (if the day of trial has been fixed) and for general directions with respect to the following matters and proceedings, viz., particulars of claim or counterclaim, special defence, payment into court, discovery (including interrogatories), examination of witnesses before the trial, mode of trial and any other matter or proceeding in the action or matter previous to trial; and the court, if satisfied that from the nature of the action or matter the directions asked for, or some of them, are necessary, may make an order giving such directions as to all or any of such matters or proceedings as may be just, whether applied for or not, and may if necessary postpone the trial. The order shall be according to the form in the Appendix, with such variations as circumstances may require. Any party may apply for directions. Form 100.

Note.—(*a*) It is questionable whether all the matters mentioned in this rule can be dealt with by the registrar. See *ante*, p. 8.

O. XV. r. 2.
Notice of—application.
Form 99.

2. An application under the last preceding rule shall be made upon giving at least threeclear days' notice in writing to every party to the action or matter who may be affected thereby; such notice shall be according to the form in the Appendix, with such variations as circumstances may require, and shall include, so far as is practicable, all the above-mentioned matters and proceedings, or as many thereof as, having regard to the nature of the action or matter, can conveniently be dealt with by the order of the court.

Application for directions by any party served with notice.

3. Upon the hearing of the application any party who has been served with notice thereof may apply for any order or directions as to any of the above-mentioned matters or proceedings which he may desire; and thereupon the court may either make such order and give such directions respecting the same as may be just, or may adjourn the consideration of the same, and direct any necessary notice to be given.

Costs on application for any matter which could have been asked for in application for directions.

4. If upon any other application as to any of the above-mentioned matters or proceedings it appears to the court that the application is one that could and ought to have been included in the general application for directions, such application shall be granted only at the costs of the party making the same.

Setting down action for trial after order for directions.

5. If the trial is adjourned generally by the order giving directions, any party may apply, on giving at least three clear days' notice in writing to the other party, to have the action or matter set down for trial; or, by consent of all parties, the same may be set down at any time and for any court which the state of business, in the opinion of the registrar, may allow.

Notice of day of trial.
Form 101.

6. Whenever an action or matter is set down for trial under the last preceding rule, the registrar shall issue to the party applying to set the same down a notice according to the form in the Appendix, and as many sealed copies thereof as there are parties to be served; and such party shall serve the same upon all other parties to the action or matter eight clear days at least before the day fixed for the trial, unless otherwise ordered.

In actions under the extended jurisdiction "ten clear days" is substituted for "eight clear days" (Order XXIIA. r. 16).

ORDER XVI.

Discovery and Inspection.

Interrogatories.

1. Any party to any action or matter may, without filing an affidavit, by leave of the court deliver interrogatories in writing for the examination of any one or more of the opposite parties,

and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such parties is to answer: Provided that interrogatories which do not relate to any question in the action or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness. O. XVI. r. 1.

By the County Court Rules, the procedure with regard to interrogatories has been rendered substantially uniform with the procedure in the High Court, excepting that, in High Court actions, leave to deliver interrogatories is not required where relief is sought on the ground of fraud or breach of trust, and the deposit is 5*l*. The County Court Rules, moreover, do not provide for the setting aside or striking out of interrogatories.

In some cases a third party may interrogate the plaintiff (*Eden* v. *Weardale Co.* (C. A.), (1887) 35 Ch. D. 287; 56 L. J. Ch. 400).

The fee payable into court as security for the costs of discovery by interrogatories is twenty shillings, and two shillings for every additional folio beyond five, but the court may order either a less, or a greater sum to be deposited (Order XVI. r. 23).

2. If leave is granted, an order shall be drawn up by the registrar and served by the applicant on the party against whom the order is made. Such order shall be according to the form in the Appendix, and shall specify the number of days within which the interrogatories are to be delivered by the applicant, and also the time within which the affidavit in answer is to be filed. Order to be drawn by registrar and served. Form 102.

3. On an application for leave to deliver interrogatories the particular interrogatories proposed to be delivered shall be submitted to the court. In deciding upon such application, the court shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents relating to the subject in question, or any of them; and shall also consider whether the application has been made too early in the proceedings in the action or matter, or too late to allow of the answers being used at the hearing; and leave shall be given as to such only of the interrogatories submitted as the court considers necessary either for disposing fairly of the action or matter, or for saving costs. (R. S. C., Order XXXI. r. 2.) Particular interrogatories to be submitted. Matters to be considered.

4. In adjusting the costs of the action or matter inquiry shall, at the instance of any party, be made into the propriety of exhibiting interrogatories, and if it is the opinion of the registrar on taxation, or of the judge, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault. Costs of improper interrogatories.

O. XVI. r. 5.

Interrogatories, form of.

Form 103.

5. Interrogatories shall be according to the form in the Appendix, with such variations as circumstances may require.

Corporations and joint stock companies.

6. If any party to an action or matter be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

Objection to answer.

7. Any objection to answer any one or more of several interrogatories, on the ground that it or they is or are scandalous or irrelevant, or not *bonâ fide* for the purpose of the action or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Affidavit in answer.

Form 104.

8. Interrogatories shall be answered by affidavit according to the form in the Appendix, with such variations as circumstances may require. Such affidavit shall be filed and a copy thereof delivered to the party interrogating within the time named in the order giving leave to interrogate.

Further answer.

9. If any person interrogated omits to answer, or answers insufficiently, the party interrogating, after giving to such person two clear days' notice of the time and place at which he intends to apply, may apply to the court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or to answer further, either by affidavit or by *vivâ voce* examination before the court, as the court may direct.

Form 105.

To found an application for attachment, the order to answer, or answer further, should be drawn up and served (Order XXV. r. 58).

Discovery of documents.

10. Any party to any action or matter may, without filing any affidavit, apply to the court for an order directing any other party to the action or matter to make discovery on oath of the documents which are or have been in his possession or power relating to any question therein. On the hearing of such application the court may either refuse or adjourn the same, if satisfied that such discovery is not necessary or not necessary at that stage of the action or matter, or make such order, either generally or limited to certain classes of documents, as the court may in its discretion think fit. Provided that discovery shall not be ordered when and so far as the court is of opinion that it is not necessary either for disposing fairly of the action or matter, or for saving

costs. If an order is made it shall be drawn up by the registrar and served by the applicant on the party against whom the order is made. Such order shall be according to the form in the Appendix, and shall specify the time within which the affidavit in answer is to be filed. O. XVI. r. 10. Form 106.

Application how made.]—The application may be made by notice for directions (Order XV. rr. 1, 4), or *ex parte*, or on notice, in or out of court (Order XII. r. 11). In general the application should be made to the registrar.

Appeal.]—There was, before the Act of 1888, no appeal if the judge refused the order; but there is now (see 51 & 52 Vict. c. 43, s. 120). If refused by the registrar, application may be made to the judge pursuant to Order XII. r. 11.

Order.]—An order for discovery must be drawn up and served with a copy of the receipt for the payment into court (if ordered) of the deposit for costs mentioned below; and it must state the amount ordered to be paid into court, or that payment into court is dispensed with (Order XVI. r. 23 (2); Form 106A). It must be drawn up by the registrar (Order XXIII. r. 7). If the party obtaining it acts by solicitor, he should serve it (Order XXIII. r. 6); if not, service must be by bailiff (51 & 52 Vict. c. 43, s. 35). If the party on whom the order is made acts by solicitor, service should be made on him (Order XXIII. r. 6). Service may be made by delivery at his office, or by sending the order to him by prepaid postal letter (Order LIV. rr. 3, 20).

Service.]—Service will count on the day of such delivery, or, if sent by post, on the day on which, in the ordinary course of post, delivery would be made (Order LIV. r. 3). If such party does not act by solicitor, service when by bailiff may be by prepaid postal letter or must be personal; and if by post, it will not be necessary to prove either posting or the receipt of the order (Order XXIII. r. 7; Order LIV. r. 20). When service is by solicitor on a party who does not act by solicitor, it seems that service should be personal. Probably in case of absence or for other sufficient cause, an order for substituted service may be made (Order VII. r. 40).

Deposit for Costs.]—There must be served with the order for discovery a copy of a receipt for the sum which, upon making the application, the party applying for discovery may be ordered to pay into court (Order XVI. rr. 22, 23 (2)). The fee prescribed is twenty shillings (Order XVI. r. 23 (1)), but the court has now a discretion as to requiring security for the costs of discovery (Order XVI. r. 23 (2)). This sum will be retained in court as security for the costs of discovery; and such costs will only be allowed, where there is a trial, if the judge thinks that discovery was reasonably asked for; when there is no trial, if the registrar on taxation is of that opinion (Order XVI. rr. 22, 24). In the absence of service of a copy of the above-mentioned receipt, discovery need not be made (Order XVI. r. 23 (2)). The amount of security is ordinarily 1*l.*, but it may be more or less as the judge or registrar directs.

If the party paying in afterwards gets the costs of the action or matter, he or his solicitor will, when the action or matter is finally disposed of, be entitled to have the sum deposited paid out to him; but if the judge should think the discovery unnecessary, he may, it is conceived, order the amount to be applied in payment of the costs incurred by the opposite party in obedience to the order for discovery. If the party paying in be ordered to pay the costs of the action or matter, the amount paid in will be subject to a lien for such costs (Order XVI. r. 24). If no taxation of costs is required, the registrar must, by consent, or on being satisfied that the party who made the payment is entitled to the amount, pay it out to the party, or to his solicitor on his written authority (Order XVI. r. 24).

O. XVI. r. 10. Notes.

Costs of Discovery in Actions under 10*l.*.]—Where the amount recovered (or in the case of a defendant the amount claimed) does not exceed 10*l.*, the amount of the deposit, or so much of it as may be directed by the court, may be allowed as costs to the party against whom discovery is ordered; but no further costs of discovery will be allowed, unless the judge certifies under sect. 119 of the Act of 1888 that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons, or of general or public interest, or unless the judge, upon consideration of the facts of the particular case, makes a special order, in either of which cases costs of discovery may be allowed on the scale specified in the certificate or order (Order XVI. r. 24A).

The party on whom an order for discovery is made is, in the absence of any order dispensing with the payment, not bound to comply with the order until the payment has been made, and a copy of the receipt for the payment into court served upon him (Order XVI. r. 23 (2)).

As a general rule in actions against several, one deposit suffices (*Eder* v. *Attenborough*, (1889) 23 Q. B. D. 130; 58 L. J. Q. B. 311; *Joyce* v. *Beall*, (1891) 1 Q. B. 459; 60 L. J. Q. B. 242); but if there are several defendants who appear separately and have independent rights, it seems that a separate deposit should be made for the costs of each one against whom the order for discovery is made (*Liverpool and Manchester Bread Co.* v. *Firth*, (1891) 1 Ch. 367; 60 L. J. Ch. 153; *Joyce* v. *Beall*, *supra*). When money is paid in it must remain as security for the general costs of the action, and cannot be withdrawn, even if the order for discovery be abandoned (*Jubb* v. *Bibbs*, W. N. (1883) 208). The judge or registrar may in his discretion dispense with the deposit (*Newman* v. *L. & S. W. Rail. Co.*, (1890) 24 Q. B. D. 454; 59 L. J. Q. B. 341); but the parties by agreement cannot do so (*Aste* v. *Stumore* (C. A.), (1884) 13 Q. B. D. 326; 53 L. J. Q. B. 82).

By and against whom Order made.]—An order for discovery may be made, not only against any real party, but also against a nominal party whose name has been used as plaintiff (*Wilson* v. *Raffalovitch* (C. A.), (1881) 7 Q. B. D. 553); also against a third party who defends (*MacAllister* v. *Rochester*, (1880) 5 C. P. D. 194; 49 L. J. C. P. 443; *Eden* v. *Weardale Co.* (2) (C. A.), (1887) 35 Ch. D. 287; 56 L. J. Ch. 400). Where the action is by or against a sheriff or high bailiff or other like officer in respect of matters connected with the execution of his office, the officer actually concerned may be ordered to make the affidavit in answer (Order XVI. r. 18). Formerly an order could not be made against an infant plaintiff or defendant (*Mayor* v. *Collins*, (1890) 24 Q. B. D. 361; 59 L. J. Q. B. 199; *Curtis* v. *Mundy*, (1892) 2 Q. B. 178); nor against a next friend (*In re Corsellis*, (1883) 52 L. J. Ch. 399; *Dyke* v. *Stephens*, (1885) 30 Ch. D. 189; 55 L. J. Ch. 41; but see *Higginson* v. *Hall*, (1878) 10 Ch. D. 235; 48 L. J. Ch. 250), or guardian *ad litem* (*Ingram* v. *Little*, (1883) 11 Q. B. D. 251); but now Order XVI. as to discovery and inspection applies to infant plaintiffs and defendants and their next friends and guardians *ad litem* (Order XVI. r. 25).

When not Made.]—The order cannot be made in a penal action; as in an action for treble damages under 2 W. & M., sess. 1, c. 5, s. 4 (*Jones* v. *Jones* (4), (1889) 22 Q. B. D. 425); or for double value of goods removed under 11 Geo. II. c. 19, s. 3 (*Hobbs* v. *Hudson* (C. A.), (1890) 25 Q. B. D. 232; 59 L. J. Q. B. 562); nor can it be obtained by one defendant against a co-defendant (*Brown* v. *Watkins*, (1886) 16 Q. B. D. 125; 55 L. J. Q. B. 126).

Objection to discover documents.

11. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made shall specify which, if any, of the documents therein mentioned he objects to produce, and on what grounds and it shall be

according to the form in the Appendix, with such variations as circumstances may require. Such affidavit shall be filed and a copy thereof delivered to the party who obtains the order within the time named in the order. O. XVI. r. 11. Form 107.

It is believed that the party or his solicitor may serve the copy; but Order LIV. r. 13, apparently requires the delivery of two copies, and the original to the registrar. One of these copies is presumably intended for the opposite party.

Identification of Documents.]—The affidavit of documents should specify the documents with dates; but where they are numerous and of a particular class, such as letters, they ought to be numbered and tied up and marked and referred to as a bundle so marked and numbered (*Walker* v. *Poole*, (1882) 21 Ch. D. 835; 51 L. J. Ch. 840). All communications relevant to the matter in dispute, received in the ordinary course of business, must be disclosed (*Woolley* v. *N. L. Rail. Co.*, (1869) L. R. 4 C. P. 602; 38 L. J. C. P. 317; *Cossey* v. *L. & Br. Rail. Co.*, (1870) L. R. 5 C. P. 146; 39 L. J. C. P. 174; *Skinner* v. *G. N. Rail. Co.*, (1874) L. R. 9 Ex. 298; 43 L. J. Ex. 150). Even if privilege be claimed, the documents must be set out or identified, and the ground of privilege stated (*Gardner* v. *Irvin* (C. A.), (1879) 4 Ex. D. 49; 48 L. J. Ex. 223). Certain documents and letters which have passed "between my legal advisers and myself, numbered 50 to 76 inclusive, and tied up in a bundle marked A, and initialled by me," has been held sufficient for the purpose of identity (*Taylor* v. *Batten* (C. A.), (1878) 4 Q. B. D. 85; 48 L. J. Q. B. 72; *Budden* v. *Wilkinson* (C. A.), (1893) 2 Q. B. 432; 63 L. J. Q. B. 32).

Grounds of Privilege.]—The following are instances of privilege:—Documents which in the opinion of the proper authority cannot be disclosed without prejudice to the public interest (*Asiatic Petroleum Co., Ltd.* v. *Anglo-Persian Oil Co., Ltd.*, (1916) 85 L. J. K. B. 1075). Communications between solicitor and client of a professional and confidential character (*Gardner* v. *Irvin*, *supra*); documents prepared for the purpose of being submitted to a legal adviser relating to pending or impending litigation (*Southwark Water Co.* v. *Quick* (C. A.), (1878) 3 Q. B. D. 315; 47 L. J. Q. B. 258), or to a previous action (*Pearce* v. *Foster* (C. A.), (1885) 15 Q. B. D. 114; 54 L. J. Q. B. 432); reports procured by a solicitor for the purpose of an action (*Friend* v. *L. C. D. Rail. Co.* (C. A.), (1876) 2 Ex. D. 437; 46 L. J. Ex. 696), but it is not necessary that the affidavit should state that the information was obtained "solely" or "merely" or "primarily" for the solicitor if it was obtained for the solicitor in the sense of being procured as materials upon which professional advice should be taken in proceedings pending, or threatened, or anticipated (*Birmingham and Midland Motor Omnibus Co.* v. *London and North Western Rail. Co.*, (1914) 3 K. B. 850; 83 L. J. K. B. 474, followed in *Adam Steamship Co.* v. *London Assurance Corporation*, (1914) 3 K. B. 1256; 83 L. J. K. B. 1861); documents in the joint possession of defendant and a person not a party (*Kearsley* v. *Philips* (C. A.), (1882) 10 Q. B. D. 465; 52 L. J. Q. B. 581); title deeds of defendant in an action for the recovery of land (*New British, etc., Co.* v. *Peed*, (1878) 3 C. P. D. 196); but even title deeds must be sufficiently described and identified (*New British, etc., Co.* v. *Peed*, *supra*; *Lyell* v. *Kennedy*, (1882) 8 App. Cas. 217; 52 L. J. Ch. 385); and generally a party will be entitled to see them if they support his case (*Jenkins* v. *Bushby*, (1866) 35 L. J. Ch. 400; *Attorney-General* v. *Emerson* (C. A.), (1883) 10 Q. B. D. 191; 52 L. J. Q. B. 67).

Reports procured by a solicitor before litigation was contemplated are not privileged (*Wheeler* v. *Le Marchant* (C. A.), (1881) 17 Ch. D. 675; 44 L. T. 632); nor are the letters of a mercantile agent to his principal relating to threatened litigation (*Anderson* v. *Bk. of Columbia* (C. A.), (1876) 2 Ch. D. 644; 45 L. J. Ch. 449).

O. XVI. r. 11. Notes.

Short-hand reports of proceedings in an action in a county court made for the purpose of a High Court action relating to the same matters are not protected (*Lambert* v. *Home*, (1914) 3 K. B. 86; 83 L. J. K B. 1091).

The affidavit of documents is conclusive, and a further affidavit cannot be ordered, unless it is insufficient on the face of it (*Morris* v. *Edwards*, (1890) 15 A. C. 309; 60 L. J. Q. B. 292). If, from the affidavit, the court infers that privilege has been erroneously claimed, or that other documents exist, inspection may, it seems, be ordered (*Attorney-General* v. *Emerson* (C. A.), (1883) 10 Q. B. D. 191; 52 L. J. Q. B. 67), or interrogatories permitted (*Jones* v. *Monte Video Gas Co.* (C. A.), (1880) 5 Q. B. D. 556; 49 L. J. Q. B. 627; *Hall* v. *Truman* (C. A.), (1885) 29 Ch. D. 307; 54 L. J. Ch. 717). Moreover, if on an application under Order XVI. r. 16, the judge be satisfied that the party making the affidavit of documents has admitted the possession of some other relevant document, he may make an order for its inspection (*Wiedemann* v. *Walpole*, (1890) 24 Q. B. D. 537).

Enforcing Order for Discovery.]—Disobedience to an order for discovery is punishable by attachment, and the order must be indorsed with a notice according to Form 346 (Order XVI. r. 21; *Richards* v. *Cullerne* (C. A.), (1881) 7 Q. B. D. 623; *Martin* v. *Bannister* (C. A.), (1879) 4 Q. B. D. 491; S. C., *R.* v. *Harrington*, (1879) 48 L. J. Q. B. 677). In order to obtain an attachment it would probably be necessary that an order to answer or answer further should be obtained from the *judge*, and that it should be drawn up and served. A plaintiff is also liable to have his action stayed until the order is complied with, or to have it dismissed for want of prosecution, and a defendant is liable to be debarred from defending until compliance; an order to that effect may be made by the court (Order XVI. r. 21).

An additional power to order discovery of documents is conferred by Order XVI. r. 12.

Production of documents. Form 108.

12. The court may, at any time during the pendency of any action or matter, order the production upon oath, by any party thereto, of such of the documents in his possession or power relating to any question in such action or matter as the court may direct; and the court may deal with such documents, when produced, in such manner as may be just.

Inspection of documents referred to in particulars, notices, or affidavits. Form 109.

13. Any party to an action or matter may at any time give notice in writing to any other party in whose particulars, notices or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, and to permit him to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or matter, unless he satisfies the court that such document relates only to his own title, he being a defendant to the action or matter, or that he had some other cause or excuse which the court deems sufficient for not complying with such notice; in which case the court may allow the same to be put in evidence on such terms as to costs and otherwise as the court may think fit.

Inspection of Documents.]—The power of compelling production of documents for the purpose of inspection is now possessed by all judges of the High Court, and hence by all county court judges.

A party is entitled to inspection of all documents in the possession of his opponent, except such as are privileged; and a judge has no discretion to

refuse inspection, except on a ground of privilege raised by the affidavit in answer (*Bustros* v. *White* (C. A.), (1875) 1 Q. B. D. 423; 45 L. J. Q. B. 642; *Anderson* v. *Bk. of Columbia* (C. A.), (1876) 2 Ch. D. 644; 45 L. J. Ch. 449; see also *Webb* v. *East* (C. A.), (1879) 5 Ex. D. 108; 49 L. J. Ex. 250).

Notice to Inspect.]—Any party may at any time give notice to any other party to produce for his inspection or that of his solicitor, and to permit him to take copies of any documents referred to in such other party's particulars, notices, affidavit of documents, or other affidavits. The notice must be in writing (Order XVI. rr. 13, 14; Form 109).

By Whom and to Whom given.]—If the party wishing to give the notice acts by solicitor, the notice may (Order LIV. r. 3), and if the solicitor has given written notice that he is so acting must (Order LIV. r. 4), be given and served by him; if not, the notice may be given by such party or his *agent* (Order LIV. r. 1). The same rule applies to the party to whom notice is to be given. Service may be by delivery at his office, or by sending the notice to him by prepaid postal letter (Order LIV. rr. 3, 20). Service will count on the day of such delivery, or, if sent by post, on the day on which, in the ordinary course of post, delivery would be made (Order LIV. r. 3). If the party does not act by solicitor, service should be personal, or under order for substituted service (Order VII. r. 40), if it would be of any use.

Appointment to Inspect.]—The party to whom such notice is given must by notice (Form 110), to be served in the same manner as the original notice, appoint a time and place for inspection in the manner and within the time named in Order XVI. r. 15, or must state which, if any, of the documents he objects to produce, and on what grounds (Order XVI. r. 15).

Order on Failure to give Inspection.]—In the event of the party served failing to comply with the notice, or objecting to give inspection, or offering inspection elsewhere than at the office of his solicitor, the court may make an order for inspection in such place and in such manner as it may think fit; the order is not to be made if unnecessary either for disposing fairly of the action or matter, or for saving costs (Order XVI. r. 16; Form 108; see *Wiedemann* v. *Walpole*, (1890) 24 Q. B. D. 537). The application may be by notice for directions (Order XV. rr. 1, 4), or *ex parte*, or on notice, pursuant to Order XII. r. 11.

An affidavit will be necessary in support only when the documents of which inspection is sought are not disclosed in any particulars, notices, affidavit of documents, or other affidavits. The affidavit must then show of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. An order for inspection will not be made when and so far as the court is of opinion that it is not necessary either for disposing fairly of the action or matter or for saving costs (Order XVI. r. 16). To make the order of use for the purpose of attachment it should be drawn up and served, but without order to that effect no order need be drawn up or served (Order XXIII. r. 5). When drawn up and served the practice as to orders for discovery of documents should be followed.

Non-compliance with the notice to produce for inspection also entails another penalty, viz., that the party not complying will not be allowed to put any document included in the notice in evidence, unless he satisfy the court that it relates only to his own title, he being a defendant, or that he had some other just cause or excuse for non-compliance; in which case the court may allow the document to be put in evidence on such terms as it may think fit (Order XVI. r. 13).

Order to Produce for Inspection.]—In addition to the above provisions for inspection, it is also provided that the court may at any time order the production, on oath, by any party of documents in his possession or power relating to any question in any action or matter (Order XVI. r. 12; Form 108; see Annual Practice, notes to Order XXXI. r. 14, R. S. C.). The

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application may be by notice for directions (Order XV. rr. 1, 4), or *ex parte* or on notice, pursuant to Order XII. r. 11.

The rule apparently contemplates inspection without the giving of the formal notice already mentioned; but the method should not be resorted to without some special reason. It appears to supplement the power given by 36 & 37 Vict. c. 66, s. 66.

Service of Order.]—Any order for inspection required to be drawn up and served may be drawn up and served in the manner already mentioned for orders of discovery.

Deposit for Costs.]—When the application for inspection does not follow an order for discovery, a deposit for costs pursuant to Order XVI. rr. 23A, 24, may be ordered, except when the document of which inspection is sought is one in which both parties have a common interest, *e.g.*, the contract on which the cause of action arises (*Brown* v. *Liell*, (1885) 16 Q. B. D. 229; 55 L. J. Q. B. 73). Costs of inspection will not be allowed, unless the registrar is satisfie that there was need for it (see item 57).

Attachment for Disobedience.]—Disobedience to an order for inspection is also punishable by attachment, in the same manner as disobedience to an order for discovery (Order XVI. r. 21).

Court Rolls of Manor.]—As to inspection of the court rolls of a manor, see Order XVI. r. 17.

Bankers' Books.]—As to inspection and taking copies of entries in bankers' books, see 42 Vict. c. 11, ss. 7, 8, 10 (see, as to the effect of the Act, *Harding* v. *Williams*, (1880) 14 Ch. D. 197; 49 L. J. Ch. 661; *Howard* v. *Beall*, (1889) 23 Q. B. D. 1; 58 L. J. Q. B. 384; and as to the banking accounts of third persons, *Pollock* v. *Garle*, (1898) 1 Ch. 1; 66 L. J. Ch. 788). The application may be to the judge by notice for directions (Order XV. rr. 1, 4), or *ex parte* or on notice under 51 & 52 Vict. c. 43, s. 9, and Order XII. r. 11.

Business Books.]—Instead of ordering the inspection of business books, the court may order a copy of any entries in them to be furnished, and verified by the affidavit of a person who has examined the copy with the original entries, stating whether there are any and what erasures, interlineations, or alterations in the original; inspection may be ordered notwithstanding that this copy has been supplied (Order XVI. r. 19 (1)). Where on an application for inspection privilege is claimed, the court may inspect the document for the purpose of deciding on the claim (Order XVI. r. 19 (2)). The court may, on application made on affidavit, order the other party to state whether any specific documents are or have been in his possession or power, when he parted with them, and what has become of them; the affidavit must state the deponent's belief that the other party has, or has had, the specified documents in his possession or power and that they relate to the matters in question in the action or matter (Order XVI. r. 19 (3)). If the court is satisfied that the right to discovery or inspection depends on the determination of any issue or question in dispute in the action or matter, or that for any other reason it is desirable that any issue or question in dispute should be determined before deciding upon the right to discovery or inspection, it may make an order that the issue or question be tried first, reserving the question as to discovery or inspection (Order XVI. r. 20).

Notice under preceding rule. Form 109.

14. Notice to any party to produce any documents under the last preceding rule shall be according to the form in the Appendix, with such variations as circumstances may require.

Time within which inspection to be given.

15. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is

mentioned in Rule 11 of this Order, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business, or in case the party is not acting by a solicitor, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what grounds. Such notice shall be according to the form in the Appendix, with such variations as circumstances may require. O. XVI. r. 15. Place of inspection. Form 110.

16.—(1) If any party served with notice under Rule 13 of this Order omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than is provided by Rule 15, the court may, on the application of the party desiring it, make an order for inspection at such place and in such manner as the court may think fit: Provided that the order shall not be made when and so far as the court is of opinion that it is not necessary either for disposing fairly of the action or matter, or for saving costs. Order for inspection. Form 108.

See *Wiedemann* v. *Walpole*, (1890) 24 Q. B. D. 537.

(2) Any application to inspect documents, except such as are referred to in the particulars, notices, or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The court shall not make an order for inspection of such documents when and so far as the court is of opinion that it is not necessary either for disposing fairly of the action or matter, or for saving costs. (R. S. C., Order XXXI. r. 18.)

17. In any pending action or matter an order upon the lord of a manor to allow limited inspection of the court rolls may be made on the application of a copyhold tenant supported by an affidavit that he has applied for inspection, and that the same has been refused. Inspection of court rolls.

18. In an action against or by a sheriff or high bailiff, or other officer discharging the like functions, in respect of any matters Actions against or by sheriff or high bailiff.

O. XVI. r. 18.

connected with the execution of his office, the court may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned.

Verified copies.

19.—(1) Where inspection of any business books is applied for, the court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations. Provided that, notwithstanding that such copy has been supplied, the court may order inspection of the book from which the copy was made.

Privilege.

(2) Where on an application for an order for inspection privilege is claimed for any document, the court may inspect the document for the purpose of deciding as to the validity of the claim of privilege.

Inquiry as to present or past possession of specified documents.

(3) The court may, on the application of any party to an action or matter at any time, and whether an affidavit of documents has or has not been already ordered or made, make an order requiring any other party to state by affidavit whether any specific documents, to be specified in the application, are or have at any time been in his possession or power; and if not then in his possession, when he parted with the same, and what has become thereof. Such application shall be made on affidavit stating that in the belief of the deponent the party against whom the application is made has or has at some time had in his possession or power the documents specified in the application, and that they relate to the matters in question in the action or matter, or to some of them. (R. S. C., Order XXXI. r. 19A.)

Premature discovery.

20. If a party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, the court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action or matter, or that for any other reason it is desirable that any issue or question in dispute in the action or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection. (R. S. C., Order XXXI. r. 20.)

Non-compliance with order.

21. If any party fails to comply with an order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment.

He shall also, if a plaintiff, be liable to have his action stayed until the order is complied with, or dismissed for want of prosecution, and, if a defendant, be debarred from defending until the order is complied with; and the party applying for discovery or inspection may apply to the court for an order to that effect, and an order may be made accordingly. O. XVI. r. 21. Form 346.

Where application is made for the issue of a warrant of attachment, the provisions of Order XXV., Rules 58 to 63, shall apply.

See *Richards* v. *Cullerne* (C. A.), (1881) 7 Q. B. D. 623; *Martin* v. *Bannister* (C. A.), (1879) 4 Q. B. D. 491; S. C., *R.* v. *Harrington*, (1879) 48 L. J. Q. B. 677.

The interrogating party has the option of proceeding at once for the contempt, in the event of insufficient answers being given, or of obtaining the order for oral examination.

22. In every action or matter, the costs of discovery, by interrogatories or otherwise, shall, unless otherwise ordered by the court, be secured in the first instance as provided by Rule 23 of this Order, by the party seeking such discovery, and shall be allowed as part of his costs, where, and only where, such discovery appears to the judge at the trial, or, if there is no trial, to the registrar on taxation, to have been reasonably asked for. Security for costs.

As a general rule in actions against several, one deposit suffices (*Eder* v. *Attenborough*, (1889) 23 Q. B. D. 130; 58 L. J. Q. B. 311; *Joyce* v. *Beall*, (1891) 1 Q. B. 459; 60 L. J. Q. B. 242; but if there are several defendants who appear separately and have independent rights, it seems that a separate deposit should be made for the costs of each one against whom the order for discovery is made (*Liverpool and Manchester Bread Co.* v. *Firth*, (1891) 1 Ch. 367; 60 L. J. Ch. 153; *Joyce* v. *Beall*, *supra*). When money is paid in, it must remain as security for the general costs of the action, and cannot be withdrawn, even if the order for discovery be abandoned (*Jubb* v. *Bibbs*, (1883) W. N. 208).

The judge or registrar may in his discretion dispense with the deposit (*Newman* v. *L. & S. W. Rail. Co.*, (1890) 24 Q. B. D. 454; 59 L. J. Q. B. 341); but the parties by agreement cannot do so (*Aste* v. *Stumore* (C. A.), (1884) 13 Q. B. D. 326; 53 L. J. Q. B. 82).

By and against whom Order made.]—An order for discovery may be made not only against any real party, but also against a nominal party whose name has been used as plaintiff (*Wilson* v. *Raffalovitch* (C. A.), (1881) 7 Q. B. D. 553); also against a third party who defends (*MacAllister* v. *Rochester*, (1880) 5 C. P. D. 194; 49 L. J. C. P. 443; *Eden* v. *Weardale Co.* (2) (C. A.), (1887) 35 Ch. D. 287; 56 L. J. Ch. 400). Formerly an order could not be made against an infant plaintiff or defendant (*Mayor* v. *Collins*, (1890) 24 Q. B. D. 361; 59 L. J. Q. B. 199; *Curtis* v. *Mundy*, (1892) 2 Q. B. 178); nor against a next friend (*In re Corsellis*, (1883) 52 L. J. Ch. 399; *Dyke* v. *Stephens*, (1885) 30 Ch. D. 189; 55 L. J. Ch. 41; but see *Higginson* v. *Hall*, (1878) 10 Ch. D. 235; 48 L. J. Ch. 250), or guardian *ad litem* (*Ingram* v. *Little*, (1883) 11 Q. B. D. 251); but now Order XVI. as to discovery and inspection applies to infant plaintiffs and defendants and their next friends and guardians *ad litem* (Order XVI. r. 25).

23.—(1) Any party seeking discovery by interrogatories or otherwise may be ordered upon making application for discovery Security for costs of discovery.

O. XVI. r. 23.

Forms 102, 106.

to pay into court, in the case of interrogatories, the sum of twenty shillings, and, if the number of folios exceeds five, the further sum of two shillings for each additional folio, or in the case of discovery otherwise than by interrogatories the sum of twenty shillings, or (in either case) any less sum, or such additional sum as the court shall direct.

(2) An order for discovery shall state the amount ordered to be paid into court, or that payment into court is dispensed with; and where payment into court is ordered the party seeking discovery shall, with his interrogatories or order for discovery, serve a copy of the receipt for the payment into court, and the party from whom discovery is sought shall not be bound to answer or make discovery unless and until the said copy has been served.

See *ante*, p. 475.

Payment out of amount paid in as security.

24. Unless the court otherwise orders, the amount paid in under the last preceding rule in any action or matter shall after the action or matter has been finally disposed of be paid out to the party by whom the same was paid in, on his request, or to his solicitor on such party's written authority, except in the event of his being ordered to pay costs, in which case the amount in court shall be subject to a lien for the costs ordered to be paid to any other party. Provided, that if after the action or matter has been finally disposed of, by consent or otherwise, no taxation of costs is required, the registrar shall, by consent of the parties, or on being satisfied that the party by whom the amount was paid in is entitled thereto, pay out the same to such party, or to his solicitor on such written authority as aforesaid.

Costs of discovery in actions under 10*l.* 51 & 52 Vict. c. 43, s. 119.

24A. Where the amount recovered, or in the case of a defendant the amount claimed, does not exceed 10*l.*, the amount paid in under Rule 23 of this Order, or so much thereof as the court may direct, may be allowed as costs to the party against whom discovery is ordered, by interrogatories or otherwise; but no further costs of discovery shall be allowed, unless the judge certifies under section 119 of the Act, or by a special order of the judge made upon consideration of the facts of the particular case, in either of which cases such costs may be allowed on the scale specified in the certificate or order.

See *ante*, p. 476.

Order to apply to infants.

25. This order shall apply to infant plaintiffs and defendants and their next friends and guardians *ad litem*.

ORDER XVII.

Change of Parties.

Rule 1.

When action not to abate.

1. An action or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survives or continues, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite ;* and whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered notwithstanding the death.

Death.]—"*Actio personalis moritur cum persona.*" At common law a purely personal action dies with the person entitled to bring it, or against whom it is brought (*Gillett* v. *Firbank* (1887), 3 T. L. R. 618). In case of death, in order to ascertain whether the cause of action survives or continues, the true test appears to be: Could the executors or administrators of the deceased plaintiff or defendant have sued, or would they have been liable to have been sued if the deceased had not himself sued or been sued in his lifetime? If so, the action will not abate. The power and liability of executors and administrators to sue and be sued in actions of *assumpsit* was fully established at an early period (*Pinchon's Case*, (1612) 9 Co. Rep. 86 b, 89 a); but an action for breach of promise of marriage is, as regards all damage other than damage to property, a mere personal action, and executors and administrators can neither sue nor be sued in such an action for personal damages (*Finlay* v. *Chirney* (C. A.), (1888) 20 Q. B. D. 494; 57 L. J. Q. B. 247). There was no power to sue for the torts done to any of the property of a deceased until the 4 Edw. III. c. 7, which was followed by the 25 Edw. III. c. 5, and 31 Edw. III. c. 11.

Since those Acts, however, liberally interpreted as they have been, executors and administrators may sue for any damage to the personal property or estate of the deceased in respect of which he himself might have sued had he lived (1 Wms. Saund. 217 b; Sir W. Jones, 174; *Smith* v. *Colgay*, (1595) Cro. Eliz. 384; *Twycross* v. *Grant* (C. A.), (1879) 4 C. P. D. 40; *Bradshaw* v. *L. & Y. Rail.*, (1875) L. R. 10 C. P. 189; *Leggott* v. *G. N. Rail. Co.*, (1876) 1 Q. B. D. 599; 45 L. J. Q. B. 577); but they cannot sue for mere personal wrongs not within the above rule, *e.g.*, assault and battery, libel, slander, false imprisonment, deceit (see the notes to *Pinchon's Case*, (1612) 9 Co. Rep. 89 a; 1 Wms. Saund. 217 b; and *Phillips* v. *Homfray* (C. A.), (1883) 24 Ch. D. 439; 52 L. J. Ch. 383, *per* Bowen, L.J.). They may also sue within a year for injuries to the real estate of the deceased, provided the injury took place within six months before the death, by virtue of the 3 & 4 Will. IV. c. 42, s. 2. And by the same Act the executors or administrators of a deceased wrong-doer may be sued for injuries done by the deceased to the real or personal property of another within six months of his decease. It seems, also, that executors may be sued in certain cases where the deceased has appropriated the property of another and added it to his own estate (*Phillips* v. *Homfray, supra ; Powell* v. *Rees*, (1837) 7 A. & E. 426; 8 L. J. (N. S.) Q. B. 47; 35 R. R. 747).

As to personal injuries by negligence causing death, see Fatal Accidents Acts, 9 & 10 Vict. c. 93, 27 & 28 Vict. c. 95, and 8 Edw. VII. c. 7, but the statutes give a new cause of action.

In the cases to which the 3 & 4 Will. IV. applies, if the deceased dies more than six months after the accruing of the cause of action, the action abates,

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for the executors or administrators could not have sued or been sued in respect of that cause of action (*Kirk* v. *Todd* (C. A.), (1882) 21 Ch. D. 484; 52 L. J. Ch. 224).

Where the action would otherwise abate, an interlocutory order or judgment will not preserve it (*Phillips* v. *Homfray* (C. A.), (1883) 24 Ch. D. 439; *Smith* v. *Eyles*, (1742) 2 Atk. 385). The last clause of Order XVII. r. 1, embodying the provisions of the 17 Car. II. c. 8, s. 1, now in R. S. C., Order XVII. r. 1, will prevent abatement if a verdict be obtained before the death, although judgment may not have been delivered, even in cases in which executors or administrators could not have sued or been sued for the cause of action (*Palmer* v. *Cohen*, (1831) 2 B. & Ad. 966; *Kramer* v. *Waymark*, (1866) L. R. 1 Ex. 241; 35 L. J. Ex. 148).

Death before Return-day.]—Where the plaintiff or defendant in an action or matter dies and the cause of action survives, but the person entitled to proceed fails to do so, the defendant (or the person against whom the action or matter is continued) may apply to the court for an order directing the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; in default of such proceeding the action or matter may be struck out and costs awarded by the court as in other cases of striking out. In such case, if the plaintiff be dead, execution may issue as provided by Order XXV. r. 14 (Order XVII. r. 7).

Bankruptcy.]—The bankruptcy of the plaintiff in any action in the county court which the trustee might maintain for the benefit of the creditors does not cause the action to abate if the trustee elects to continue the action, and gives security for costs, within such reasonable time as the judge may order, but the hearing may be adjourned until such election is made. In default of such election and security, the bankruptcy may be relied on as a defence (51 & 52 Vict. c. 43, s. 94; Order XVII. r. 9); or an order to stay may be obtained if the bankrupt proceeds with it (*Warder* v. *Saunders*, (1882) 10 Q. B. D. 114). If the trustee refuses to continue the action the stay is absolute against all subsequent assignees of the cause of action (*Selig* v. *Lion*, (1891) 1 Q. B. 513; 60 L. J. Q. B. 403). When the trustee elects to continue the action, he should, it is believed, apply to be joined as plaintiff under the rules hereafter mentioned; where he has been so added (in a case commenced in the High Court, but ordered to be tried in the county court under sect. 65) before the original writ or order has been lodged with the registrar of the county court, the judge of the county court has no jurisdiction to order security for costs under sect. 94 (*Hemming* v. *Davies*, (1898) 1 Q. B. 660; 67 L. J. Q. B. 458).

The right to maintain actions for breaches of contract resulting in direct injury to the bankrupt's person or feelings does not pass to his trustee, *e.g.*, for a breach of promise of marriage (*Beckham* v. *Drake*, (1849) 2 H. L. Cas. 579; 81 R. R. 301); nor for personal wrongs, *e.g.*, libel, assault, personal injuries, etc. (*Howard* v. *Crowther*, (1841) 8 M. & W. 601; 10 L. J. Ex. 335; 58 R. R. 823). In such cases, there is no abatement, but security for costs will be ordered (*Brocklebank* v. *King's Lynn*, (1878) 3 C. P. D. 365; 47 L. J. C. P. 321).

Where bankruptcy takes place after judgment, the provisions of Order XXV. r. 14 presumably apply (see *East End Building Society* v. *Slack*, (1891) 60 L. J. Q. B. 359).

If a defendant becomes bankrupt, and the trustee continues the defence and fails, he may be ordered to pay costs personally, even if he has not been added as defendant (*London School Board* v. *Wall* (C. A.), (1891) 7 T. L. R. 566).

Marriage.]—At common law it might be pleaded in abatement that the plaintiff, or one of several plaintiffs, took husband pending the writ; *aliter* in the case of a defendant (*King* v. *Jones*, (1727) 2 Ld. Raym. 1525); but marriage after verdict or judgment did not cause an abatement (Com. Dig. "Abatement," H. 42).

The rule above mentioned preserves an action brought by a woman who marries *pendente lite* from abating, if the cause of action survives or continues. This is, it is believed, since the Married Women's Property Acts, and the decisions thereon, almost equivalent to stating that marriage *simpliciter* shall never cause abatement. Where a settlement is made in contemplation of marriage of property in respect of which an action is pending, it is not the marriage which affects the right of action, but the devolution of interest by the settlement.

Where marriage takes place after judgment the provisions of Order XXV. r. 14, *post*, p. 539, will presumably apply.

Practice Generally.]—Where by reason of any of the events above mentioned or any other event occurring after the commencement of any action or matter, there is any assignment, creation, change, transmission, or devolution of the interest, estate, or title of any plaintiff in any such action or matter before judgment, the person to or upon whom such interest, estate, or title has come or devolved may give notice thereof to the registrar (Form 115), with his name and address, together with an affidavit of the truth of the facts stated in such notice. And thereupon the registrar may adjourn the hearing to a day to be named by him, and must cause a copy of the notice to be served by post upon the defendant, and a further notice (Form 117) that unless upon the day named therein he appears and shows cause against the same, the person to or upon whom such interest, estate, or title has come or devolved will be substituted for, or made a joint plaintiff with, the plaintiff named in the original summons; unless cause is so shown, the person may be added or substituted as plaintiff (Order XVII. r. 2 (1)). Where the change of title affects more actions and matters than one, and is caused by the same event, one notice only need be given specifying in a schedule the actions and matters in respect of which the notice is given; the copy of such notice served on any defendant need only set forth the part affecting such defendant (Order XVII. r. 2 (2); Form 116). On notice to the registrar of a change in the defendant's title, accompanied by an affidavit of the truth of the facts stated, the registrar may take similar proceedings, and the successor to the interest, or liability of a defendant may be substituted or added in like manner (Order XVII. r. 3 (1)); but where the notice is given by any person other than the person proposed to be substituted or added as defendant, a copy of the summons must be affixed to the notice to be served on the proposed defendant, and the notice and summons must be served on him ten clear days at least before the hearing, and the hearing may be adjourned to enable service to be made (Order XVII. r. 3 (2)).

Adding New Parties.]—Where, in any case not provided for by Order XVII. rr. 1—3, by reason of any event occurring after the commencement of any action or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party may be obtained, before or at the trial, on application to the court, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence (Order XVII. r. 4; Form 118; see notes to Order XVII. R. S. C. in Annual Practice).

Service of Order.]—The above rule seems to supplement the practice prescribed by the preceding rules, and to provide for cases of infants born *pendente lite* (see *Peter* v. *Thomas Peter*, (1884) 26 Ch. D. 181; 53 L. J. Ch. 514). An order obtained under this rule must, unless otherwise directed, be served on the continuing parties, and also on each new party, unless the person applying be the only one, according to the rules as to the service of ordinary summonses, ten clear days at least before any further proceedings are taken; and in the case of a person not already a party, a copy of the

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summons or petition and a notice (Form 119) of the order are to be served with the order; and the order subject to Rule 6 will be binding on the persons served. Every person served, not already a party, will be bound to appear at the trial, and in the same manner as if served with a summons or petition. An order for adjournment may be made in order to give effect to the rule (Order XVII. r. 5).

Variation of Order.]—Where any person not already a party to the action or matter is served with an order on change or transmission of interest, either under Rule 4 or Rule 5 of Order XVII., he may on or before the day fixed for proceeding with the action or matter apply to the court to vary the order (Order XVII. r. 6).

Alteration of Title.]—Where a plaintiff or defendant is substituted or added under any of the above rules, the minute-book must be altered, and subsequent proceedings carried on under the altered title (Order XVII. r. 8).

Bankruptcy.]—None of the above provisions apply to cases expressly provided for by s. 94 of the County Courts Act, 1888 (51 & 52 Vict. c. 43 (Order XVII. r. 9)).

Proceedings on change of plaintiff's title before judgment.

2.—(1) Where by reason of any event occurring after the commencement of any action or matter there shall be any assignment, creation, change, transmission, or devolution of the interest, estate, or title of any plaintiff in such action or matter before judgment, the person to or upon whom such interest, estate, or title has come or devolved may give notice thereof to the registrar according to the form in the Appendix, with his name and address, together with an affidavit of the truth of the facts stated in such notice. And thereupon the registrar may adjourn the hearing to a day to be named by him, and shall cause a copy of such notice to be served by post upon the defendant in the action or matter, and a further notice that unless upon the day named therein he appears and shows cause against the same, the person to or upon whom such interest, estate, or title has come or devolved will be substituted for or made a joint plaintiff with the plaintiff named in the original summons; and unless cause is so shown such person may be added or substituted as plaintiff accordingly.

Form 115.

Form 117.

Provision for cases where change affects more actions than one.

Form 116.

(2) Where by reason of one and the same event, any person becomes entitled to give notice under the last preceding paragraph in more actions or matters than one, such person may give one notice only in respect of all or any of such actions or matters, specifying in a schedule to such notice all the actions or matters in respect of which such notice is given; and in serving a copy of such notice on any defendant in any such action or matter, it shall be sufficient to set forth such part only of such notice as affects such defendant, without setting forth the rest of such notice.

Proceedings on change of defendant's title.

3.—(1) Where by reason of any event occurring after the commencement of any action or matter there shall be any assignment, creation, change, transmission, or devolution of the liability,

interest, estate, or title of any defendant in such action or matter before judgment, the plaintiff or the defendant or the person to or upon whom such liability, interest, estate, or title has come or devolved may in like manner give notice thereof to the registrar, in accordance with the last preceding rule, together with an affidavit of the truth of the facts stated in such notice; and the registrar shall take proceedings thereon similar to those prescribed by the last preceding rule; and a defendant may be substituted or added, as the case may be, in manner similar to that provided in such rule for the substitution or addition of a plaintiff. O. XVII. r. 3.

(2) Where the notice mentioned in the last preceding paragraph is given by any person other than the person proposed to be substituted or added as a defendant, a copy of the summons in the action shall be annexed to the notice to be served on the person proposed to be substituted or added as a defendant, and such notice and summons shall be served on such person, according to the rules applicable to the service of the original summons in the action, ten clear days at least before the day fixed for the hearing, and the hearing shall be adjourned for such time as may be necessary to enable such notice and summons to be so served.

Change or transmission of interest.

4. Where, in any case not provided for by the preceding rules of this Order, it becomes necessary or desirable, by reason of any event occurring after the commencement of any action or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of any action or matter, that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party may be obtained, before or at the trial, on application to the court, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence. Form 118.

See *Peter* v. *Thomas Peter*, (1884) 26 Ch. D. 181; 53 L. J. Ch. 514.

Service of order on change or transmission of interest.

5. An order obtained as in the last preceding rule mentioned shall, unless the court otherwise directs, be served upon the continuing parties, and also upon each new party, unless the person making the application be himself the only new party, according to the rules as to service of ordinary summonses, ten clear days at least before any further proceedings are taken in the action or matter; and in the case of a person who is not already a party, a copy of the summons or petition in the action or matter, and a

O. XVII. r. 5. Form 119.

notice according to the form in the Appendix shall be annexed to the order and served therewith. The order shall from the time of such service, subject nevertheless to the next following rule, be binding on the persons served therewith; and every person served therewith who is not already a party to the action or matter shall be bound to appear in the same manner as if he had been served with a summons or petition. Such order for adjournment shall be made as shall be necessary to give effect to this rule.

Application to discharge or vary order by person not already a party.

6. Where any person not already a party to the action or matter is served with such order as is mentioned in the two last preceding rules, such person may on or before the day fixed for proceeding with the action or matter apply to the court to discharge or vary such order.

Where person entitled to proceed on death of plaintiff or defendant fails to do so.

7. When the plaintiff or defendant in an action or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the action or matter may be continued) may apply to the court for an order directing the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding the action or matter may be struck out, and the court may award costs to the defendant or (as the case may be) to the person against whom the action or matter might have been continued, in the same manner as in other cases of striking out; and in such case, if the plaintiff has died, execution may issue for such costs as provided by Order XXV. Rule 14. (R. S. C., Order XVII. r. 8.)

Alteration of records on change of parties.

8. Where a plaintiff or a defendant is substituted or added under any of the rules of this Order, the minute book shall be altered, and all subsequent proceedings shall be carried on under the altered title.

Saving. 51 & 52 Vict. c. 43, s. 94.

9. This Order shall not apply to any case expressly provided for by section ninety-four of the Act.

ORDER XVIII.

Evidence.

Evidence be taken orally.

1. Except where otherwise provided by these rules, the evidence of witnesses on the trial of any action or hearing of any matter shall be taken orally on oath; and where by these rules evidence is required or permitted to be taken by affidavit such

evidence shall nevertheless be taken orally on oath if the court, on any application before or at the trial or hearing, so directs. O. XVIII. r. 1.

The judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any particular witness may be read at the trial or hearing, on such conditions as he thinks reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with be examined by interrogatories or otherwise before an examiner; where, however, it appears to the judge that the other party *bonâ fide* desires the production of a witness for cross-examination, an order authorising his evidence to be given by affidavit is not to be made (Order XVIII. r. 2). The term affidavit, when used in the rules, includes statutory declarations, affirmations and attestations upon honour (Order LV.). Where a party desires to use at the trial an affidavit by any particular witness, or an affidavit as to particular facts, as to which no order has been made by the judge under Order XVIII. r. 2, he may, not less than four clear days (in actions under the extended jurisdiction eight clear days) before the trial, give notice, with a copy of the affidavit annexed, to the party against whom it is to be used; and unless he within two clear days (in actions under the extended jurisdiction four clear days) at least before the trial gives notice that he objects, he will be taken to have consented to its use, unless the judge otherwise orders; and the judge may make such order as to costs incident to the objection as he thinks fit (Order XVIII. r. 11; Order XXIIA. r. 18). Affidavits and depositions are read as the evidence of the person by whom they are used (Order XVIII. r. 17).

When the affidavit is in answer to interrogatories, one or more of the answers, or any part of an answer, may be used without the remainder; but the judge may look at the whole and may direct other answers to be put in, if of opinion that they are so connected with them that they ought not to be used without them (Order XVIII. r. 16).

Affidavits may be sworn before any judge or registrar, or any registrar's clerk nominated by the judge, without fee, or before a commissioner to administer oaths in the Supreme Court or the Court of Chancery of the County Palatine of Lancaster (not being a registrar), or before a magistrate (51 & 52 Vict. c. 43, s. 83; 36 & 37 Vict. c. 66, ss. 76, 82; 53 & 54 Vict. c. 7, s. 1).

Affidavits must be expressed in the first person, and drawn up in paragraphs and numbered (Order XIX. r. 1; for heading, see Form 3). All affidavits other than those for which forms are given must state the deponent's occupation, quality, and place of residence, and also what facts or circumstances deposed to are within his own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, and what those sources are (Order XIX. r. 2). The costs of an affidavit which unnecessarily sets forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, are to be paid by the party filing it (Order XIX. r. 2). Every affidavit must be intituled in the action or matter in which it is sworn; but if there are more plaintiffs or defendants than one the full name of the first only must be given, with a statement that there are others (Order XIX. r. 3). It must be stated in a note at the foot on whose behalf it is filed, and that note must appear in all copies (Order XIX. r. 4). The costs of affidavits not in conformity with the preceding rules will be disallowed on taxation, unless the court otherwise directs (Order XIX. r. 5). In an affidavit made by two or more deponents, the names of the several deponents are to be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it will be sufficient to state that it was sworn by both (or all) of the "above-named" deponents (Order XIX. r. 6).

All affidavits must be delivered to the registrar, and must be filed by him before use, and it is his duty to distinguish them by the number of the plaint

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in respect of which they are filed, and from each other, by a distinctive letter of the alphabet (Order XIX. r. 7; Order II. r. 3). He is entitled to require also the delivery of copies to him pursuant to Order LIV. r. 13.

The rule as to filing does not hinder a judge from making an order in an urgent case upon the undertaking of the applicant to file an affidavit already sworn, provided that the order be not issued until the affidavit has been filed (Order XIX. r. 7).

An affidavit will not be filed which has been sworn before a commissioner who was at the time of the swearing of the same the solicitor acting for the party on whose behalf such affidavit is to be used, or the agent, correspondent, partner, or clerk of such solicitor, or who is the party himself (Order XIX. r. 8).

No affidavit which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, or in the body or jurat of which there is any interlineation, alteration, or erasure, unless the person before whom it is sworn has initialled the interlineation or alteration, and in case of an erasure, shall have re-written and signed in the margin the words or figures appearing to be written on the erasure, or which is so imperfect upon the face by reason of blanks or otherwise that it cannot easily be read or understood, is to be filed or used, unless the court otherwise orders (Order XIX. r. 9).

Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer must certify in the jurat that the affidavit was read in his presence to the deponent, and that the deponent made his signature in the presence of the officer. No such affidavit can be used in evidence in the absence of this certificate, unless the court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent (Order XIX. r. 10).

The court may receive an affidavit sworn for the purpose of being used in any action or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in its form, and may direct a memorandum of its reception to be made upon it (Order XIX. r. 11).

Where a registrar rejects an affidavit, he must give notice (Form 133), by post or otherwise, to the party offering it for filing, of the rejection and the reasons, but no such notice is necessary if the party offering the same is present when the registrar rejects the affidavit (Order XIX. r. 14).

The above rules apply to all cases in which any evidence may be given, or matter proved, by affidavit; but, even in cases in which evidence is required or permitted to be taken by affidavit, such evidence may be taken orally on oath, if the judge or registrar shall, at or before the trial, so direct (Order XVIII. r. 1).

On taxation of costs instructions for special affidavits will not be allowed, unless in the opinion of the registrar the facts on which they were grounded had not become known to the solicitor or his clerks in the course of the business (item 23).

Affidavits of service, when required, must state when, where, how, and by whom service was effected (Order XIX. r. 12).

Witnesses.]—The attendance of witnesses for the purpose of giving evidence orally on oath is enforced by means of summonses, to be served either in the home or in any foreign district; they may be issued without leave, and are then served by bailiff. They may, also, by leave of the court, be issued in blank and served by the party applying for the same or some person in his permanent and exclusive employ or by his solicitor, or a solicitor acting as agent for such solicitor, or by some person in the employ of either of them, or some person employed by either of them to serve such summonses who might be so employed to serve a summons in an action in the High Court. In no case may more than one name be placed on any summons (51 & 52 Vict. c. 43, s. 110; Order XVIII. r. 3; Forms 123, 124,

24A). A summons to a witness may be issued by post. The plaintiff or his solicitor must transmit to the registrar (*a*) the plaint note, or summons, or a duplicate; (*b*) a request for the issue of summonses to witnesses, and (where the service is to be by bailiff) their names and addresses, or (if service is not to be by bailiff) a request to serve them in accordance with Order XVIII. r. 3; (*c*) a money order for the fees, and (where service is to be by bailiff) the amount to be tendered to each witness for expenses; (*d*) a stamped addressed envelope (Order XVIII. r. 3A). It is sufficient if a summons to a witness is served within a reasonable time; it may be served by delivering it to the witness personally, or to some person apparently not less than sixteen years old at the house or place of dwelling or place of business of the witness, or in the cases mentioned in Order VII. rr. 18, 19, 21, and 22, in the manner prescribed by those rules for the service of an ordinary summons (Order XVIII. r. 4; for affidavit of service, see Form 125). For the purposes of this rule a place of business is not deemed to be the place of business of a witness unless he is the master or one of the masters of it (Order XVIII. r. 4). The parties themselves and their wives are competent witnesses (14 & 15 Vict. c. 99, s. 2).

The summons may be issued with or without a clause requiring the production of books, deeds, papers, and writings, in the possession or control of the person summoned as a witness (51 & 52 Vict. c. 43, s. 110; Form 124).

Where a witness served with a summons containing such a clause does not produce the documents at the trial, the judge may, upon admission or proof that the summons was served within a reasonable time, and that such documents are in the possession or power or under the control of the witness, and that they relate to the matter then pending, make an order for their production by the witness, and may deal with them, when produced, and with all costs occasioned by their non-production, as may be just. This rule does not affect the rules as to the admission of secondary evidence of such documents (Order XVIII. r. 3; Form 126).

If a witness who is duly summoned, and to whom at the same time payment or a tender of payment of his "expenses" has been made according to the prescribed scale, refuses or neglects, without sufficient cause, to appear, or to produce any books and papers, or writings, required by the summons to be produced, or to be sworn, or give evidence, or if a person in court, who is required to give evidence, refuses to be sworn and give evidence, he is liable to forfeit and pay such fine, not exceeding 10*l.*, as the judge may direct. The whole or part of this fine, in the discretion of the judge, after deducting the costs, is applicable towards indemnifying the party injured by the refusal or neglect of the witness; the remainder is to be accounted for by the registrar to the treasurer (51 & 52 Vict. c. 43, s. 111; Order LII. r. 7; Form 126).

Expenses.]—Judges differ as to the meaning of "expenses"; some hold "expenses" to include an allowance according to scale for loss of time, others that "expenses" simply means travelling expenses, and that allowance for loss of time must be claimed in court before being sworn. The latter seems the better course, as a litigant could not reasonably be expected to determine what the allowance should be.

A fine on a witness for non-attendance may be remitted on cause shown. The practice is, under Order LII. r. 6, the same as in the case of a juror (Order LII. r. 7A). A judgment summons is to be deemed a summons to a witness for the purposes of the section (s. 111) of the Act (Order XXV. r. 31 (3)), but where a fine is inflicted on a judgment debtor for refusing or neglecting without reasonable cause to appear at the hearing of a judgment summons, the judge has no jurisdiction to apply the fine in reduction of the judgment debt, but only thereout to recoup the judgment creditor for any expense occasioned to him by the non-attendance (*Rex* v. *Snagge*, (1909) 1 K. B. 644; 78 L. J. K. B. 562). The payment of the fine may be enforced on the order of the judge as a summary judgment, or as money

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adjudged to be paid under the Summary Jurisdiction Acts (51 & 52 Vict. c. 43, s. 167; see *post*, pp. 866—868: Forms, Warrant of Execution against Goods, 127; Commitment in Default of Distress, 128: Commitment in Lieu of Distress, 129).

Power to order particular facts to be proved by affidavit, or witnesses to be examined before examiner.

2. The judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the trial or hearing, on such conditions as he may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with be examined by interrogatories or otherwise before an examiner; provided that, where it appears to the judge that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit. (R. S. C., Order XXXVII. r. 1.)

Where a party desires to use at the trial an affidavit by any particular witness, or an affidavit as to particular facts, as to which no order has been made by the judge under Order XVIII. r. 2, he may, not less than four clear days (in actions under the extended jurisdiction eight clear days) before the trial, give notice, with a copy of the affidavit annexed, to the party against whom it is to be used; and unless he within two clear days (in actions under the extended jurisdiction four clear days) at least before the trial gives notice that he objects, he will be taken to have consented to its use, unless the judge otherwise orders; and the judge may make such order as to costs incident to the objection as he thinks fit (Order XVIII. r. 11; Order XXIIA. r. 18). Affidavits and depositions are read as the evidence of the person by whom they are used (Order XVIII. r. 17).

When the affidavit is in answer to interrogatories, one or more of the answers, or any part of an answer, may be used without the remainder; but the judge may look at the whole and may direct other answers to be put in, if of opinion that they are so connected with them that they ought not to be used without them (Order XVIII. r. 16).

Affidavits may be sworn before any judge or registrar, or any registrar's clerk nominated by the judge, without fee, or before a commissioner to administer oaths in the Supreme Court or the Court of Chancery of the County Palatine of Lancaster (not being a registrar), or before a magistrate (51 & 52 Vict. c. 43, s. 83; 36 & 37 Vict. c. 66, ss. 76, 82; 53 & 54 Vict. c. 7, s. 1).

Summonses to witnesses and service.

3.—(1) Summonses to witnesses, to be served either in the home or in any foreign district, may be issued without leave, and may also, by leave of the court, be issued in blank.

(2) Summonses to witnesses may be served—

(*a*) by a bailiff of a court;

or, when so requested on the issue of the summonses,

(*b*) by the party applying for the same, or some person in his permanent and exclusive employ; or

(*c*) by the solicitor of the party applying for the same, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve the summonses who might

be so employed to serve a summons in an action in the High Court. O. XVIII. r. 3.

(3) In any case only one name shall be inserted in any such summons.

(4) Summonses to witnesses shall be according to the forms in the Appendix, and, where served by a bailiff, shall be indorsed according to the form in the Appendix. Forms 123, 124, 124A.

(5) Affidavits of service of summonses served otherwise than by a bailiff shall be according to the form in the Appendix. Form 125.

3A. A party to an action or his solicitor may, instead of attending at the office of the court, transmit, by prepaid post, to the registrar— Issue of summonses by letter.

(*a*) The plaint note or summons issued in the action, or a duplicate thereof:

(*b*) A request for the issue of summonses to witnesses, with, where the summonses are to be served by a bailiff, the names and addresses of the witnesses to be served, or if the summonses are to be served otherwise than by a bailiff, a request for leave to serve the same in accordance with the last preceding rule:

(*c*) A money order for the fees payable upon the issue of summonses to witnesses, and, where the summonses are to be served by a bailiff, the amount which the party requesting the issue of the summonses desires to be paid or tendered to each of the witnesses for his expenses, payable to the registrar at the post office of the town or place at which the court is held:

(*d*) An envelope addressed to himself, with a penny postage stamp thereon;

And upon receipt of the above the registrar shall issue the summonses, and shall forward in the addressed envelope—

(i.) If the summonses are to be served by a bailiff, the plaint note or summons or duplicate, with a note thereon that the summonses have been issued; or

(ii.) If the summonses are to be served otherwise than by a bailiff, the plaint note or summons or duplicate, and the summonses to witnesses for service.

4. It shall be sufficient if a summons to a witness is served within a reasonable time; and such summons may be served by delivering the same to the witness personally, or to some person apparently not less than sixteen years old at the house or place of dwelling or place of business of the witness, or in the cases mentioned in Rules 18, 19, 21, and 22 of Order VII. in the manner prescribed by those rules for the service of an ordinary summons. Time and mode of service.

O. XVIII. r. 4. Provided that for the purposes of this rule a place of business shall not be deemed to be the place of business of a witness unless he is the master or one of the masters thereof.

When witness does not produce documents, order for production may be made.

5. Where a witness served with a summons containing a direction for the production of any documents at the trial does not produce the same, the judge may, upon admission or proof that the summons was served within a reasonable time, and that such documents are in the possession or power or under the control of the party so served, and that they relate to the matter then pending before him, make an order for their production by the witness, and may deal with them, when produced, and with all costs occasioned by their non-production, as may be just: Provided that nothing herein shall prevent the receiving of secondary evidence where admissible.

Admission of documents.

6. Where a party desires to give in evidence any document, he may, not less than five clear days before the trial, give notice to any other party in the action or matter who is competent to make admissions requiring him to inspect and admit such document; and if such other party does not within three days after receiving such notice make such admission, any expense of proving the same at the trial shall be paid by him, whatever may be the result, unless the court otherwise orders; and no costs of proving any document shall be allowed unless such notice has been given, except in cases where, in the opinion of the judge at the trial, or of the registrar on taxation, the omission to give such notice has been a saving of expense.

Form 111.

In actions under the extended jurisdiction "ten clear days" and "five days" are substituted for "five clear days" and "three days" respectively (Order XXIIA. r. 17).

An affidavit by the party, his solicitor, or of some person in the permanent and exclusive employ of either of them, of service of the notice, and of the time when it was served, with a copy of the notice, will in all cases be sufficient evidence of service, and of the time of service (Order XVIII. r. 7).

If a notice to admit comprises documents which are not necessary, the costs occasioned thereby must be borne by the party giving the notice (Order XVIII. r. 8).

Notice to admit or produce. Forms 111, 112.

7. Notices to admit or to produce documents shall be according to the forms in the Appendix, with such variations as circumstances may require.

An affidavit of the party, or his solicitor, or of some person in the permanent and exclusive employ of either of them, of the service of any notice to admit or to produce, and of the time when it was served, with a copy of the notice to admit or to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

O. XVIII. r. 8.

Costs of notice to admit or produce.

8. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

Documents produced from proper custody to be read without proof unless objected to.

9. Where any documents which would, if duly proved, be admissible in evidence are produced to the court from proper custody, they shall be read without further proof, if, in the opinion of the court, they appear genuine, and if no objection is taken thereto; and if the admission of any documents so produced is objected to, the court may adjourn the hearing for the proof of the documents, and the party objecting shall pay the costs caused by such objection, in case the documents shall afterwards be proved, unless the court otherwise orders.

An unstamped or insufficiently stamped instrument to be given in evidence only where receipt of registrar for unpaid duty and penalty is produced.

10. Where an instrument which may be legally stamped after its execution is produced as evidence, and the same is unstamped or insufficiently stamped, it shall not be received in evidence until the party desirous of giving the instrument in evidence produces to the court the receipt of the registrar for the amount of the unpaid duty, and the penalty payable by law on stamping the same, and the sum of one pound.

It should be noted that this rule only applies where the document is one which may be legally stamped after execution.

No appeal lies from the ruling of a county court judge holding that the stamp on a document is sufficient (*Mander* v. *Ridgway*, (1898) 1 Q. B. 501; 67 L. J. Q. B. 335); nor from the admission of an unstamped document without exacting a penalty (*Lowe* v. *Dorling*, (1905) 2 K. B. 501; 74 L. J. K. B. 794; (C. A.), (1906) 2 K. B. 772; 75 L. J. K. B. 1019).

Where it is desired to use an affidavit, notice may be given. Costs of objection.

11. Where a party desires to use at the trial an affidavit by any particular witness, or an affidavit as to particular facts as to which no order has been made under Rule 2 of this Order, he may, not less than four clear days before the trial, give a notice, with a copy of such affidavit annexed, to the party against whom such affidavit is to be used; and unless such last-mentioned party shall two clear days at least before the trial give notice to the other party that he objects to the use of such affidavit, he shall be taken to have consented to the use thereof, unless the judge otherwise orders; and the judge may make such order as he may think fit as to the costs of or incidental to any such objection.

In actions under the extended jurisdiction, "eight clear days" and "four clear days" are substituted for "four clear days" and "two clear days" respectively (Order XXIIA. r. 18).

Use of evidence taken at trial in subsequent proceedings.

12. All evidence taken at the trial of any action or matter may be used in any subsequent proceedings in the same action or matter.

Prior to the rules of 1904, the operation of this rule was confined to documentary evidence only.

O. XVIII. r. 13.

Evidence taken after trial.

13. Evidence taken subsequently to the trial or hearing of any action or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial or hearing. (R. S. C., Order XXXVII. r. 21.)

Practice as to taking evidence at any stage of action or matter.

14. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any action or matter at any stage. (R. S. C., Order XXXVII. r. 22.)

Special directions as to taking evidence after trial.

15. The practice of the court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the court or other person in any action or matter after the trial or hearing, shall be subject to any special directions which may be given in any case. (R. S. C., Order XXXVII. r. 23.)

Use of answer to interrogatories at trial.

16. Any party may, at the trial of an action or matter, use in evidence any one or more of the answers, or any part of an answer, of the opposite party to interrogatories, without putting in the others, or the whole of such answer: Provided that in such case the judge may look at the whole of the answers, and if he is of opinion that any others of them are so connected with those put in that the last mentioned answers ought not to be used without them, he may direct them to be put in. (R. S. C., Order XXXI. r. 24.)

Affidavits, evidence of person using them.

17. Affidavits and depositions shall be read as the evidence of the person by whom they are used.

Examinations.

Examination of witnesses before trial.

Form 132.

18. The court may, in any action or matter where it appears necessary for the purposes of justice, make an order for the examination upon oath before the court or any officer of the court, or any other person and at any place in England or Wales, of any witness or person, and may empower any party to any such action or matter to give such deposition in evidence therein on such terms, if any, as the court may direct.

Oral Examinations.]—Judges of county courts have power in certain cases to order the examination of witnesses out of court, and that their depositions may be given in evidence instead of their attending the trial. Under the 36 & 37 Vict. c. 66, s. 89, they appear to have the same power in this respect as a judge of the High Court, and the rules substantially adopt the High Court procedure.

The grounds upon which these examinations can be ordered appear to be —that a witness is upwards of seventy years old, or is dangerously ill, or about to go abroad, or is the only person who can prove a fact of great importance (see *Warner* v. *Mosses* (C. A.), (1881) 16 Ch. D. 100; 50 L. J. Ch. 28; Story, Equity Jurisprudence, sects. 1513, 1514). But the fact of being over seventy, although sufficient to raise a *primâ facie* case, is not conclusive;

and where a number of witnesses to the same fact were just over seventy, the order was refused (*Bidder* v. *Bridges* (C. A.), (1885) 29 Ch. D. 29; 53 L. J. Ch. 479; Annual Practice, R. S. C., Order XXXVII. r. 5, and notes thereon). O. XVIII. r. 18. Notes.

Except where otherwise directed by the judge, no deposition may be given in evidence at the trial without the consent of the opposite party, unless the judge is satisfied that the deponent is dead, or out of England and Wales, or unable from sickness or other infirmity to attend (Order XVIII. r. 31).

19. Where any witness or person mentioned in the last preceding rule resides out of the district of the court, the judge may appoint the registrar of the court in the district of which such witness or person resides to take the examination. When registrar of foreign court may be appointed examiner.

It is extremely doubtful whether a judge could compel an examination to be made before any judge but himself, or any officer (except the registrar) of any other court than his own.

20. The court may in any action or matter, at any stage of the proceedings, order the attendance of any person for the purpose of being examined or of producing to or before any examiner any writings or other documents which the court may think fit to be produced, and any person served with any such order shall be bound to attend accordingly: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the trial. Any such order may be served in accordance with the provisions of section one hundred and eleven of the Act, and Rules 3 and 4 of this Order, with respect to the service of summonses to witnesses. Order for attendance of persons to be examined or produce documents. Form 132. Service of order.

21. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document to or before an examiner shall be deemed guilty of contempt of court, and may be dealt with accordingly. Disobedience to order for such attendance.

It seems doubtful whether the remedy is by fine or attachment.

22. Any person required to attend before an examiner for the purpose of being examined or of producing any document shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in court. Expenses of persons attending before examiner.

23. Where any witness or person is ordered to be examined before any officer of a county court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the summons and particulars and of the defence (if any), and with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties. Examiner to be furnished with certain documents.

The examiner has power to administer oaths, whether he be an officer of the court or not (Order XVIII. r. 32).

O. XVIII. r. 24.

Who entitled to be present on examination.

24. The examination shall take place in the presence of the parties, or their counsel or solicitors, or the agents of such solicitors, and the witnesses shall be subject to cross-examination and re-examination.

Depositions, how taken.

25. The depositions taken before an officer of a county court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner not ordinarily by question and answer, but so as to represent as nearly as may be the statements of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there appears to be any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which are objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question.

Failure to comply with summons, or refusal to be sworn or answer.

26. If any person duly summoned to attend for examination or to produce any document refuses to attend, or, if having attended, he refuses to be sworn or to answer any lawful question or to produce any document, a certificate of such refusal, signed by the examiner, shall be filed with the registrar, and thereupon the party requiring the attendance of the witness may apply to the judge for an order directing the witness to attend, or to be sworn, or to answer any question, or to produce such document, as the case may be.

Objection to answer.

27. If any witness objects to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the registrar to be filed, and the validity of the objection shall be decided by the judge.

Witness may be ordered to pay costs.

28. In any case under the two last preceding rules, the judge may order the witness to pay any costs occasioned by his refusal or objection.

Filing of depositions.

29. When the examination of any witness before any examiner has been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the registrar to be filed.

30. The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the court touching such examination and the conduct or absence of any witness or other person thereon; and the judge may direct such proceedings and make such order as upon the report he may think just. O. XVIII. r. 30. Special report by examiner.

31. Except where otherwise provided by this order, or directed by the judge, no deposition shall be given in evidence at the trial of the action or matter without the consent of the party against whom the same may be offered, unless the judge is satisfied that the deponent is dead, or out of England and Wales, or unable from sickness or other infirmity to attend the trial, in any of which cases the depositions certified under the hand of the examiner shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate. When depositions may be given in evidence.

32. Any officer of the court, or other person directed to take the examination of any witness or person, may administer oaths. Power to administer oaths.

ORDER XIX.

Affidavits.

1. All affidavits shall be expressed in the first person, and shall be drawn up in paragraphs and numbered. Affidavits to be expressed in the first person.

For heading, see Form 3.

2. All affidavits, other than those for which forms are given in the Appendix, shall state the deponent's occupation, quality, and place of residence, and also what facts or circumstances deposed to are within the deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, and what such sources are. Sources of knowledge to be stated.

The costs of every affidavit which unnecessarily sets forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same. (R. S. C., Order XXXVIII. r. 3.)

3. Every affidavit shall be intituled in the action or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the registrar on taxation. Affidavits, how to be intituled.

O. XIX. r. 4.

Affidavits to show on whose behalf filed.

4. It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be copied on every office or other copy furnished to a party.

Costs of affidavits, when disallowed.

5. The costs of affidavits not in conformity with the preceding rules of this order shall be disallowed on taxation, unless the court otherwise directs.

Affidavits made by two or more deponents.

6. In any affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents. (R. S. C., Order XXXVIII. r. 9.)

Filing of affidavits.

7. Before any affidavit is used it shall be filed in the office of the registrar, but this rule shall not hinder a judge from making an order in an urgent case upon the undertaking of the applicant to file any affidavit sworn before the making of such order, provided that such order shall not be issued until such affidavit has been filed.

Affidavits not to be filed if sworn before party's solicitor.

8. An affidavit shall not be filed which has been sworn before a commissioner who was at the time of the swearing of the same the solicitor acting for the party on whose behalf such affidavit is to be used, or the agent, correspondent, partner, or clerk of such solicitor, or who is the party himself.

Erasure, blotting, interlineation, etc., in affidavits.

9. No affidavit or other document shall be filed or used in any action or matter, unless the court otherwise orders, which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, or in the body or jurat of which there is any interlineation, alteration, or erasure, unless the person before whom the same is sworn has duly initialled such interlineation or alteration, and in the case of an erasure has re-written and signed in the margin of the affidavit or document the words or figures appearing to be written on the erasure, or which is so imperfect upon the face thereof by reason of having blanks thereon or otherwise that it cannot easily be read or understood.

Illiterate or blind deponent.

10. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the court is otherwise satisfied

that the affidavit was read over to and appeared to be perfectly understood by the deponent. O. XIX. r. 10.

11. The court may receive any affidavit sworn for the purpose of being used in any action or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received. (R. S. C., Order XXXVIII. r. 14.) Use of defective affidavit.

12. Affidavits of service, when required, shall state when, where, how, and by whom service was effected. (R. S. C., Order LXVI. r. 9.) Affidavits of service.

13. The consent of any person to act as a trustee or new trustee shall be sufficiently evidenced by a written consent signed by him and verified by the signature of his solicitor. The form in the Appendix hereto shall be used, with such variations as circumstances may require. (R. S. C., Order XXXVIII. r. 19A.) Verification of new trustee's consent to act. Form 332.

14. Whenever a registrar rejects an affidavit or other document, he shall give notice, according to the form in the Appendix, by post or otherwise, to the party offering the same for filing, of such rejection and the reasons thereof; but no such notice shall be necessary if the party offering the same is present when the registrar rejects the affidavit. Notice of rejection of imperfect affidavits or documents. Form 133.

ORDER XX.

Arbitration.

1. At any time after an action is commenced the judge may, with the consent of the parties, as well in cases within the ordinary jurisdiction of the court as in cases of agreement under section sixty-four of the Act, make an order for a reference, under the provisions of section one hundred and four of the Act; and all the provisions in the last-mentioned section contained as to references shall apply to a reference proceeding under such an order: Provided that the same fees shall be paid as would have been payable on entering judgment under a default summons, but where any reference is ordered to the registrar or any other officer of the court the same hearing fee shall be paid as if the action had been tried. Arbitration. 51 & 52 Vict. c. 43, ss. 64, 104. Forms 134, 134A.

The Act to amend the law of evidence (14 & 15 Vict. c. 99) provides, by sect. 16, that "every court, judge, justice, officer, commissioner, arbitrator or other person, now or hereafter having by law or by consent of parties authority to hear, receive and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively." See Oaths Acts, 1888, 1889, and 1909 in Part V., *post* p. 2152.

O. XX. r. 1. Notes.

Entry of Award.]—The award of the arbitrator or umpire is entered as the judgment in the action, and is as binding as if given by the judge; but, at the first court held after the expiration of one week after the entry of the award, the judge may set it aside, or, with the consent of both parties, may revoke the reference or order another (51 & 52 Vict. c. 43, s. 104).

The High Court had, before the Act of 1888, no jurisdiction to entertain an appeal from the refusal of a judge to set aside an award (*Mayer* v. *Farmer*, (1878) 3 Ex. D. 235; 47 L. J. Ex. 760).

The application to refer before the trial cannot be made *ex parte*, as the consent of both parties is required. It may be made on notice (Order XII. r. 11) or by notice for directions (Order XV. rr. 1, 4).

Before the 19 & 20 Vict. c. 108, s. 25, it was held that a defendant, by consenting to a reference, did not waive his right to obtain a prohibition, if the court had no jurisdiction over the cause (*Knowles* v. *Holden*, (1855) 24 L. J. Ex. 223; 101 R. R. 909). It is conceived, however, that the defendant would now be held to have waived his right to a prohibition. The order of reference is proof in other proceedings of an agreement to refer (*Roper* v. *Levy*, (1851) 7 Ex. 55; 21 L. J. Ex. 28). The death of either party before award would revoke the authority of the arbitrator (*Cooper* v. *Johnson*, (1819) 2 B. & A. 394; 20 R. R. 483).

Where parties who have a dispute agree to abide by the decision of the judge, but do not follow the practice required to give him jurisdiction, his position becomes that of an arbitrator, and no appeal lies from his decision (*Pearce* v. *Winkworth*, (1873) 28 L. T. 710). Where, during the hearing of an action of trespass, the parties agreed to withdraw a juror and abide by the decision of the judge, and before his decision the defendant withdrew his consent, the court held that the power of the judge as arbitrator was gone, but that the cause remained, and so ordered the judge to rehear it (*Norburn* v. *Hilliam*, (1869) L. R. 5 C. P. 129; 39 L. J. C. P. 183).

Staying Proceedings.]—It has not yet been definitely decided how far the provisions of the Judicature Acts justify a stay of proceedings before judgment. A county court judge was held justified in refusing to try, and in staying proceedings, until the plaintiff had paid the costs of a previous High Court action decided in favour of the defendant, which involved substantially the same questions as the county court action (*R.* v. *Bayley*, (1881) 8 Q. B. D. 411; 51 L. J. Q. B. 244); and there are strong grounds for believing that a judge may stay proceedings in his own court in any case in which, if the action were in the High Court, an order to stay might be made (see *King* v. *Hawkesworth*, (1879) 4 Q. B. D. 371; 48 L. J. Q. B. 484; *Poyser* v. *Minors* (C. A.), (1881) 7 Q. B. D. 329; 50 L. J. Q. B. 555).

Under sect. 4 of the Arbitration Act, 1889 (which reproduces sect. 11 of the Common Law Procedure Act, 1854), a county court judge has power to stay proceedings where the action has been commenced notwithstanding the existence of a submission to arbitration by the parties; this seems to follow from the definition of "court" in that Act when read in conjunction with sect. 89 of the Judicature Act, 1873, and has been decided to be the law (*Morriston Tinplate Co.* v. *Brooker*, (1908) 1 K. B. 403; 77 L. J. K. B. 197). But it is very doubtful whether the registrar of a county court, as such, has jurisdiction to make the order; and the safest course would appear to be to make the application to the judge, except in cases where the registrar is also a district registrar of the High Court.

Counsel.]—Counsel's fee on a reference cannot be allowed, except by order of the judge (see Item 92).

ORDER XXI.

ASSESSORS.

Registrar at request of judge to

1. The registrar of each court shall, from time to time, at the request of the judge submit to him the names of as many persons

O. XXI. r. 1.

as the judge may direct, whom, having regard to the nature of the ordinary business of the court, and to their fitness from ability and reputation, the registrar believes to be qualified to act as assessors under section one hundred and three of the Act; and the judge shall from the names so submitted frame a list of persons to act as assessors for each court of which he is judge.

frame list of assessors for approval. 51 & 52 Vict. c. 43, s. 103.

2. The registrar shall apply to such persons as the judge may approve to know if they are willing to act as assessors and to attend any court which they may be summoned to attend a reasonable time beforehand.

Consent of assessors to act.

3. When the judge has completed the list of assessors for any court the registrar shall cause a printed list of their names in alphabetical order to be hung up in the court and office.

List of assessors. Form 135.

4. Every assessor named in the printed list shall continue to be an assessor until a new list of assessors has been framed and approved as aforesaid, or until he gives to the registrar notice in writing that he is unwilling to act as an assessor from and after a day to be named in such notice.

Duration of power of assessors.

5. Upon the receipt of notice of resignation from an assessor the registrar shall remove the name of such assessor from the list.

Assessor resigning to be removed from list.

6. Every assessor shall receive for each day's attendance one guinea or two guineas, according as the subject matter of the action does or does not exceed twenty pounds in value, together with such sum, if any, for his expenses as the judge may order.

Remuneration of assessors.

7. A party who desires assessors to be summoned to assist the judge shall six clear days at least before the return-day file an application therefor according to the form in the Appendix, giving the names of the assessors he wishes to be summoned, and if he has obtained the consent of the other party to the assessors named he shall file such consent with his application.

Application for assessors to act with judge. Form 136.

In actions under the extended jurisdiction, "twelve clear days" is substituted for "six clear days" (Order XXIIA. r. 19).

8. Upon receipt of an application for assessors the registrar shall forward a copy of the same to the judge, who, if he thinks fit, shall return the same with his approval, and thereupon the registrar shall forthwith summon the assessors named. If the judge does not think fit that assessors shall be summoned, notice thereof shall be given by the registrar to all parties, according to the form in the Appendix.

Assessors to be summoned if judge approves. Form 137. Form 141.

9. Where the party applying does not file with his application the consent of the other party to the appointment of the assessors

Notice where opposite party

O. XXI. r. 9.

has not consented to assessors proposed.

Form 138.

proposed by him, the registrar shall, after obtaining the consent of the judge to the appointment of assessors as prescribed in the last preceding rule, forthwith cause to be served on the other party notice of the application according to the form in the Appendix; and the party so served shall, as soon as may be after receipt of the notice, inform the registrar in writing whether or not he accepts the appointment of the assessors proposed in such notice, or any of them, and shall give the names of such assessors as he is willing should be summoned.

Proceedings where party served with notice does not accept proposed appointment.

10. Where the party served with the notice mentioned in the last preceding rule does not accept the proposed appointment, he shall forthwith after receipt of such notice inform the registrar in writing of his non-acceptance and of the reasons thereof, and the registrar shall thereupon fix a time and place for hearing such objection and selecting the assessors to be summoned. Such objection may be heard either on the return-day of the summons, or before the judge acting under the powers conferred on him by section nine of the Act, or, if the judge so directs, before the registrar. Notice of the time and place at which the objection will be heard shall be given to all parties interested. On the hearing such order shall be made as the judge or registrar shall think just, and any costs occasioned by the objection or consequent thereon may be ordered to be paid by the party objecting.

Form 139.

Form 140.

Summoning of assessors.

When assessors are appointed they shall be summoned by the registrar.

See 51 & 52 Vict. c. 43, s. 103.

Where assessors or any of them fail to attend.

11. If at the time and place appointed for the trial any of the assessors summoned do not attend, the judge may either proceed to try the action, with the assistance of such of the assessors, if any, as do attend, or, if none attend, without assistance, or he may adjourn the trial.

Payment on application for assessors by party.

12. Every person applying for assessors shall at the time of applying pay to the registrar the sum of two guineas if the amount of the subject matter of the action does not exceed twenty pounds, and four guineas if it does exceed that amount; and such payments shall be considered as costs in the action, unless otherwise ordered by the judge.

Assessors' fees on adjournment.

13. Where an action is adjourned, the plaintiff shall pay the assessors' fees for the day of adjournment forthwith after the order of adjournment is made by the court.

ORDER XXII.

TRIAL.

Rule 1.

Notice of demand for jury.

Forms 142, 143, 144.

Deposit.

1. Notice of demand for a jury shall be given in writing to the registrar, according to the form in the Appendix, ten clear days at least before the return day, and the registrar shall forthwith give notice thereof to the other party, according to the form in the Appendix; and the summonses to the intended jurors shall be delivered to the bailiff forthwith, and shall be served six clear days at least before the return day. The deposit to be paid on a demand for a jury shall be eight shillings.

As to actions under Employers' Liability Act, 1880, see Order XLIV. r. 4.

Adjournment in order to try by jury.

2. Where a summons has not been served, or notice of trial has not been given, in time to enable a party served with such summons, or to whom such notice has been given, who desires a jury to be summoned, to give notice of demand for a jury in due time, the court may, on the application of such party, adjourn the trial in order that due notice for a jury may be given. And in any other case in which notice of demand for a jury has not been given in due time, or where no notice of demand has been given, but at the trial all parties desire to try by a jury, and no jury is then in court, the judge may, on such terms as he may think fit, adjourn the trial in order that notice for a jury may be given.

If an adjournment is granted for other reasons, a party who has not given due notice for a jury cannot give notice for a jury on the adjourned hearing (*Fletcher* v. *Baker*, (1873) L. R. 9 Q. B. 370; 43 L. J. Q. B. 112; *R.* v. *Leeds C. C.*, (1885) 16 Q. B. D. 691; 55 L. J. Q. B. 365).

Actions and matters which may be tried by jury.

3. Interpleader matters and actions of replevin or ejectment or for the recovery of possession, or to enforce any right relating to land, or for the recovery of any damages in respect of any such right, may, at the instance of either party, be tried by a jury; and by order of the judge any other action or matter or any question of fact arising therein, which but for this rule could not be so tried, may be tried by a jury.

As to what is a right relating to land, see *Rex* v. *Surrey County Court Judge*, (1910) 2 K. B. 410; 79 L. J. K. B. 802.

Number of jurymen to be summoned.

4. The number of jurymen summoned to attend at a court for the trial of actions shall be sixteen, unless the judge otherwise orders.

Notice to jurors where action settled,

5.—(1) Where a jury has been summoned, but before the return day the action or matter is settled or withdrawn, it shall be the duty of the party at whose instance the jury was summoned

O. XXII. r. 5. withdrawn, or adjourned before return day.

to inform the registrar of the fact; and the registrar shall thereupon return the deposit, and shall, unless the attendance of the persons summoned as jurors is required in any other action or matter, forthwith send notice by post to such persons that their attendance will not be required according to the form in the Appendix; and where in like case the action or matter is adjourned before the return day, the registrar shall forthwith send notice by post to the persons summoned as jurors of the adjournment, and of the day on which their attendance will be required, according to the form in the Appendix.

Forms 144A, 144B.

Notice of settlement or withdrawal of non-jury action.

(2) Where an action or matter in which a jury has not been summoned is settled or withdrawn before the return day, it shall be the duty of the parties to inform the registrar of the fact.

Costs of notice.

(3) Where notice is given under this rule three clear days before the return day, and costs in the action or matter are taxed under any column of the higher scale, item 97 in the scale may be allowed for such notice.

Notice to jurors where jury impanelled and action adjourned, or action adjourned on return day before jury impanelled.

5A.—(1) Where on the trial of an action or matter a jury has been impanelled, and the hearing is adjourned, the registrar shall, unless the adjournment is to the next day, or to the next day but one, forthwith give or send by post to the jurors impanelled notice of the adjournment, and of the day on which their further attendance will be required, according to the form in the Appendix.

(2) Where a jury has been summoned, but the action or matter is adjourned on the return day before a jury has been impanelled, the registrar shall, unless the judge orders the persons summoned as jurors to be discharged, and a fresh jury to be summoned, forthwith give or send by post to the persons summoned as jurors notice of the adjournment, and of the day on which their attendance will be required, according to the form in the Appendix.

Form 144B.

Where plaintiff does not appear.

6. If when an action is called on for trial the plaintiff does not appear, and the defendant appears, and does not admit the plaintiff's claim, the court may, in its discretion, award costs to the defendant in the same manner, and to the same amount, as to counsel, solicitor, witnesses, and other matters, as if the action had been tried, but no hearing fee shall be charged.

The costs may be recovered by the ordinary means for recovering any sum ordered to be paid by the court.

If the defendant appears and admits the claim, and pays the court fees payable in the first instance by the plaintiff, the judge may give judgment for the plaintiff (51 & 52 Vict. c. 43, ss. 88, 89, 186; Order LV.). These provisions apply to actions by and against executors and administrators (Order XXX. r. 2). If the plaintiff does not appear, and the cause is struck out, and the judge refuses to restore it, the case is at an end, and the court

above cannot interfere (*Jennings* v. *London Omnibus Co.* (2), (1874) 30 L. T. 640; 22 W. R. 757). O. XXII. r. 6. Notes.

If the defendant has given notice of a counterclaim, he may prove it and get judgment; but the judgment may be set aside on terms pursuant to 51 & 52 Vict. c. 43, s. 91 (Order XXII. r. 8).

Where a case was adjourned for the attendance of a witness, and after the adjournment the defendant appeared but the plaintiff did not, and the judge directed judgment to be entered for the defendant, it was held that the judge had no jurisdiction to hear the case in the absence of the plaintiff, and that he should have ordered the case to be struck out (*Jordan* v. *Jones*, (1884) 44 J. P. 800).

7. Where a default summons has been issued and notice of defence has been given, and neither the plaintiff nor the defendant appears when the action is called on, the action shall be struck out; and where notice of defence has been given, and the defendant appears and the plaintiff does not appear, the action shall be struck out, and costs may be ordered against the plaintiff as in the last preceding rule mentioned; and where the plaintiff appears and the defendant does not appear, judgment may be entered for the plaintiff without further proof, the amount to be payable by instalments or otherwise as the court may think fit. Where neither party or one party only appears on default summons.

It appears from the judgments of the Court of Appeal in *Hooper* v. *Hill*, (1894) 1 Q. B. 659; 63 L. J. Q. B. 598, that these actions are subject to the provisions of sect. 90 of the Act of 1888, and that in default of appearance by the defendant, the *judge* alone has power under this rule to enter judgment without further proof, if notice of defence has been given. Where the registrar deals with the case, it appears that proof ought to be given in accordance with sect. 90 (see, however, the definition of "court" in sect. 186 of the Act of 1888, and in Order LV.).

Where both parties appear, the action will be tried, and personal service need not be proved (*Davis* v. *Pearce*, (1870) L. R. 5 C. P. 435).

8. If when an action is called on for trial the plaintiff does not appear, and the defendant has given notice of a counter-claim, he may prove such counter-claim so far as the burden of proof lies upon him, and have judgment accordingly: Provided that any judgment obtained under this rule may be set aside upon the application of the plaintiff in like manner as a judgment obtained under section ninety-one of the Act. Judgment on counter-claim where plaintiff does not appear. 51 & 52 Vict. c. 43, s. 91.

9. Where any action or matter has been struck out under section eighty-eight or section ninety of the Act or under rule 7 of this Order, the court may order such action or matter to be restored to the list for hearing on the same day or any subsequent day, and may set aside any order awarding costs to the opposite party which may have been made under section eighty-nine of the Act or Rule 6 or Rule 7 of this Order, upon such terms as to payment of costs of the day, adjournment of the hearing, notice to the opposite party, and otherwise, as may be just. Restoring case struck out for non-appearance of plaintiff. 51 & 52 Vict. c. 43, ss. 88—90.

O. XXII. r. 10.

Subsequent action after nonsuit or striking out.

51 & 52 Vict. c. 43, ss. 88, 93.

10. If after the judge has directed a nonsuit under section eighty-eight or section ninety-three of the Act, or after an action has been struck out, a subsequent action is brought for the same or substantially the same cause of action before payment of the costs (if any) allowed on such nonsuit or striking out, the judge may, if he thinks fit, order a stay of such subsequent action until such costs have been paid.

Action pending in another court for same cause.

11. Where at the trial it appears that an action for the same cause at the suit of the same plaintiff is pending in any other court of record, the court shall order the trial to stand adjourned to a certain day, and unless before such day the action in such other court has been discontinued, the action shall be struck out.

Disallowance of vexatious questions in cross-examination.

12. The judge may in all cases disallow any question put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the action or matter. (R. S. C., Order XXXVI. r. 38.)

General jurisdiction of judge on trial of action.

13. At the trial the judge may try the whole matter of the action and give judgment thereon, or grant any relief, redress, or remedy, or may make any order or give any direction which he may consider necessary to enable final judgment to be given upon a day to which the trial may be adjourned, and may also make such order as to costs as he may think fit.

This rule is especially applicable to cases in which accounts are ordered to be taken or inquiries made.

Decision of questions at issue without general order for execution of trusts or administration.

14. It shall not be obligatory on the judge in any action for the execution of any trust, or for the administration of the estate of any deceased person, to pronounce or make a judgment or order for the general execution of the trust or administration of the estate, if the questions between the parties can be properly determined without such judgment or order, but the judge may make such order as may be necessary for determining such questions without pronouncing or making such general judgment or order. (R. S. C., Order LV. r. 10.)

See *Jones* v. *Blake* (C. A.), (1885) 29 Ch. D. 913; 54 L. J. Ch. 880, as to the proper order to be made in, and use of, administration actions.

This and the next rule give the judge a discretion in all cases to make or refuse a general order for administration (*Pearson* v. *Pearson*, (1883) 56 L. T. 445).

Orders which may be made on applications for administration or execution of trusts,

15. Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the judge may, in addition to the powers already existing :—

(*a*) Order that the application shall stand over for a certain

time, and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings : O. XXII. r. 15. where no accounts or insufficient accounts have been rendered.

(*b*) When necessary, to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order without leave of the judge in person. (R. S. C., Order LV. r. 10A.)

16. In any action or matter in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any wrongful act or breach of contract of a like kind relating to the same property or right, or arising out of the same contract ; and the judge may, in addition to giving judgment for such damages and costs as the plaintiff may be entitled to, grant the injunction, either upon or without terms, as may be just. Injunction, application for.

An application under this rule may be made—

(*a*) before the trial or hearing, in which case it shall be made in accordance with Order XII. Rule 6 :

(*b*) at or immediately after the trial or hearing, in which case the order, if any, shall be included in the judgment : or

(*c*) subsequently to judgment, in which case it shall be made in accordance with Order XII. Rule 11, on notice supported by affidavit.

Injunctions.]—The provisions of sect. 89 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), enable county court judges in all causes of action within their jurisdiction to grant injunctions in as full and complete a manner as if they were judges of the High Court (*Martin* v. *Bannister* (C. A.), (1879) 4 Q. B. D. 491 ; 48 L. J. Q. B. 676). They had, prior to the Judicature Acts, power, when a decree for administration had been made in a county court, to restrain proceedings in any court to recover a debt provable under the decree (this power they had under 28 & 29 Vict. c. 99, s. 1, which was not re-enacted). This power was held to be taken away even prior to the late Act (*Cobbold* v. *Pryke*, (1879) 4 Ex. D. 315 ; 49 L. J. Ex. 8), and it is believed they have no power in any case to restrain an action pending in another court (see *In re Alison's Trusts* (C. A.), (1878) 8 Ch. D. 1 ; 47 L. J. Ch. 755).

The cases in which injunctions will usually be necessary are expressed in a rule which in substance provides that the judge may in any action or matter in which an injunction has been, or might have been claimed, grant an injunction, either before or at the trial, against the repetition or continuance of a wrongful act or breach of contract, or the commission of any injury or breach of contract of a like kind, relating to the same property or right, or arising out of the same contract. And that the injunction may be

O. XXII. r. 16. Notes.

granted in addition to damages (Order XXII. r. 16). An application under this rule may be made, (*a*) before the trial or hearing, in which case it must be made in accordance with Order XII. r. 6; (*b*) at or immediately after the trial or hearing, in which case the order (if any) will be included in the judgment; or (*c*) subsequently to judgment, when it will be made in accordance with Order XII. r. 11, on notice supported by affidavit (Order XXII. r. 16).

An injunction is a remedy and not a cause of action; and the opinion has been generally entertained that a county court could not grant an injunction if that were the only remedy claimed. In *Martin* v. *Bannister* (C. A.), (1879) 4 Q. B. D. 491; 48 L. J. Q. B. 676, the plaintiff claimed damages for a nuisance and an injunction. The jurisdiction to try the action for damages was derived from the 9 & 10 Vict. c. 95, s. 58, as a "personal action," and the judge having thus acquired seisin of it, had, by sect. 89 of the Judicature Act, 1873, all the powers of a judge of the High Court in regard to it. The judges in the Court of Appeal mentioned, but expressly declined to decide, the question, whether when no damage had been suffered, a plaint would lie to restrain a mere threatened injury, *e.g.*, a threatened nuisance, a threatened distress for rent (see *Shaw* v. *Jerscy* (C. A.), (1879) 4 C. P. D. 359), a threatened infringement of a patent (see *Frearson* v. *Loe*, (1878) 9 Ch. D. 48). These are *à fortiori* cases, as there could be no claim for damages on which to found the jurisdiction. But it has recently been held that the county court has jurisdiction where an injunction only is claimed, if a claim for damages (supposing it to have been made) must necessarily have been within the jurisdiction in point of amount (*Stiles* v. *Ecclestone*, (1903) 1 K. B. 544; 72 L. J. K. B. 256). This was, however, a case in which a claim for a penalty of 40*l.* recoverable as liquidated damages might have been made, had the plaintiff desired to make it.

An injunction may be granted to restrain breaches of contract which are in restraint of trade, made between partners, or masters and servants or others, if the restraint is reasonable in respect of time and distance, and reasonably required for the protection of the interests of the complaining party. The whole of such a contract must be regarded, and a mere verbal evasion of its spirit will not be permitted (*Hadsley* v. *Dayer-Smith*, (1914) A. C. 979; 83 L. J. Ch. 770. As to onus of proof, see *Goldsoll* v. *Goldman*, (1915) 1 Ch. 292; 84 L. J. Ch. 228; see also generally *Nordenfelt* v. *Maxim-Nordenfelt Gun Co.*, (1894) A. C. 535; *Mason* v. *Provident Clothing and Supply Co.*, (1913) A. C. 724; 82 L. J. K. B. 1153; *Herbert Morris, Ltd.* v. *Saxelby*, (1915) 84 L. J. Ch. 149; (1916) 85 L. J. Ch. 210; *Konski* v. *Peet*, (1915) 1 Ch. 530; 84 L. J. Ch. 515).

It appears that the power to grant the same remedies as judges of the High Court must enable county court judges to grant mandatory, perpetual, or interlocutory injunctions, according as the relief sought could be aided by such injunctions if the action were in the High Court (36 & 37 Vict. c. 66, s. 25 (8)). Obedience to the injunction may be enforced by attachment (*Martin* v. *Bannister* (C. A.), (1879) 4 Q. B. D. 491).

The remedy by injunction having hitherto been sparingly used in county courts, it may be useful to describe here the nature of the remedy and the extent of the power to grant it.

"A writ of injunction may be described as a judicial process whereby a party was required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ. The process, however, was rather preventive than restorative, though it was by no means confined to the former object. When commanding an act to be done, it issued after decree, and was in the nature of an execution to enforce the same. Under the present procedure no writ of injunction is to issue."

Perpetual and Interlocutory Injunctions.]—"Injunctions are either interlocutory or perpetual. Interlocutory injunctions are such as are to continue until the hearing of the cause upon the merits, or generally until further order. Perpetual injunctions are such as form part of the decree

made at the hearing upon the merits, whereby the defendant is perpetually inhibited from the assertion of a right, or perpetually restrained from the commission of an act which would be contrary to equity and good conscience. The perpetual injunction is in effect a decree, and concludes a right. The interlocutory injunction is merely provisional in its nature, and does not conclude a right. The effect and object of the interlocutory injunction is merely to preserve the property in dispute *in statu quo* until the hearing or further order. . . . A man who comes to the court for an interlocutory injunction is not required to make out a case which will entitle him at all events to relief at the hearing. It is enough if he can show that he has a fair question to raise as to the existence of the right which he alleges, and can satisfy the court that the property should be preserved in its present actual condition, until such question can be disposed of" (see Kerr on Injunctions, pp. 9, 10 (3rd edit.)).

Mandatory Injunctions.]—"Though a court of equity had (*i.e.*, before the Judicature Acts) no jurisdiction to compel the performance of a positive act tending to alter the existing state of things, such as the removal of a work already executed, it could, by framing the order in an indirect form, compel a defendant to restore things to their former condition, and to effectuate the same results as would be obtained by ordering a positive act to be done. The order when framed in such a form is called a *mandatory* injunction" (Kerr on Injunctions, p. 48). It seems to have been thought formerly that the jurisdiction to grant mandatory injunctions must be exercised with more than ordinary judicial caution. "To that proposition I can by no means assent. Every injunction requires to be granted with care and caution, and I do not know what is meant by extraordinary caution. Every judge ought to exercise care, and it is not more needed in one case than in another" (*per* Jessel, M. R., *Smith* v. *Smith*, (1875) L. R. 20 Eq. 500, 504). A mandatory injunction appears to be, in fact, a mandamus under another name. For instances where mandatory injunctions were granted, see *Smith* v. *Smith*, *supra*, and *Krehl* v. *Burrell* (M. R.), (1879) 7 Ch. D. 551; 47 L. J. Ch. 353; 11 Ch. D. 146; 48 L. J. Ch. 252; see also *Smith* v. *Day* (C. A.), (1880) 13 Ch. D. 651).

The courts can grant damages in place of injunction when it appears right to do so. This power was first given by Lord Cairns' Act (21 & 22 Vict. c. 27), now repealed, but as an injunction is always a matter of judicial discretion the power still exists. For a case where damages were held to be an inappropriate remedy, see *Wood* v. *Conway Corporation*, (1914) 2 Ch. 47; 83 L. J. Ch. 498.

When Injunction may be granted.]—The courts are not, since the Judicature Acts, confined to giving such relief by injunction as could formerly have been obtained in equity. Their power was enlarged by the provisions of the Common Law Procedure Act, 1854, which enacted that "in all cases of breach of contract or other injury, where the party injured is entitled to maintain, and has brought an action, he may claim an injunction against the repetition or continuance of the breach of contract or injury, or the committal of any breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right" (17 & 18 Vict. c. 125, s. 79). "In my opinion," says Jessel, M. R. (*Beddow* v. *Beddow*, (1878) 9 Ch. D. 89, 93; 47 L. J. Ch. 588; and see *per* Lord Blackburn in *Doherty* v. *Allman*, (1878) 3 App. Cas. 709, 728; *Nor. Lon. Rail. Co.* v. *G. N. Rail. Co.* (C. A.), (1883) 11 Q. B. D. 30; 52 L. J. Q. B. 380), "having regard to these two Acts of Parliament" (*i.e.*, the Judicature Act, 1873, and the Common Law Procedure Act, 1854), "I have unlimited power to grant an injunction in any case where it would be right or just to do so; and what is right or just must be decided, not by the caprice of the judge, but according to sufficient legal reasons or on settled legal principles."

Appeal.]—Where an injunction has been granted or claimed an appeal lies without leave even though the damages claimed do not exceed 20*l.* (*Brune* v. *James*, (1898) 1 Q. B. 417; 67 L. J. Q. B. 283).

O. XXII. r. 17.

Inspection of property by judge or jury. Costs of inspection.

17. The judge may, in his discretion, inspect, or order the jury to inspect, any property or thing concerning which any question may arise in any action or matter. The expenses of any inspection under this rule shall be paid in the first instance by the party on whose application such inspection is made or ordered, or if inspection is made or ordered without such application, by the plaintiff; but the court shall have power to direct by whom such expenses shall be ultimately borne.

Absent parties may be added on hearing.

18. Where at the trial it appears to the judge that there are claims, estates, titles, or rights, or any equitable duties or liabilities, which cannot be disposed of by reason of all the proper parties not being before the court, the judge may order such parties as may be necessary to be made plaintiffs or defendants, upon such terms as to adjournment, notices, and costs as he may think fit. Where a defendant is added, the provisions of Order XIV. Rule 11, shall apply.

The provisions of Order XIV. r. 11, referred to are those for service upon the defendant of the order, copy summons, and notice of day of hearing.

Counter-claim where action stayed, discontinued, or dismissed.

19. If in any case in which the defendant sets up a counter-claim the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with.

See *McGowan* v. *Middleton* (C. A.), (1883) 11 Q. B. D. 464; 52 L. J. Q. B. 355.

Counter or other claim may be ordered to be tried by an independent action.

20. In any case of counter-claim or otherwise, or where any incidental claim arises at the trial, if the judge thinks that such claim can be better disposed of by an independent action, he may order such claim to be excluded, whether any application for that purpose be made or not.

When a person brought in does not appear at the trial.

21. If a person not originally a party to the action who has been served with a notice of counter-claim does not appear at the trial, the judge may proceed with the trial notwithstanding, and give such judgment or make such order as may be just against the person so served and not appearing, or may adjourn the trial and give such directions and make such order as to costs as he may think fit.

If the plaintiff does not appear at the trial, the defendant may prove and get judgment on his counterclaim (Order XXII. r. 8).

Judgment may be given for balance found due to defendant.

Form 152.

22. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

In the absence of such judgment, judgment ought to be entered for the plaintiff in the action and for the defendant on the counter-claim (*Shrapnel*

v. *Laing* (C. A.), (1887) 20 Q. B. D. 334, 338; 57 L. J. Q. B. 195, *per* Lord Esher, M.R.). O. XXII. r. 22. Note.

23. Where any of the parties to an action are officers of the court, the judge, if he thinks fit, may, and where an action is brought by an officer of the court, except as official receiver, he shall, at the request of the defendant, direct the trial to take place at some convenient court of which he is not the judge; and where any such direction is given the provisions of section forty-two of the Act shall apply. Transfer of action by or against officer of court. 51 & 52 Vict. c. 43, s. 42.

Where an action is brought by an officer of a county court in the court of which he is an officer, except as *official* receiver, the judge, at the request of the defendant, must order that the action be sent for trial to the court of some convenient district of which he is not the judge (51 & 52 Vict. c. 43, s. 42; Form 120).

24. Where by the Act the leave of the judge is required for the exercise of any powers or jurisdiction by the registrar, such leave may be either general or special. Leave to registrar to exercise jurisdiction.

25. Where a registrar is authorised by the judge to hear and determine disputed claims when the sum claimed or amount involved does not exceed two pounds, he shall, when any such case is called on before him, ask the parties whether they desire to have the case heard by him or by the judge. Where registrar authorised to hear disputed claims.

Any mere matter of account may be referred by the judge to the registrar for inquiry and report (51 & 52 Vict. c. 43, s. 92).

ORDER XXIIA.

Order XXIIA. was made for the due working of the County Courts Act of 1903. It comprises Rules 20 to 46, 1904, and Rules 7 and 8, 1905.

THE COUNTY COURTS ACT, 1903.

[3 EDW. VII. c. 42.]

GENERAL PROVISIONS AS TO PROCEDURE.

1. Subject to the following rules of this Order, the procedure in actions brought under the extended jurisdiction conferred by the County Courts Act, 1903, shall be the same as in other actions. General provisions as to procedure in actions under 3 Edw. VII. c. 42.

Provided, that where an ordinary summons is issued in any action brought under such extended jurisdiction, Rules 2 to 20 of this Order shall have effect.

SPECIAL PROVISIONS AS TO PROCEDURE.

2. An ordinary summons (except in an action of ejectment) shall (subject to the proviso to Rule 9 of Order VII.) be issued, Time for issue and service of

O. XXIIa. r. 2. ordinary summons. Order VII. r. 9.

where it is to be served in the home district twenty-five clear days at least, and where it is to be served in a foreign district twenty-eight clear days at least before the return day, and shall in either case be served twenty clear days at least before the return day thereof.

Mode of service.

3.—(1) Service of an ordinary summons may be effected—

(*a*) by delivering the same to the defendant personally; or

(*b*) in the cases mentioned in Rules 12 to 22, 24, 26, and 27 of Order VII., in the manner prescribed by those rules; or

(*c*) under an order for substituted service as prescribed by Order VII. Rule 40.

By whom service may be effected.

(2) Service may be effected in accordance with Order VII. Rule 33.

Præcipe to state how service to be made.

(3) Where the plaintiff wishes the summons to be served otherwise than by a bailiff, he shall so request in the præcipe; and the proviso to Order VII. Rule 33, shall apply.

Indorsement and proof of service made otherwise than by bailiff. Form 37.

4. Where service is effected otherwise than by a bailiff, a copy of the summons, with the date and place and mode of service indorsed thereon, and an affidavit of service according to the form in the Appendix, with such modifications as the circumstances may require, shall within three clear days after the day of service, or such further time as may be allowed by the registrar, be delivered or transmitted to the registrar by the plaintiff.

Return of summons served in foreign district.

5.—(1) Order II. Rule 27, shall be read as if the words "eighteen clear days" were substituted therein for the words "eight clear days."

High bailiff's list of summonses.

(2) Order II. Rule 30, shall be read as if the words "seventeen clear days" were substituted therein for the words "seven clear days."

Further particulars.

6. A notice requiring further particulars under Order VI. Rule 7, shall be given not later than fifteen clear days before the return day.

Guardian *ad litem.*

7. Order VII. Rule 50, paragraph (1), as to appointment of guardians *ad litem*, shall be read as if the words "twelve clear days" were substituted therein for the words "six clear days"; and paragraph (3) of the same rule shall be read as if the words "twelfth day before the return day" were substituted therein for the words "sixth day before the return day."

Confessions and admissions.

8. Order IX. Rules 2 and 5, as to confessions and admissions, shall be read as if the words "ten clear days" were substituted therein for the words "five clear days."

9. Order IX. Rule 8, as to notices to admit, shall be read as if the words " twelve clear days " and " six clear days " respectively were substituted therein for the words " six clear days " and " three clear days " respectively. O. XXIIa. r. 9. Notice to admit facts.

10. Order IX. Rule 12, paragraphs (1), (3) and (4), as to payment into court, shall be read as if the words " ten clear days " were substituted therein for the words " five clear days." Payment into court.

11. Order X. Rules 4 and 5, as to actions of ejectment or for recovery of possession of tenements, shall be read as if the words " twenty clear days," " ten clear days," " eighteen clear days," and " eight clear days " respectively were substituted therein for the words " twelve clear days," " five clear days," " ten clear days," and " three clear days " respectively. Appearance of party not named as defendant in ejectment or action for recovery of possession.

12. Order X. Rule 6, shall be read as if the words " ten clear days " were substituted therein for the words " five clear days." Objection to jurisdiction.

13.—(1) A defendant intending to rely on any ground of defence, set-off, or counter-claim, as mentioned in Order X. Rule 10, shall file the notice required by that rule ten clear days at least before the return day. Defence, set-off, or counter-claim.

(2) Order X. Rule 21, as to notice of defence to a counter-claim, shall be read as if the words " ten clear days " were substituted therein for the words " five clear days." Defence to counter-claim.

14. Where a defendant claims to be entitled to contribution or indemnity against any person not a party to the action, he shall file the notice required by Order XI. Rule 1, ten clear days at least before the return day. Claim to contribution or indemnity.

15. Order XII. Rule 9, paragraph 2, shall be read as if the words " ten clear days " were substituted therein for the words " seven clear days." Where a defendant resident more than twenty miles from court shows defence on merits.

16. Notice of trial under Order XV. Rule 6, shall be served ten clear days at least before the day fixed for the trial, unless otherwise ordered. Notice of trial under Order XV. r. 6.

17. Order XVIII. Rule 6, as to notices to inspect and admit, shall be read as if the words " ten clear days " and " five days " respectively were substituted therein for the words " five clear days " and " three days " respectively. Notices to inspect and admit.

18. Order XVIII. Rule 11, as to use of affidavits, shall be read as if the words " eight clear days " and " four clear days " respectively were substituted therein for the words " four clear days " and " two clear days " respectively. Notice of intention to use affidavit.

O. XXIIa. r. 19.

Application for assessors.

19. Order XXI. Rule 7, as to assessors, shall be read as if the words "twelve clear days" were substituted therein for the words "six clear days."

Rule 20, as to notice of demand for jury in actions under the Act of 1903, was annulled by Rule 5 of 1908 (see Order XXII. r. 1, which makes the practice under the Acts of 1888 and 1903 as to demand for a jury identical).

Where Action commenced in one Court is to be tried in another Court.

Where action commenced in one court is to be tried in another.

20. Where under any Order in Council made under section 5 of the County Courts Act, 1903, an action commenced in one court is to be tried in any other court, the following provisions shall have effect.

3 Edw. VII. c. 42, s. 5.

Fixing day for trial of ordinary summons.

Form 41A (1)

Form 41B.

21. Where an ordinary summons is to be issued, the registrar of the court in which the action is commenced (in these rules referred to as "the home court") shall on the filing of the præcipe send to the registrar of the court in which it is to be tried (in these rules referred to as "the foreign court") a letter according to the form in the Appendix, requesting him to fix a day for the trial; and immediately on the receipt of such letter the registrar of the foreign court shall fix a day accordingly, such day to be so fixed as to allow the summons to be served in accordance with these rules, and shall send to the registrar of the home court a letter according to the form in the Appendix, informing him of the day on which he has fixed that the trial shall take place; and on the receipt of such letter the registrar of the home court shall enter the plaint and issue the summons, and shall insert in the plaint note and in the summons the date and place of trial, and shall annex to the plaint note and summons a notice according to the form in the Appendix.

Form 41C.

Successive summons.

When the summons has not been served, and a successive summons may be issued, the registrar of the foreign court shall on request fix another day for the trial, and the procedure prescribed by this rule shall be followed.

Fixing day for trial of default summons.

22. Where a default summons is issued and the defendant gives notice of his intention to defend, or is let in to defend, the registrar of the home court shall, on the filing of the notice, or on the making of the order letting the defendant in to defend, send to the registrar of the foreign court a letter according to the form

Form 41A (2).

in the Appendix, requesting him to fix a day for the trial; and immediately on the receipt of such letter the registrar of the foreign court shall fix a day accordingly, such day to be so fixed

Form 41B.

as to allow at least ten clear days' notice to be given of the day so

fixed, and shall send to the registrar of the home court a letter according to the form in the Appendix, informing him of the day on which he has fixed that the trial shall take place; and on the receipt of such letter the registrar of the home court shall send to the plaintiff and defendant notice of trial according to the forms in the Appendix, and shall annex to such notice a notice according to the form in the Appendix. O. XXIIa. r. 22. Forms 38, 39. Form 41c.

23. When an ordinary summons has been served, and the copy returned to the registrar of the home court, or when notice of trial of a default summons has been sent, the registrar of the home court shall transmit all documents filed in the action to the registrar of the foreign court, who shall enter the action for trial in his court. Transmission of documents to court of trial.

On the action being sent to the foreign court, the registrar of the home court shall make in red ink, against the entry of the action in the plaint book, an entry of its having been so sent, with the name of the foreign court, and the date when the action is sent there for trial; and shall send a copy of the entries in the plaint book, under the seal of the court, to the registrar of the foreign court; and the registrar of the foreign court shall enter the particulars and proceedings in the action in a book to be kept for that purpose in accordance with the form in Part II. of the Appendix. Appendix, Part II.

24. All proceedings in the action subsequent to the service of an ordinary summons, or the sending of notice of trial in the case of a default summons, and previous to the trial, shall be taken in, and payment into court before trial shall be made into, the foreign court. Proceedings before trial.

25. When the action has been tried or otherwise disposed of, the registrar of the foreign court shall tax any costs directed to be taxed, and shall settle the judgment or order (if any) of the court, and shall transmit all documents in the action, with the judgment or order and the certificate of taxation (if any), and a copy of the entries made in the book kept by the registrar of the foreign court, under the seal of the court, to the registrar of the home court, who shall fill up the entry of the action in his plaint book in accordance with the copy of the entries made in the book kept by the registrar of the foreign court; and the judgment or order shall be entered, filed, and served, and subsequent proceedings in the action shall be taken, in the home court, as if the action had been tried or otherwise disposed of in that court; and where any money paid into the foreign court has not been paid out, the registrar of that court shall certify to the registrar of the home court the amount remaining in court and how the Proceedings when action tried or disposed of. Judgment and subsequent proceedings. Disposal of moneys in court.

O. XXIIa. r. 25.

same is to be applied, and shall account for and pay over such amount as the treasurer shall require : and the registrar of the home court shall pay such amount out of any moneys in his hands to the parties entitled thereto, and shall be allowed by the treasurer of his court, at his audit, the amount so paid.

Application for new trial.

26.—(1) An application for a new trial in an action sent for trial to a foreign court shall be made to the foreign court, and if such application is granted the new trial shall take place in that court.

(2) A notice of an application for a new trial shall not operate as a stay of proceedings unless the judge otherwise orders.

(3) If notice of an application for a new trial is given before the registrar of the foreign court has transmitted the documents in the action to the registrar of the home court in accordance with the last preceding rule, the registrar of the foreign court shall, unless proceedings are stayed, proceed in accordance with that rule, and shall transmit the notice to the registrar of the home court with the other documents in the action ; and if proceedings are stayed, the registrar of the foreign court shall retain the documents in the action until the application is disposed of.

(4) If notice of an application for a new trial is given after the registrar of the foreign court has transmitted the documents in the action to the registrar of the home court in accordance with the last preceding rule, the registrar of the foreign court shall forthwith transmit the notice to the registrar of the home court ; and if proceedings are stayed, he shall give notice of such stay to the registrar of the home court.

(5) Where the documents in the action have been transmitted to the registrar of the home court, he shall in sufficient time before the hearing of the application for a new trial re-transmit the documents to the registrar of the foreign court for use on such application.

(6) When an application for a new trial has been heard or otherwise disposed of, then—

(*a*) if the application is refused or abandoned, the registrar of the foreign court shall proceed in accordance with the last preceding rule, and that rule shall apply to the subsequent proceedings in the action ; and

(*b*) if the application is granted, the registrar of the foreign court shall retain the documents in the action ; and when the action has been re-tried or otherwise disposed of, he shall proceed in accordance with the last preceding rule, and that rule shall apply to the subsequent proceedings in the action.

(7) Where notice of an application for a new trial is given, if any money paid into the foreign court and certified to the registrar of the home court, or any money paid into the home court under any execution or order in the action has not been paid out by the registrar of the home court at the time when he receives notice of the application, the registrar of the home court shall retain the same to abide the result of the application, or until the judge otherwise orders ; and if the application is not made, such money shall, if required, be paid by the registrar of the home court to the parties entitled thereto, unless the judge otherwise orders ; and the provisions of the last preceding rule as to money paid into the foreign court shall apply accordingly. O. XXIIa. r. 26.

APPEAL.

27.—(1) Where an appeal is brought in an action sent for trial to a foreign court, a copy of the notice of motion shall be lodged by the appellant with the registrar of the foreign court. Appeals.

(2) If such copy is lodged before the registrar of the foreign court has transmitted the documents in the action to the registrar of the home court in accordance with Rule 25 of this Order, the registrar of the foreign court shall, unless proceedings are stayed, proceed in accordance with that rule, and shall transmit such copy to the registrar of the home court with the other documents in the action ; and if proceedings are stayed, the registrar of the foreign court shall retain the documents in the action until the appeal is disposed of.

(3) If such copy is lodged after the registrar of the foreign court has transmitted the documents in the action to the registrar of the home court in accordance with Rule 25 of this Order, the registrar of the foreign court shall forthwith transmit such copy to the registrar of the home court ; and if proceedings are stayed, he shall give notice of such stay to the registrar of the home court.

(4) When an appeal has been heard or otherwise disposed of, either party may deposit the judgment of the Court of Appeal, or an office copy thereof, or a memorandum signed by the parties and showing how the appeal is disposed of, with the registrar of the foreign court ; and thereupon the like proceedings shall be taken as are prescribed by these rules to be taken when an application for a new trial has been heard or otherwise disposed of ; and the provisions of the last preceding rule, and of Rules 2 to 4 of Order XXXII., shall, with the necessary modifications, apply accordingly.

O. XXIIa. r. 28.

Costs.

Costs.

28. The costs of actions brought under the extended jurisdiction conferred by the County Courts Act, 1903, shall be allowed and taxed according to the rules and scales of costs for the time being in force in the county courts, and applicable to the subject-matter of such actions.

ORDER XXIII.

Judgments and Orders.

Entries to be made in minute book.

1. The registrar shall enter in the minute book a minute of all ordinary judgments and orders for the payment of any debt or damages or costs (*a*). Where the party against whom an order is made is a married woman, a note thereof shall be made.

Note.—(*a*) A county court judge cannot on certain findings deliver an oral judgment and afterwards give a different judgment on the same facts (*Higginson* v. *Blackwell Colliery Co.*, (1915) 84 L. J. K. B. 1189).

Form of ordinary judgment. Form 151.

Judgment against married woman, etc., in respect of contract, etc., before or during coverture.

Forms 151, 151A.

2. An ordinary judgment for debt or damages shall be according to the form in the Appendix.

Where judgment is given against a married woman, or against a widow or a divorced woman, in respect of a contract or tort before or during coverture, such judgment shall be according to the form 151 in the Appendix, with the addition of such one of the paragraphs in Form 151A of the Appendix as shall be applicable to the circumstances of the case.

A contract by a married woman under sect. 1 of the Married Women's Property Act, 1893, can be enforced only against such of her separate property as neither at the time of making the contract, nor at any subsequent date, has been subject to restraint against anticipation (*Wood* v. *Lewis*, (1914) 3 K. B. 73; 83 L. J. K. B. 1046). As to costs, see *infra*.

Where the form of judgment against a married woman does not follow the forms provided it cannot be corrected as being an accidental slip or omission (*Oxley and Others* v. *Link*, (1914) 2 K. B. 734; 83 L. J. K. B. 602).

Judgment for costs against married woman who is plaintiff.

Form 151A.

56 & 57 Vict. c. 63, s. 2.

3. Where in any action or proceeding by a married woman judgment is given or an order made for payment by such married woman of any costs of the opposite party, the judgment or order shall be according to the form applicable in the circumstances of the case to a judgment against a married woman who is a defendant; and, unless the judge otherwise orders, there shall be added to the judgment or order words reserving liberty to the opposite party to apply under section 2 of the Married Women's Property Act, 1893, for payment of such costs out of any property of the married woman which is subject to a restraint on anticipation.

Section 2 of the Married Women's Property Act, 1893, gives the Court this power.

A counterclaim is a "proceeding" within sect. 2 of the Married Women's

Property Act, 1893 (*Hood-Barrs* v. *Cathcart*, (1895) 1 Q. B. 873; 64 L. J. Q. B. 520); and so is an intervention in a probate action (*Crickitt* v. *Crickitt*, (1902) P. 177; 71 L. J. P. 65); but an appeal from a judgment is not (*Hood-Barrs* v. *Heriot*, (1897) A. C. 177; 66 L. J. Q. B. 356). O. XXIII. r. 3. Notes.

Judgment for delivery of goods.

3A. A judgment for the delivery of goods shall be according to the form in the Appendix.

Form 292.

Preparation of special judgment.

4. Every special judgment or order in the nature of a decree shall be prepared by the registrar, and the draft thereof shall be delivered by him to the successful party, together with an appointment to settle the same. The successful party shall submit the draft to his opponent for approval, and give notice of the appointment to settle. In case of disapproval by either party the registrar shall finally settle the draft in the presence of such of the parties as attend. Either party dissatisfied with the judgment or order as so settled may apply to the judge on not less than four days' notice to vary and finally settle the same, but, except by leave of the court, such notice shall not operate as a stay of proceedings. The judge on the hearing of such application may refuse to make any order if the application has not been made at the next sitting of the court available after the judgment or order has been settled by the registrar. The judgment or order when finally settled shall be sealed with the seal of the court, and filed of record, and a minute of such filing, with the date thereof, shall be entered in the minute book.

Such special judgments or orders as in this rule mentioned shall not be subject to the provisions of Rule 11 of this Order; and any money payable in respect of costs or otherwise under any such special judgment or order shall, unless otherwise ordered, be payable forthwith.

The judgment or order clearly requires to be served (see Order XXIII. r. 7).

Certain orders need not be drawn up or served.

5. Except where otherwise provided by statute or by these rules, no order giving leave to take any proceeding and no interlocutory order need be drawn up or served unless the court otherwise orders.

Service by or on solicitor.

6. When a party acts by a solicitor, service of any judgment or order in the nature of a decree, and of any interlocutory order, or any notice relating to any such order, when directed to be served, may be made by or upon such solicitor, as the case may be.

See Order LIV. rr. 3, 4.

Mode of service of judgments and orders.

7. Any judgment or order for the payment of money or costs or both, or any other order, shall, subject to any special order by the court, and subject to the provisions of these rules, be prepared by the registrar and delivered to the bailiff, who shall, within twenty-four hours, send the same, by post or otherwise, to the

O. XXIII. r. 7.

party on whom service has to be made: Provided that it shall not be necessary for the party in whose favour any such judgment or order has been made to prove, previously to his taking proceedings thereon, that it was posted or reached the opposite party.

Where a solicitor undertakes service, he must make the necessary copies and get them sealed by the registrar (Order LIV. r. 5).

When order on default summons need not be served.

8. Where judgment is entered up against a party served with a default summons no order need be drawn up or served unless the judgment is for payment by instalments, or unless the plaintiff has abandoned part of his claim under Order XIV. Rule 13.

Time to be stated for doing any act ordered to be done.

9. Every judgment or order given or made in any action or matter requiring any person to do an act thereby ordered, other than the payment of money or costs, shall state the time, or the time after service of the judgment or order, within which the act is to be done, and a copy of the judgment or order shall be served personally upon the person required to obey the same, on which copy shall be indorsed a memorandum according to the form in the Appendix. (R. S. C., Order XLI. r. 5.)

Memorandum to be indorsed.

Form 346.

Purposes for which certificate of judgment required, to be stated.

Form 155.

10.—(1) Any person requiring a certificate of any judgment or order shall state in writing whether such certificate is required for the purpose of taking proceedings thereon in any other court, or for the purpose of evidence only; and in such latter case the registrar shall state thereon the purpose for which it is required.

Application for certificate by a person not a party to the proceedings.

(2) Where a person applying for a certificate of any judgment or order is not a party to the proceeding in which the judgment or order was given or made, he shall state in writing, with particulars, the purpose for which the certificate is required, and the capacity in which he applies for the same, and shall satisfy the registrar that it may properly be granted; and the registrar may in any case refer the application to the judge.

NOTE.—Last clause added by Rules of 1917, dated February 19th, 1917.

Money payable under ordinary judgment, how payable.

51 & 52 Vict. c. 43, s. 105.

11. Money payable under an ordinary judgment shall be paid within fourteen days from the date of the judgment, unless the court at the time of giving judgment otherwise orders. Where judgment is given for payment by instalments, such instalments shall be payable at such periods as the order directs; and if no period is mentioned, the first shall become due on the twenty-eighth day from the day of making the order, and every successive instalment shall become due at a like period of twenty-eight days from the day of the last previous instalment becoming due; and such instalments shall be paid into court in accordance with section one hundred and five of the Act.

See 51 & 52 Vict. c. 43, s. 105.

O. XXIII. r. 12.

12. Where judgment is given or an order made for the recovery or payment of a sum of money exceeding twenty pounds and costs, such judgment or order may direct such sum of money to be paid forthwith or within fourteen clear days from the date of the judgment or order, and may direct the costs to be taxed and paid forthwith or within fourteen clear days after taxation.

Order for payment of money recovered, and of costs to be taxed. Form 151 (2).

12A. Where under any judgment or order any money is payable within fourteen days from the date of the judgment or order, or in the case of costs within fourteen days after taxation, the judge may in his discretion at any time before the expiration of such period of fourteen days, for good cause shown on application made on oath or affidavit in accordance with the rules as to interlocutory applications, make an order for payment at an earlier date. Any order so made shall be served in accordance with Rule 7 of this Order ; and if the order was made *ex parte*, any party affected thereby may within two days after service thereof apply to set it aside.

Order for earlier payment of money payable within 14 days.

12B. Subject to the provisions of this rule, a person liable to pay money under a judgment or an order may at any time pay money into court in reduction of the amount payable by him. Provided, that where the judgment or order is for payment of a sum exceeding twenty pounds, exclusive of costs, and no order has been made for payment by instalments, the registrar shall not receive any sum less than the full amount payable, if the person entitled to the benefit of the judgment or order has, at or before the time when such sum becomes payable, directed him in writing not to receive any less sum than such full amount; and if in any such case any less sum is paid into court and is inadvertently received, the registrar shall, if so directed in writing by the person entitled to the benefit of the judgment or order, place the sum so paid to the credit of the person by whom it was paid, and shall on request return the amount to him.

Payment into court of less than amount due, when allowed.

13. The registrar shall give notice by post, according to the form in the Appendix, to the party in whose favour it is made, of every payment made into court, whether by instalments or otherwise, in pursuance of a judgment or order, where the payment exceeds ten shillings.

Notice of payment into court. Form 156.

Money in court cannot be attached under a garnishee summons as a debt due from the registrar or other officer of the court (*Dolphin* v. *Layton*, (1879) 4 C. P. D. 130 ; 48 L. J. C. P. 426).

14.—(1) Where there is an unsatisfied judgment or order the party entitled to enforce it may apply *ex parte* to the court in

Fresh order for payment by instal-

O. XXIII. r. 14.

ments on application of plaintiff.

Form 157.

which the same was given or made to order that the amount due and unpaid be paid by instalments, or, if payable by instalments, by the like or smaller instalments; and the court may thereupon make an order accordingly.

(2) An application under this rule may be made at any sitting of the court: or it may be made at any other time by request in writing, giving the letter and number of and the names of the parties to the action or matter in which the judgment or order was given or made, and the instalments by which the applicant desires that the amount due and unpaid may be ordered to be paid. Such request shall be left at or sent by post to the office of the registrar, accompanied by the plaint note or the duplicate mentioned in Order VII. Rule 1, or where a defendant is entitled to enforce a judgment or order, by the summons issued in the action, or the duplicate mentioned in Order LIV. Rule 26, and a stamped and directed envelope; and when the request has been dealt with the registrar shall return such note, summons or duplicate, with a minute of the order made, in such envelope.

(3) The registrar may, by leave of the judge, deal with any application under this rule out of court, and without requiring the attendance of the applicant; but he may, and, where no payment has been made within six years before the date of the application, he shall, refer such application to the judge, who may make such order in the matter as he shall think right, and may require the attendance of the applicant.

(4) An order made on an application under this rule shall be entered in the minute book, and prepared and served in accordance with Rule 7 of this Order, and shall have the same effect as a fresh order for payment by instalments made on the hearing of a judgment summons.

Fresh order for payment of sum not exceeding 20*l.* on application of defendant.

Form 157.

15.—(1) Where a judgment has been given or an order made for the payment of any sum not exceeding twenty pounds, exclusive of costs, by instalments or otherwise, and it appears to the satisfaction of the judge that the person liable under the judgment or order is unable to pay the sum ordered to be paid at the time or by the instalments ordered, he may, on the application of such person, made on notice served on the party entitled to enforce the judgment or order two days at least before the hearing of the application, order the amount due and unpaid under the judgment or order to be paid by instalments, or, if already payable by instalments, by the like or smaller instalments, and may from time to time vary such order.

Fresh order for payment in one sum

(2) In like manner, if it appears to the satisfaction of the judge that the person liable under any such judgment or order is able to

pay the sum ordered to be paid either in one sum or by larger instalments than those ordered, he may, on the application of the person entitled to enforce the judgment or order, made on the like notice to the person liable thereunder, order the amount due and unpaid to be paid in one sum, or by larger instalments than those previously ordered, and may from time to time vary such order. O. XXIII. r. 15. or by increased instalments on application of plaintiff.

(3) An order made on an application under this rule shall be entered in the minute book, and prepared and served in accordance with Rule 7 of this Order, and shall have the same effect as a fresh order for payment made on the hearing of a judgment summons. Form 157.

16. Where in an action of ejectment, or for the recovery of possession of a tenement, or of damages in respect of any right relating to land, the title of the plaintiff shall appear to have existed, as alleged in the summons, at the time of the entry of the plaint, but to have expired before the return day, the plaintiff shall be entitled to judgment according to the fact that he was so entitled and for his costs of the action, unless the judge otherwise orders. Judgment in action of ejectment or for recovery of possession, or relating to land, where plaintiff's title existed when plaint entered but has since expired.

17. Where a judgment or order directs any deed to be prepared and executed, it shall state by which party the said deed shall be prepared, and to whom it shall be submitted for approval; and if the parties cannot agree upon the form thereof, the judge may, upon the application of either party, settle the same himself, or name a conveyancing counsel by whom the same shall be settled, subject to the final approval of the judge. Form 260. Where order directs a deed to be prepared.

18. Subject to the provisions of these rules, where real property is ordered to be sold, the judgment or order shall direct who shall have the conduct of the sale, and by whom the conditions and contracts of sale, and the abstract of title, shall be prepared, and the registrar shall have all the powers of a master of the Chancery Division of the High Court to settle such conditions and contracts, and to fix reserved biddings. And where any conditions or contracts are ordered to be settled by a conveyancing counsel, the order shall name the counsel to whom they are to be submitted. Sale of real property. Forms 304, 306.

The court has a general power to order a sale where expedient or necessary (see Annual Practice, notes to R. S. C., Order LI. r. 1). The person conducting the sale if by auction requires no licence (15 & 16 Vict. c. 87, s. 42). The ordinary conveyancing charges are to be allowed (Order LIII. r. 28).

19. Where any real estate is ordered to be sold, any party bound by the order and in possession of the estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be directed. (R. S. C., Order LI. r. 1.) Delivery up of real estate ordered to be sold.

O. XXIII. r. 20.

Sale with approbation of judge. Forms 304, 306.

20. Where a judgment or order is given or made directing any property to be sold, the same shall, unless otherwise ordered, be sold, with the approbation of the judge, to the best purchaser that can be got, and all proper parties shall join in the sale and conveyance as the judge shall direct. (R. S. C., Order LI. r. 3.)

Form of affidavit of value.

21. Affidavits for the purpose of enabling the court to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed. (R. S. C., Order LI. r. 4.)

Certificate of result of sale in lieu of affidavit.

22. In the case of sales under the direction of the court the particulars of sale shall be signed by and the result of the sale shall be certified under the hands of the auctioneer and the solicitor of the party having the conduct of the sale. It shall not be necessary to file any affidavit verifying the particulars or the result of the sale. (R. S. C., Order LI. r. 6A.)

Sale of personal property. Form 305.

23. Where an order directs any personal property to be sold, the same shall be sold by public auction or private contract, as the court shall direct; and it shall be the duty of the high bailiff, if the court so directs, to superintend such sale, or to see that the directions of the court are duly carried out in accordance with Order II., rule 38.

The person conducting the sale requires no licence as auctioneer (15 & 16 Vict. c. 87, s. 42), *ante*, p. 234.

ORDER XXIV.

Accounts and Inquiries.

Accounts, how to be taken.

1. Where a judgment or order directs that any account be taken or inquiry made, such account shall be taken and inquiry made by the registrar, and he shall for that purpose have all the powers of a master of the Chancery Division of the High Court; and all parties shall have the same power of summoning witnesses, including as witnesses any parties in the action, and of examining them on such accounts or inquiries, and of compelling the production of documents, as they would have upon the trial of an action; and all rules as to the summoning, swearing, and examining of witnesses, and the production of documents at the trial, shall be applicable (as far as may be) to such summoning, swearing, examining, and production on taking any such accounts, or prosecuting any such inquiries.

Registrar to appoint time and place for

2. Where the registrar is directed to make inquiries or to take accounts, he shall by summons, according to the form in the

Appendix, returnable not less than seven days from the date of the order, addressed to all parties entitled to attend, direct such parties to attend at his office or at the court, for the purpose of proceeding with such inquiries or accounts. In all cases in which advertisements are ordered, the return-day shall be not less than twenty-one days after the date of the order, and the registrar shall forthwith prepare and insert advertisements in conformity with such order, stating the time, place, and purpose of the proceedings, and shall insert the same fourteen days previous to the day appointed.

O. XXIV. r. 2.
inquiries and taking accounts.
Form 318.

3. Upon the day so appointed, or at any adjourned sitting, the registrar shall sit at the time and place appointed, and shall hear all parties interested, their counsel or solicitors.

Hearing before registrar.

4. If on the hearing of the summons to proceed it appears that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for leaving the accounts in chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties have been served, and are bound, or service has been dispensed with. (R. S. C., Order LV. r. 36.)

Stoppage of proceedings where all necessary parties have not been served with notice of judgment or order.

5. Where at any time during the prosecution of the proceedings under a judgment or order it appears to the judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings; and where the parties constituting any class cannot agree upon the solicitor to represent them, the judge may nominate such solicitor for the purpose of the proceedings before him; and where any one of the parties constituting such class declines to authorise the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings with respect to which such nomination has been made, and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated. (R. S. C., Order LV. r. 40.)

Classifying interests of parties.
Costs of party appearing separately.

6. Whenever, in any proceeding under a judgment or order, the same solicitor is employed for two or more parties, the judge may at his discretion require that any of the said parties shall

Judge may require distinct

O. XXIV. r. 6.

appear separately in person or be represented by a distinct solicitor, and adjourn such proceedings until such requirement is complied with. (R. S. C., Order LV. r. 41.)

solicitor to represent parties.

7. Where a judgment or order is given or made directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement shall be excluded from the benefit of the judgment or order. (R. S. C., Order LV. r. 44.)

Claimants not coming in to prove, etc., excluded.

8. Where an order directs accounts to be taken, any books of account in which the accounts required to be taken, or any of them, have been kept, shall, unless the court otherwise directs, be taken as *primâ facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Books of accounts to be *primâ facie* evidence.

9. Where any account is directed to be taken, the accounting party shall, unless the court otherwise directs, make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be left at the registrar's office. (R. S. C., Order XXXIII. r. 4.)

Accounts to be verified by affidavit, numbered, and left at registrar's office.

10. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner. (R. S. C., Order XXXIII. r. 5.)

Surcharge.

11. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the court otherwise directs. (R. S. C., Order XXXIII. r. 6.)

Inquiry as to outstanding personal estate.

12. Where by any judgment or order any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number; and such judgment or order shall be in the form in the Appendix, with such variations as the circumstances of the case may require. (R. S. C., Order XXXIII. r. 7.)

Accounts and inquiries to be numbered.

Form 304.

13. Every advertisement for creditors or other persons having any claim upon or interest in the distribution of any assets to be administered by the court, which shall be issued pursuant to any

Advertisements for creditors in administration.

order, shall direct every such creditor or other person, within a time to be thereby limited, to send to the registrar his name and address, and the full particulars of his claim or interest, and a statement of his account, and the nature of the security (if any) held by him, and at the time of directing such advertisement a time shall be fixed for adjudicating on the claims. O. XXIV. r. 13.

14. No creditor or other person need make any affidavit, or attend in support of his claim, except to produce his security, unless he is served with a notice requiring him to do so, as hereinafter provided. Creditors need not prove unless required.

15. Every creditor shall produce or transmit to the registrar any security held by him, at such time as shall be specified in the advertisement for that purpose as being the time appointed for adjudicating on the claims ; and every creditor shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar all other deeds and documents necessary to substantiate his claim before the registrar at his office at such time as shall be specified in such notice. Creditors holding security to produce same.

16. Every person claiming as heir-at-law, devisee, next of kin or legatee shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar any pedigree or proof mentioned in such notice within such time as shall be therein specified. Pedigree, if required, to be produced.

17. In case any creditor or other person neglects or refuses to comply with the two last preceding rules, he shall not be allowed any costs of proving his claim, unless the court otherwise directs. Creditor, etc., refusing, to have no costs.

18. At the time appointed for adjudication upon the debts or claims, the registrar shall take the evidence of the executor, administrator, or other accounting party upon such debts or claims, and may thereupon, in his discretion, allow any of such debts or claims without further proof, and may direct such investigation of all or any of the debts or claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he thinks fit, require any creditor or other person to attend and prove his claim, or any part thereof ; and the adjudication on such claims as are not then allowed may be adjourned to a time to be then fixed. Adjudication on debts or claims. Form 319.

19. Notice of allowance shall be given by the registrar to every creditor or other person whose claim, or any part thereof, has been allowed, and notice shall also be given by him to every creditor or other person whose claim or any part thereof has not Notice of allowance or non-allowance of claim.

O. XXIV. r. 19.

Form 320.

Form 319.

been allowed to attend and prove his claim or such part thereof as is not allowed, by a time to be named in such notice, not being less than seven days after such notice, and also to attend at a time to be therein named, being the time to which the adjudication thereon has been adjourned; and in case any creditor or other person shall not comply with such notice, his claim, or such part thereof as aforesaid, may be disallowed.

Claim may be sent in before adjudication.

20. Any creditor or other person who has not previously sent in the particulars of his claim pursuant to advertisement, may do so two days before any day to which the adjudication is adjourned.

Where claim sent in after time fixed.

21. If any claim is sent in after the time fixed by advertisement (except as in this order provided in case of an adjournment), the registrar may, upon special application, entertain the same, upon such terms and conditions as to costs and otherwise as he may think fit.

Costs of creditor establishing debt.

22. A creditor who has come in and established his debt under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the court, and shall be added to the debt so established. (R. S. C., Order LV. r. 58.)

Just allowances.

23. In taking any account, all just allowances shall be made without any directions for that purpose in the order to take such account.

Computation of interest on debts.

24. Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of four per cent. per annum from the date of the judgment or order. (R. S. C., Order LV. r. 62.)

Allowance of interest on debts not carrying interest.

25. A creditor whose debt does not carry interest, who comes in and establishes the same under a judgment or order, shall be entitled to interest upon his debt at the rate of four per cent. per annum from the date of the judgment or order, out of any assets which may remain after satisfying the costs of the action or matter the debts established, and the interest on such debts as by law carry interest. (R. S. C., Order LV. r. 63.)

Interest on legacies.

26. Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies after the rate of four per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any

other time of payment or rate of interest is directed by the will, and in that case according to the will. (R. S. C., Order LV. r. 64.)

Registrar's certificate. Form 321.

27. The result of the proceedings before the registrar under any judgment or order shall be stated in the shape of a certificate in writing, signed by the registrar, and presented to the judge. (R. S. C., Order LV. r. 65.)

Reference to judgment, etc.

28. The certificate of the registrar shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons, but shall refer to the judgment or order, documents, and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded. (R. S. C., Order LV. r. 66.)

Contents of certificate in case of accounts. Transcript. Filing of accounts and transcripts.

29. Where an account is directed, the certificate shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied, and shall state what additions, if any, have been made by way of surcharge or otherwise; and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates shall be retained by the registrar. No copy of any such account shall be required to be taken by any party. (R. S. C., Order LV. r. 68.)

Taking opinion of judge.

30. Any party may, before the proceedings before the registrar are concluded, take the opinion of the judge upon any matter arising in the course of the proceedings. (R. S. C., Order LV. r. 69.)

Notice that certificate may be inspected. Form 322.

31. The registrar shall prepare his certificate seven days before the day appointed for presenting the same, and shall give notice by post to all parties to the action or matter that the same lies in his office for the inspection of any parties interested therein or affected thereby; and he shall deliver a copy thereof to any person requiring the same, upon payment of the costs of such copy.

When certificate becomes binding.

32. Every certificate, with the accounts (if any) to be filed therewith, shall be binding on all the parties to the proceedings unless discharged or varied upon application to be made in

O. XXIV. r. 32.

accordance with the next following rule. (R. S. C., Order LV. r. 70.)

Variation or confirmation of certificate.

33. Where any party interested in or affected by the registrar's certificate desires to have the same varied, he shall apply at the court on the day appointed for presenting the same, and the judge shall thereupon hear and determine such application, and shall confirm or vary the certificate, and make such further order thereupon and on further consideration of the action or matter, as he may think fit.

Order on further consideration.
Form 323.

Where no application to vary certificate.
Form 323.

34. If no application is made to vary the certificate, it shall be taken as confirmed, unless the judge otherwise orders; and the judge shall, on the day appointed for the presentation of the same, make such order on further consideration of the action or matter as he may think fit.

Discharge or variation of certificate which has become binding.

35. The judge may, if the special circumstances of the case require it, upon an application for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties. (R. S. C., Order LV. r. 71.)

Notes of proceedings before registrar under judgment or order.

36. Notes shall be kept of all proceedings before the registrar under any judgment or order, so that all such proceedings in each action or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at every hearing. (R. S. C., Order LV. r. 73.)

Application to judge for further directions.

37. Where the registrar, high bailiff, receiver, or any party has by any order been directed to do any act, for doing which it may be found necessary to have further directions or an order of the court, the registrar shall apply to the judge for such directions or order, and upon such application the judge may give such directions or make such order as he may think fit, or may appoint a time to hear all parties upon the application so made by the registrar; and if the judge makes such appointment for hearing, the same shall operate as a stay of proceedings in the action until the day so appointed, unless otherwise directed.

ORDER XXV.

Enforcement of Judgments and Orders.

Enforcement of orders for payment of money.

1. Every order for the payment of money may be enforced in the same manner as a judgment for debt or damages may be enforced under section one hundred and forty-six of the Act.

51 & 52 Vict. c. 43, s. 146.

Execution.]—The amount is recoverable by execution against the goods of the judgment debtor (see 51 & 52 Vict. c. 43, s. 146).

Oral Examination.]—The party entitled to enforce the judgment or order may also apply to the court for an order for the oral examination of the debtor, or in case the debtor be a corporation, of any of its officers, as to whether the debtor has any and what property or means of satisfying the judgment or order. And an order may be made for the attendance and examination of the debtor, or of any other person, and for the production of any books or documents (Order XXV. r. 71 (1)). The examination may be taken, if necessary, as prescribed by Order XVIII. r. 18. The order may be made for the examination of a married woman as to her separate estate (*Aylesford* v. *G. W. Rail. Co.*, (1892) 2 Q. B. 626). O. XXV. r. 1. Notes.

Time for Execution.]—Execution may not issue after the expiration of twelve years from the date of the original judgment, unless there has been a part payment, or payment of interest, or an acknowledgment in writing given. If there has been such payment or acknowledgment, execution may not issue after twelve years from the date of such payment or acknowledgment, or, if more than one, from the last (37 & 38 Vict. c. 57, s. 8; *Hebblethwaite* v. *Peever*, (1892) 1 Q. B. 124; *Jay* v. *Johnstone* (C. A.), (1893) 1 Q. B. 189; 62 L. J. Q. B. 128).

2. Every order of the court in any action or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect. (R. S. C., Order XLII. r. 24.) Orders enforceable like judgments.

See *Savill* v. *Dalton*, (1915) 3 K. B. 174.

3. Any judgment or order against a corporation wilfully disobeyed may, by leave of the judge, be enforced by attachment against the directors or other officers thereof. (R. S. C., Order XLII. r. 31.) Enforcing judgment or order against corporation.

To found an application for an attachment it is essential that a sealed copy of the order which gives rise to the application should first have been duly served (Order XXV. r. 58), and even after such service the attachment can be obtained by express order of the court only (*Abud* v. *Riches* (M. R.), (1870) 2 Ch. D. 528; 45 L. J. Ch. 649). The order requiring the act to be done must state the time, or the time after its service, within which the act is to be done (Order XXIII. r. 9).

4. When a married woman sued only in her own name obtains a judgment or order on the ground of coverture, and is awarded costs, she may enforce payment of such costs in her own name. Costs of married woman.

5. In case of any judgment or order, other than for the recovery or payment of money, if any difficulty arises in or about the execution or enforcement thereof, any party interested may apply to the court, and the court may make such order thereon for the attendance and examination of any party or otherwise as may be just. Where difficulty arises in execution.

6. A warrant of execution against goods shall bear date on the day on which it is issued, and if unexecuted shall remain in force for one year only from and exclusive of such date, unless renewed in manner hereinafter provided; but such warrant may, at any time before its expiration, by leave of the court be renewed by the party issuing it for one year from the date of such Date, duration, and renewal of warrants of execution.

O. XXV. r. 6.

renewal, and so on from time to time during the continuance of the renewed warrant. The fact of the renewal of any warrant shall be indorsed thereon according to the form in the Appendix; and a warrant so renewed shall have effect and be entitled to priority according to the time of the application to the registrar for the original issue thereof. Any fees payable on renewal of a warrant may be allowed as costs of the execution, and if so allowed the amount and the fact of such allowance shall be entered on the warrant.

Form 163A.

Fees on renewal.

The precise time when the warrant is applied for must be entered by the registrar in the warrant-book and on the warrant (51 & 52 Vict. c. 43, s. 146). He must insert in or indorse on it the amount to be levied, and the fees for the execution of the warrant, distinguishing the amount adjudged to be paid and remaining due, and the amount of the fee for issuing and executing the warrant (Order XXV. r. 17; 51 & 52 Vict. c. 43, s. 155).

Applicant to produce plaint note or summons, and furnish præcipe.

Form 161A.

7. A person requiring a warrant of execution to be issued shall produce the plaint note or summons issued in the action, or a duplicate thereof, and shall furnish a præcipe according to the form in the Appendix, containing the number of the plaint, and stating the full names and address of or otherwise sufficiently identifying every person against whom the warrant is to be issued. Where the name or address of any such person as given in the præcipe differs from the name or address as given in the judgment or order, both descriptions shall be inserted in the warrant as follows, viz.:—

C. D., of (*name and address as given in the præcipe*), sued as A. D., of (*name and address as given in the judgment or order*).

Where default made, execution may issue.

Amount for which it may issue.

51 & 52 Vict. c. 43, s. 149.

Forms 163, 164, 165.

8.—(1) Where a defendant has made default in payment of the whole amount awarded by the judgment or order, or where the judgment or order was for payment by instalments of an instalment thereof, a warrant of execution may issue against his goods without leave; and such execution shall be for the whole amount of the judgment or order and costs then remaining unsatisfied, or in the case of an order for payment by instalments, for such portion thereof as the court shall order, either at the time of making the original order or at any subsequent time.

(2) Warrants of execution against the goods of—

(*a*) A defendant;

(*b*) A defendant who is a married woman, a widow, or a divorced woman, in respect of an ante-nuptial contract or tort, or a contract or tort during coverture; or

(*c*) A plaintiff,

shall be according to the forms in the Appendix.

Paragraph (2) added by Rules of 1914, r. 115.

O. XXV. r. 9.

9. Where judgment is given or an order made for the recovery or payment of a sum of money exceeding twenty pounds and costs, and directs such sum of money to be paid forthwith or within fourteen clear days from the date of the judgment or order, and the costs to be taxed and paid forthwith or within fourteen clear days after taxation, a warrant of execution may, in default of payment, issue for the recovery of the sum and costs after the latter have been taxed; or, if default is made in payment of the sum of money before the costs have been taxed, separate warrants may issue for the recovery of such sum on default in payment thereof, and for the recovery of the costs after the same have been taxed and default has been made in payment thereof; but a second warrant shall only be for costs, and shall not be issued before the expiration of eight days from the issue of the first warrant.

Separate executions for money recovered and for costs.

10. No warrant against goods, except by leave of the court shall issue on a judgment or order unless some payment into court has been made thereon by the judgment debtor within twenty-four months previously, but no notice to the debtor before applying for such leave shall be necessary; and such leave shall be expressed on the warrant under the seal of the court.

Where no payment on judgment for two years, leave to issue execution must be obtained.

10A. Where a judgment summons has been issued or an order of commitment has been made against a debtor, and is outstanding, a warrant of execution against the goods of the debtor shall not be issued in the action except by leave of the judge, and on such terms as he may impose.

Execution not to issue without leave where judgment summons or order of commitment issued and outstanding.

10B.—(1) Where a party to an action in a court within the district of which such party does not reside or carry on business desires execution to issue in such action, he or his solicitor (if the solicitor has no office within the district) may, in any case in which the leave of the court is not required before the issue of a warrant, instead of attending at the office of the court, transmit, by prepaid post, to the registrar—

Issue of execution by letter.

(*a*) The plaint note or summons issued in the action, or a duplicate thereof:

(*b*) A præcipe in accordance with Rule 7 of this Order:

(*c*) A money order for the fees payable upon the issue of the warrant, payable to the registrar at the post office of the town or place at which the court is held:

(*d*) An envelope addressed to himself, with a penny postage stamp thereon;

And upon receipt of the above the registrar shall issue the

O. XXV. r. 10B.

warrant, and forward the plaint note or summons, or duplicate, with a note thereon of the issue of the warrant and the date of issue, in the addressed envelope.

(2) For the purposes of this rule the registrar shall on receipt of a written request from the party or his solicitor, together with a stamped and addressed envelope for reply, forward to the party or his solicitor in the addressed envelope such information as he may ask for to enable him to ascertain whether execution may be issued.

(3) Provided that if a party or his solicitor desires execution to issue or requests information in more than twenty actions at any one time, the registrar may require such party or his solicitor to attend at the office of the court.

(4) For the purposes of this rule the several districts of the metropolitan courts shall be considered *inter se* as one district only.

Execution on judgment against a firm.

11. Where a judgment or order is against a firm, execution may issue in manner following :

(*a*) Against any property of the partnership :

(*b*) Against any person who has admitted before the court in the proceedings in which the judgment or order was obtained that he was a partner at the time of the accruing of the cause of action, or who has been adjudged to be liable as a partner :

(*c*) Against any person who was individually served with the summons as a partner or a person sought to be made liable, and who failed to appear at the trial.

If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as a member of the firm, he may, after giving to such person two clear days' notice of his intention, apply to the court for leave so to do ; and the court may give such leave if the liability is not disputed, or, if such liability is disputed, may order that the liability of such person be tried and determined in an action to be commenced by plaint and summons in the ordinary way. If leave to enter a plaint under this rule is required under section seventy-four of the Act, the court may grant such leave without requiring an affidavit under Order V. Rule 13 ; and in that case the order shall state that leave is so granted, and a copy of the order shall be annexed to the summons and served therewith.

51 & 52 Vict. c. 43, s. 74.

Except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of England and Wales

when the summons was issued, unless he has been made a party to the action under Order VII. Rule 41, or has been served within England or Wales after the summons in the action was issued. ... ... O. XXV. r. 11.

As to judgment summons on judgment against a firm, see Order XXV. r. 27, and as to charging orders on partnership property for the separate debt of a partner, see Order XXV. rr. 12, 13.

It seems that, instead of applying for leave, the creditor might bring an action on the judgment (*Clark* v. *Cullen*, (1882) 9 Q. B. D. 355).

12. An application by a separate judgment creditor of a partner for an order charging his interest in the partnership property and profits under section twenty-three of the Partnership Act, 1890, and for such other orders as are thereby authorised to be made, shall be made to the court on notice. Such notice shall be served in the case of a partnership other than a cost book company on the judgment debtor and on his partners, or such of them as are in England or Wales, or in the case of a cost book company on the judgment debtor and the purser of the company; and such service shall be good service on all the partners or on the cost book company, as the case may be, and all orders made on such application shall be similarly served. Application for charging order on interest of partner. 53 & 54 Vict. c. 39, s. 23.

Redemption of Charge.]—The other partners will be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase it (53 & 54 Vict. c. 39, s. 23).

The application by a partner should be made to the court on notice. The notice must be served on the judgment creditor and on the judgment debtor, and on such of the partners as do not concur in the application and are in England or Wales. If the partnership is a cost-book company the notice must be served on the judgment creditor and judgment debtor and on the purser of the company. All orders made on the application must be similarly served (Order XXV. r. 13).

13. An application by a partner of the judgment debtor under section twenty-three of the Partnership Act, 1890, shall be made to the court on notice. Such notice shall be served in the case of a partnership other than a cost book company on the judgment creditor and on the judgment debtor, and on such of the other partners as do not concur in the application and are in England or Wales, or in the case of a cost book company on the judgment creditor and on the judgment debtor, and on the purser of the company; and such service shall be good service on all the partners or on the cost book company, as the case may be, and all orders made on such application shall be similarly served. Applications by partners under 53 & 54 Vict. c. 39 s. 23.

14. In the following cases, viz.: ... ... Application for leave to issue process on changes of parties after judgment, etc.

(1) Where any change has taken place after judgment by death, assignment or otherwise in the parties entitled to take proceedings to enforce a judgment or order, or in the parties liable to such proceedings;

O. XXV. r. 14.

Forms 158, 160.

(2) Where a husband is entitled or liable to proceedings upon a judgment or order for or against a wife;

(3) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to enforce the judgment or order may apply on affidavit to the court for leave to issue the necessary process accordingly. And the court may, if satisfied that the party so applying is entitled to issue such process, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties be tried and determined in an action to be commenced by plaint and summons in the ordinary way. And in either case the court may impose such terms as to costs or otherwise as may be just.

Order thereon.

51 & 52 Vict. c. 43, s. 74.

If leave to enter a plaint under this rule is required under section seventy-four of the Act, the court may grant such leave without requiring an affidavit under Order V. Rule 13; and in that case the order shall state that leave is so granted, and a copy of the order shall be annexed to the summons and served therewith.

If a defendant becomes bankrupt, and the trustee continues the defence and fails, he may be ordered to pay costs personally, even if he has not been added as defendant (*London School Board* v. *Wall* (C. A.), (1891) 7 T. L. R. 566).

Service of order.

15. Any order made under the last preceding rule *ex parte* shall be drawn up and served by post or otherwise on the persons to be affected thereby, and proceedings thereon shall not issue until six clear days at least after the service of the order.

Joinder of several actions or persons in one application, and notice of order thereon

Forms 159, 161.

16. Where, in any case mentioned in the two last preceding rules, a party alleges himself to be entitled by reason of one and the same change or other cause to enforce the judgments or orders in more actions or matters than one, or to enforce a judgment or order against more persons than one, he may make one application only for leave to issue the necessary process in all or any of such actions or matters, or against all or any of such persons, specifying in a schedule to such application all the actions or matters in respect of which such application is made, or all the persons in respect of whom such application is made; and one order only may be made on such application in respect of all or any of such actions or matters, or all or any of such persons; and in serving notice of any such order on any person affected thereby, it shall be sufficient to set forth such part only of such order as affects such person, without setting forth the rest of such order.

17. The registrar shall, on issuing a warrant of execution against the goods, insert in or indorse on such warrant the amount to be levied, and the fees for the execution of the warrant, distinguishing the amount adjudged to be paid, and remaining due, and the amount of the fee for issuing the warrant, and the fees for the execution thereof, and shall prepare and deliver to the bailiff with the warrant a notice according to the form in the Appendix; and the bailiff, upon levying, shall deliver such notice to the party against whom the execution has issued, or leave the same at the place where the execution is levied.

Indorsement on warrant of execution.

Form 163.

Notice to be left with debtor.

Form 162.

In the event of the high bailiff being himself the judgment debtor, the warrant may be issued to a bailiff specially appointed to execute it (*Bellamy* v. *Hoyle*, (1874) L. R. 10 Ex. 220; 44 L. J. Ex. 169).

18. Warrants of execution against goods may be issued concurrently into one or more districts, provided that the costs of more than one warrant shall not be allowed against the execution debtor unless by order of the court.

Concurrent warrants.

18A. Where an execution creditor requests the high bailiff to withdraw from possession, then, unless such withdrawal is requested in pursuance of an arrangement made between the execution creditor and the execution debtor, and communicated to the high bailiff, that the high bailiff shall be at liberty to re-enter, the execution creditor shall be deemed to have abandoned the execution, and the high bailiff shall return the warrant as withdrawn by order of the execution creditor, and the execution creditor shall not be entitled to require the same to be re-issued; but nothing in this rule shall prejudice any right of the execution creditor to apply for a fresh warrant to be issued.

Withdrawal of execution by execution creditor.

19. Except as otherwise provided by these rules, the costs of warrants, whether executed or unexecuted or unproductive, shall be allowed against the execution debtor, unless the judge otherwise directs.

Costs of warrants.

But costs of an abortive execution are not to be included for the purposes of a judgment summons or of an application for a fresh order for payment under Order XXIII. r. 14. Nor is money paid into court otherwise than under execution to be attributed to payment of such costs (see Order XXV. r. 56).

20. No possession fee shall be payable where an execution is paid out at the time of the levy; but if the bailiff necessarily remains in possession for more than half an hour, and the execution is paid out on the day of levy, the possession fee for that day shall be charged.

Possession fees.

Where execution is levied under several warrants, and the same goods are seized to satisfy all the warrants, only one possession fee can be charged;

O. XXV. r. 20. Notes.

but if different goods are seized and appropriated to each warrant, a possession fee is chargeable under each warrant, although possession is held simultaneously under all the warrants by one person only (*In re Morgan, Ex parte Board of Trade*, (1904) 1 K. B. 68; 72 L. J. K. B. 948; see *Glasbrook* v. *David*, (1905) 1 K. B. 615; 74 L. J. K. B. 492, as to sheriff's right to possession money in High Court).

Appraisement.

21. No appraisement shall be made until the fifth day of the bailiff's holding possession of the goods under an execution, unless the goods are of a perishable nature, or are sold at the request of the party before the expiration of four days, or are removed.

Inventory and notice of sale of goods removed under execution.

22. Where goods taken in execution are removed, the high bailiff shall give to the execution debtor a sufficient inventory of the goods so removed, and shall also give to the execution debtor notice in writing, signed by the high bailiff, of the time when and place where such goods will be sold. Such inventory and notice shall be given to the execution debtor personally, or sent to him by post to his place of residence, if known, or if such residence is not known, they shall be left at or sent by post addressed to the execution debtor at the place from which the goods are removed. The inventory shall be given or sent at the time of or immediately after the removal of the goods; and the notice shall be given or sent at least twenty-four hours before the time fixed for the sale.

Account of sale under execution.

23. Where goods are sold in execution the high bailiff shall, on the request of the execution debtor, furnish him with a detailed account in writing of the sale, and of the application of the proceeds thereof.

Part payment after issue of warrant of execution.

51 & 52 Vict c. 43, s. 158.

23A.—(1) Where after the issue of a warrant of execution, but before sale, money is paid into the court out of which the warrant is issued, or into any foreign court to which the warrant has been sent for re-issue under sect. one hundred and fifty-eight of the Act, or to the bailiff holding the warrant, the following provisions shall apply.

See *In re Miller*, (1913) 3 K. B. 1; 81 L. J. K. B. 1180.

(2) Where payment is made into the court in the district of which the warrant is to be executed, the registrar shall receive the amount so paid, and shall as soon as may be after such receipt,

(*a*) if he is high bailiff as well as registrar, notify the fact and amount of such payment to the bailiff holding the warrant; or

(*b*) if he is not high bailiff, notify the fact and amount of such payment to the high bailiff, who shall as soon as may be

after receiving such notification notify the same to the bailiff holding the warrant.

(3) Where payment is made into the court out of which the warrant issued (in this rule referred to as "the home court") after the warrant has been sent for re-issue to any foreign court, the registrar of the home court shall receive the amount so paid, and shall as soon as may be after such receipt notify the fact and amount of such payment by post to the high bailiff of the foreign court, who shall as soon as may be after receiving such notification notify the same to the bailiff holding the warrant.

(4) The bailiff holding the warrant, on receiving any payment or notice of any payment, shall forthwith enter in ink on the face of the warrant, at the foot or in the margin thereof the amount of such payment, and shall sign the entry; and if the amount paid is not sufficient to satisfy the amount to be levied and the costs of execution incurred before payment or notice of payment is received, the execution, unless withdrawn by the plaintiff, shall proceed only for the balance of the original amount to be levied and the costs of execution calculated on that amount, less the amount so paid.

Altered (Rule 121, 1914).

Where under execution money is paid into court instead of to bailiff.
4 & 5 Geo. 5, c. 59, s. 41.

23B. Where under a warrant of execution money is paid in part satisfaction of the execution, or in order to avoid sale, but is paid into court instead of to the high bailiff of the court in the district of which the warrant is to be executed, it shall be deemed to have been received by the high bailiff, and the following provisions shall apply :—

(*a*) Where, if the money had been received by the high bailiff, it would be his duty to pay over the same to the registrar of the court of which he is high bailiff, the money paid into court shall be dealt with as if it had been so received and paid over, and the provisions of Order II. Rule 34A, paragraphs (ii.), (iii.), and (iv.) shall apply :

(*b*) Where, if the money had been received by the high bailiff, it would be his duty, under subsection two of section forty-one of the Bankruptcy Act, 1914, to retain the same, the money paid into court shall be retained in court :

(*c*) Where the execution creditor becomes entitled to receive the amount so retained, the money paid into court shall be dealt with as if it had been received by the high bailiff and paid over by him to the registrar of the court of which he is high bailiff :

(*d*) Where, if the money had been received by the high bailiff it would be his duty to pay over the same, after deducting

O. XXV. r. 23B.

the costs of the execution, to the official receiver or trustee in bankruptcy, the high bailiff shall pay to the official receiver or trustee the amount paid into court, after deducting such costs; and the registrar of the court of which the high bailiff is high bailiff shall pay the amount so paid into court to the high bailiff, and shall be allowed by the treasurer of his court, at his audit, the amount so paid; and if any part of such amount was paid into the home court the registrar of the home court shall account for and pay over such amount to the treasurer of his court at such time as the treasurer shall require.

NOTE.—Rule amended by Rules of 1917, dated February 19th, 1917.

Application for private sale.

46 & 47 Vict. c. 52, s. 145. 53 & 54 Vict. c. 71, s. 12.

Form 170.

24.—(1) An application under section one hundred and forty-five of the Bankruptcy Act, 1883, and section twelve of the Bankruptcy Act, 1890, for an order that a sale under an execution may be made otherwise than by public auction, shall be made to the court on notice in writing according to the form in the Appendix, stating shortly the grounds of the application.

High bailiff to deliver list of executions to applicant.

(2) The high bailiff shall, on the demand of any applicant desirous of making such application as aforesaid, deliver to him a written list of the names and addresses of every person at whose instance any warrant or writ of execution against the goods of the debtor has been lodged with him.

Service of notice of application.

(3) The notice shall be served four clear days at least before the day appointed for the hearing of the application on the high bailiff and on every person named in such list as aforesaid other than the applicant.

High bailiff's list to be produced.

(4) On the hearing of the application the applicant shall produce such list as aforesaid to the court.

Persons who may appear on application.

(5) Every person upon whom the notice is served may attend the hearing and be heard in opposition to or in support of the application, and the court may on the hearing direct that all or any part of the costs may be borne by any of the persons attending or otherwise as may be just.

Stay of proceedings on warrant issued without leave after administration order.

46 & 47 Vict. c. 52, s. 122.

Forms 192A, 193A.

24A. Where after a warrant of execution has issued against the goods of a debtor, the debtor files in the court out of which the warrant issued an affidavit according to the form in the Appendix, stating that an order for the administration of his estate (in these rules called an administration order) has been made under section one hundred and twenty-two of the Bankruptcy Act, 1883, and that the debt in respect of which the warrant issued has been notified to the court in which the administration order was made, and that the judgment creditor has not obtained leave to proceed

from that court, annexing to such affidavit a certificate of the registrar of the court in which the administration order was made, and forthwith upon such affidavit being so filed gives notice to the judgment creditor of the filing thereof, further proceedings under the execution shall be stayed. O. XXV. r. 24A.

Where in any such case the warrant has been sent for re-issue to a foreign court, the registrar of the court in which the affidavit is filed shall forthwith give notice thereof to the registrar of the foreign court. Where warrant issued to foreign court.

24B. For the purposes of Rule 24A of this order, the registrar of the court in which an administration order has been made shall, upon the application of the debtor, issue to him a certificate according to the form in the Appendix. Certificate that administration order has been made. Form 193.

24C. In any case coming within Rule 24A of this order, or where proceedings under an execution are stayed under section one hundred and twenty-two of the Bankruptcy Act, 1883, or under the rules made under that section, any money received under the execution shall, when received by the registrar of the court out of which the warrant issued from the high bailiff of that court, or, in the case of a warrant issued to a foreign district, when certified to the registrar of the home court under Order XXVIII. Rule 2, be dealt with as follows, viz. :— Application of money received under execution.

(*a*) If the administration order was made in or the proceedings stayed by the court out of which the warrant issued, such money shall be dealt with as the judge of that court shall direct ; and

(*b*) If the administration order was made in or the proceedings stayed by any other court, such money shall be certified in accordance with Order XXVIII. Rule 2, by the registrar of the court out of which the warrant issued to the registrar of the court in which the administration order was made or by which the proceedings were stayed, and the amount certified shall be paid over by the registrar of the court certifying the same to the treasurer, as the treasurer shall require ; and the registrar of the court in which the administration order was made or by which the proceedings were stayed shall out of any moneys in his hands pay the amount so certified as the judge of that court shall direct, and shall be allowed by the treasurer of his court, at his audit, the amount so paid.

Where in any such case the costs of the execution incurred by the creditor are not allowed out of the money received, the Costs.

O. XXV. 24C.

creditor shall be liable for such costs; but they may be allowed as against the debtor, and may on application be added to the debt.

Order for possession fees.

24D. In any such case as in the last preceding rule mentioned the judge may, if he thinks fit, on application by the high bailiff made in accordance with Order XXVII. Rule 1, make an order for payment by the execution creditor to the high bailiff of any fees or expenses incurred by the high bailiff which are not allowed under the last preceding rule out of the money (if any) received under the execution.

Judgment Summons.

Judgment summons to be served personally.

32 & 33 Vict. c. 62.

25.—(1) No order of commitment under the Debtors Act, 1869, shall be made unless a summons to appear and be examined on oath, hereinafter called a judgment summons, has been personally served upon the judgment debtor.

Although personal service of the judgment summons is required, it is not necessary that the order of the court for payment shall be served personally on the judgment debtor (*Haydon* v. *Haydon*, (1911) 2 K. B. 191; 80 L. J. K. B. 672).

Præcipe for judgment summons.

Form 176.

(2) A person requiring a judgment summons to be issued shall file a præcipe according to the form in the Appendix, stating the full names and address of or otherwise sufficiently identifying every person against whom it is to be issued. Where the name or address of any such person as given in the præcipe differs from the name or address as given in the judgment or order, both descriptions shall be inserted in the judgment summons, and in the order of commitment (if any), as follows, viz. :—

"C. D. , of (*name and address as given in the præcipe*), sued as A. D. , of (*name and address as given in the judgment or order*)."

Summons where two or more defendants.

(3) Where a judgment has been given or an order made against two or more persons, the person entitled to enforce the judgment or order may require a judgment summons to be issued against all or any one or more of the persons liable under the judgment or order.

Issue of summons against debtor in the district.

26.—(1) A judgment summons may be issued without leave by the court within the district of which the debtor against whom the summons is issued resides or carries on business or is employed.

Application for leave for judgment summons

(2) Where a debtor does not reside and neither carries on business nor is employed within the district of the court in which the judgment or order was obtained, a judgment summons shall not be issued from that court without the leave of the judge. The

application for leave shall be made upon affidavit according to the form in the Appendix, and leave shall not be granted unless the judge is satisfied that the evidence afforded by such affidavit, if uncontradicted, would justify the making of an order of commitment against the debtor. If leave is granted, a copy of the affidavit shall be lodged with the registrar and annexed to the judgment summons and served therewith. The districts of the metropolitan courts shall be deemed to be one district, so far as relates to the issuing of judgment summonses.

O. XXV. r. 26.
to issue out of the district.
Form 177.

The affidavit must strictly follow the form, and is insufficient unless it states, where a business is being carried on by the debtor, circumstances showing that the business was profitable, also whether the debtor is unmarried or a married man with children (*McIntosh* v. *Simpkins* (C. A.), (1901) 1 K. B. 487; 70 L. J. K. B. 268), and the debtor cannot waive the objection to the sufficiency of the affidavit (*Alderson* v. *Palliser* (C. A.), (1901) 2 K. B. 833; 70 L. J. K. B. 935).

(3) Provided that no affidavit or leave under the preceding paragraph of this rule shall be required if the person requiring a judgment summons to be issued either

No leave required if travelling expenses deposited or undertaking given to pay or tender same.

(*a*) When such summons is to be served by a bailiff, deposits with the registrar, to be paid or tendered to the judgment debtor with the summons, or

(*b*) When such summons is to be served otherwise than by a bailiff, gives an undertaking in writing to pay or tender to the judgment debtor with the summons,

a sum reasonably sufficient to cover the travelling expenses of the debtor to attend the court, the amount to be fixed by the registrar.

27. Where a judgment or order is against a firm, or against a person carrying on business in any name other than his own in such other name, and the person entitled to enforce the judgment or order desires to do so by judgment summons against any person whom he alleges to be liable under the judgment or order as a partner in or the sole member of the firm, or as the person carrying on business in such other name as aforesaid, he shall file an affidavit, together with a copy thereof, according to one of the forms in the Appendix, and thereupon a judgment summons may issue according to the form in the Appendix, directed to the person alleged to be liable as aforesaid, and there shall be annexed to such judgment summons, and served therewith, a copy of the said affidavit sealed with the seal of the court.

Judgment summons on judgment against a firm, etc.
Forms 182, 183.
Form 184.

Even where one of two or more persons jointly and severally liable has, subject to suspension, been committed, the plaintiff may so proceed against the other person or persons liable on the judgment (*Rex* v. *Birmingham C. C. Judge*, (1902) 2 K. B. 283; 71 L. J. K. B. 881).

O.XXV.r.27. Provided that where such person neither resides nor carries on business within the district of the court the summons shall not be issued unless the leave of the judge is obtained in accordance with the last preceding rule, or the proviso to that rule is complied with.

If such person does not appear on the return day of the judgment summons, he shall be deemed to admit his liability as a partner in or the sole member of the firm, or as the person carrying on business in such other name as aforesaid, to pay the amount due and payable under the judgment or order. But if such person appears and denies his liability, the judge may decide the question on the evidence then before him, or may order the question to be tried and determined in an action to be commenced by plaint and summons in the ordinary way.

No judgment summons to be issued after a certain time from judgment, etc., unless an affidavit in proof of means is filed.

28. A judgment summons, not being a successive summons, shall not issue after the expiration of four months from the date on which the last payment into court, if any, under the judgment or order has been made, or if no payment into court has been made, then from the date upon which default was made, unless the delay has been occasioned by an attempt to levy an execution upon the debtor's goods, or unless an affidavit is filed, stating the debtor's place of residence and place of business or employment, his profession or trade or employment (if any), and any facts known to the deponent, showing the means which the debtor has or since the date of the judgment or order has had to pay or to have paid the debt or instalments due under the judgment or order, sufficient to satisfy the judge that the debtor has the means of obeying or could have obeyed the judgment or order of the court; and if the facts stated in the affidavit do not satisfy the registrar that the debtor might be thereon committed, the registrar shall refuse to issue the summons, and refer the applicant to the judge for his directions, and the judge may make such order in the matter as he may think fit. Provided that no affidavit under this rule shall be required if the person requiring a judgment summons to be issued complies with the proviso to Rule 26 of this Order.

Where judgment summons applied for at a court in which judgment was not obtained.

Form 155.

29. Where a judgment creditor desires to apply for a judgment summons to a court other than the court in which the judgment or order was obtained, he shall obtain from the registrar of the court in which the judgment or order was obtained a certified copy of the judgment or order in the action, according to the form in the Appendix, and file the same with his application. Such copy shall state the date on which the last payment into court, if any, under such judgment or order was made, or if no payment

into court has been made, the date upon which default was made ; and the issue of a judgment summons under this rule shall be subject to the provisions of Rule 27 or Rule 28 of this Order, as the case may be. O. XXV. r. 29.

30. Where a party desires to enforce by commitment in any court a judgment or order of any competent court other than a county court, he shall obtain from such other court an office copy of the judgment or order he desires so to enforce, and shall file such office copy, together with an affidavit of the sum then due thereon, with the registrar of the court of the district in which the party, against whom the same is to be enforced resides or carries on business, or is employed, and the registrar shall thereupon issue a judgment summons. The issue of a judgment summons under this rule shall be subject to the provisions of Rule 27 of this Order in cases to which that rule applies ; but Rule 28 of this Order shall not apply to the issue of a judgment summons under this rule. Where judgment summons required on judgment of court other than a county court. Forms 180, 181.

(2) Where more persons than one are liable under the judgment or order, the office copy may be filed with the registrar of the court of the district in which any of such persons resides or carries on business or is employed ; but a judgment summons shall not be issued in that court against a person who does not reside or carry on business or who is not employed in the district, unless the leave of the judge is obtained in accordance with Rule 26 of this Order, or the proviso to that rule is complied with. Where there are several defendants.

30A.—(1) Where a party to an action desires a judgment summons to be issued in such action in a court within the district of which such party does not reside or carry on business, he or his solicitor (if the solicitor has no office within the district) may, in any case in which the leave of the court or the deposit of or an undertaking to pay a sum to cover the travelling expenses of the debtor to attend the court is not required by these rules before the issue of a judgment summons, instead of attending at the office of the court, transmit, by prepaid post, to the registrar— Issue of judgment summons by letter.

(*a*) The plaint note or summons issued in the action, or a duplicate thereof :

(*b*) A præcipe in accordance with paragraph 2 of Rule 25 of this Order :

(*c*) In any case coming within Rule 27, Rule 29, or Rule 30 of this Order, the affidavit and copy thereof, certified copy, or office copy and affidavit, required by those rules respectively :

(*d*) A money order for the fees payable upon the issue of the judgment summons, payable to the registrar at the post office of the town or place at which the court is held :

O. XXV. r. 30A.

(*e*) An envelope addressed to himself, with a penny postage stamp thereon ;

And upon receipt of the above the registrar shall issue the judgment summons and forward in the addressed envelope—

(i.) If the summons is to be served by a bailiff, the plaint note or summons issued in the action, or the duplicate thereof, and a note of the issue of the summons and the date of issue, and of the day on which the summons is to be heard ; or

(ii.) If the summons is to be served in accordance with the provisions of paragraph 2 of Rule 31 of this Order, the documents mentioned in paragraph (i.), and the judgment summons and a copy thereof.

(2) For the purposes of this rule the registrar shall on receipt of a written request from the party or his solicitor, together with a stamped and addressed envelope for reply, forward to the party or his solicitor in the addressed envelope such information as he may ask for to enable him to ascertain whether a judgment summons may be issued.

(3) Provided that if a party or his solicitor desires judgment summonses to be issued or requests information in more than twenty actions at any one time, the registrar may require such party or his solicitor to attend at the office of the court.

(4) For the purposes of this rule the several districts of the metropolitan courts shall be considered *inter se* as one district only.

Issue and service of judgment summons.

Forms 178, 181, 184.

31.—(1) A judgment summons shall be according to such one of the forms in the Appendix as shall be applicable to the circumstances of the case, and shall be issued not less than ten clear days and be served not less than five clear days before the day on which the judgment debtor is required to appear, except in the case provided for by the next following rule.

(2) A judgment summons may be served in accordance with the provisions of Order VII. Rule 33 ; and that rule shall apply to such service with the substitution of the words " on the filing of the præcipe " for the words " on the entry of the plaint under Order V. Rule 9." If served otherwise than by a bailiff, an affidavit of service according to the form in the Appendix by the person who actually effected service must be lodged with the registrar before or on the return-day.

Form 185.

Judgment summons deemed to be a summons to a witness.

51 & 52 Vict. c. 43, s. 111.

Form 178A.

(3) A judgment summons shall be deemed to be a summons to a witness within the meaning of section one hundred and eleven of the Act ; and a notice according to the form in the Appendix shall be printed at the foot of or annexed to the summons.

O. XXV. r. 32.

32. Where the person applying for a judgment summons states to the registrar that the judgment debtor is about to remove from his residence or place of business, or is keeping out of the way to avoid service, the judgment summons may be issued and served at any time before the hearing: Provided that the court shall not act upon a summons issued under this rule in the absence of the judgment debtor, unless at the hearing the judge is satisfied, by evidence on oath, that at the time of the application for the judgment summons such party was either about to remove from his residence or place of business, or was keeping out of the way to avoid service.

Where judgment debtor about to remove.

33. Where a judgment summons has not been served in due time, a successive summons may be issued, without fee, at any time within three months from the date of the summons; but if such successive summons is not served in due time, no further successive summons shall be allowed, but a fresh summons may be issued on payment of the fee. Any successive or subsequent judgment summons may be served by such person as the court may direct. If served otherwise than by a bailiff, an affidavit of service according to the form in the Appendix by the person who actually effected service must be lodged with the registrar before the return-day.

Successive judgment summons.

Form 185.

34. The hearing of a judgment summons may, by leave of the judge, be adjourned from time to time.

Adjournment.

35. Witnesses may be summoned to prove the means of a judgment debtor in the same manner as witnesses are summoned to give evidence upon the hearing of a plaint; and the expenses of any person examined, whether summoned or not, may, subject to these rules, be allowed.

Witnesses may be summoned to prove means.

Where the judgment debtor does not appear at the hearing, or pays into court the amount in payment of which he has made default, expenses paid to him with the judgment summons, or with a summons to appear as a witness, may, if the judge so directs, be allowed as expenses of a witness; and where the judgment debtor appears at the hearing, expenses so paid to him may, if the judge so directs, be allowed as expenses of a witness in any case in which the costs of witnesses may be allowed under these rules.

When expenses paid to judgment debtor may be allowed.

36. In Book H referred to in the Appendix there shall be entered the name of every witness who has been examined as to the means of the debtor; and whenever an order of commitment is made there shall also be entered in the column "order" of the said book a note or minute showing whether such order has been

Name of witness to be entered in Book H, and whether proof made

O. XXV. r. 36. made on account of the past or of the present ability of the debtor to obey the order of the court.

of past or present means.

Evidence by affidavit, where creditor or debtor not resident in district of court issuing judgment summons.

Form 179.

37. Where a judgment creditor at whose instance a judgment summons is issued, or a judgment debtor summoned to appear by a judgment summons, does not reside within the district of the court in which the summons is to be heard, he may forward to the registrar of the court from which the summons is issued an affidavit, setting forth any facts which he may wish to be before the court prior to any order being made on the summons. And the judge may, if he thinks fit, on the hearing of the judgment summons admit the affidavit as the evidence of the person by whom the same is made. Notice of this rule, according to the form in the Appendix, shall be printed at the foot of or annexed to every judgment summons issued pursuant to leave granted under Rule 26 of this Order.

Warrant of execution to be lodged in court before issue of judgment summons.

38. Where a party who has issued a warrant of execution against the goods of any party upon a judgment or order desires to issue a judgment summons against such party, the high bailiff of the court shall lodge the warrant of execution in court, and a judgment summons shall not issue until the warrant has been so lodged; but any such warrant, if not fully executed, may be re-issued by leave of the judge.

Where order issued to foreign court.

Where in any such case the warrant has been sent for re-issue to a foreign court, the high bailiff of the foreign court shall on request of the high bailiff of the home court return the warrant to him to be lodged in court.

Order for possession fees.

In any such case the judge, or where the warrant has been sent for re-issue to a foreign court, the judge of that court, may, if he thinks fit, on application by the high bailiff make an order for payment by the execution creditor to the high bailiff of any fees or expenses incurred prior to the recall of the warrant, on application made in accordance with Order XXVII., Rule 1, paragraph 2.

Where a judgment summons or order of commitment is outstanding, a warrant of execution may not be issued in the same action without the leave of the judge (Order XXV. r. 10A).

Minute that certificate of judgment has been given to be made.

39. Where a certified copy of a judgment or order is obtained from a registrar for the purpose of taking proceedings thereon in any other court, the registrar shall make on the minute of the judgment or order a memorandum of such certified copy having been given, and the bailiff of the court issuing such certified copy shall lodge in court any warrant of execution against the goods or judgment summons or order of commitment which may have

been issued by such court upon such judgment or order; and no such warrant, summons, or order shall be re-issued, nor shall any subsequent warrant of execution against the goods or judgment summons upon such judgment or order be issued by such court, nor shall any order be made under Order XXIII. Rule 14, in such court, unless it is shown to the satisfaction of the court that no order has been made against the person liable under such judgment or order in any other court upon such certified copy. O. XXV. r. 39 — Restriction on proceedings in court issuing certificate.

40.—(1) Where a judgment summons is heard in a court other than that in which the judgment or order was obtained, a memorandum of the result of such hearing shall be sent by the registrar to the registrar of the court in which the judgment or order was obtained, and shall be entered by such last mentioned registrar on the minute of the judgment or order. Where order of commitment made or order altered by another court, proceedings to be transferred to and continued in that court.

(2) If on such hearing an order of commitment or an order altering the terms of the judgment or order is made, the proceedings shall be thereby transferred to the court in which such order is made; and all payments whether under the order of commitment or under the original judgment or order, or under the new order shall be made into, and execution or other process for enforcing either the order of commitment or the original judgment or order, or the new order, shall be issued by, the court making such order of commitment or new order.

(3) In any such case the certified copy of the judgment or order filed in the court pursuant to Rule 29 of this Order shall for the purposes of that rule and for all other purposes be deemed to be a judgment or order of the court in which the judgment summons is heard; and if the judgment creditor subsequently desires to apply for a judgment summons to another court pursuant to the last-mentioned rule, he shall obtain from the registrar of the court in which the order of commitment or new order was made a copy, certified by the registrar to be a correct copy, of the certified copy of the judgment or order filed in that court pursuant to the last-mentioned rule, and a certified copy of the order made on the hearing of the judgment summons, containing the particulars required by the said rule, according to the form in the Appendix, Form 155. and shall file the same with his application.

(4) If on such hearing no order is made, the judgment or order shall remain in the court in which it was obtained, and the certified copy thereof shall be returned to that court; and subsequent payments thereunder shall be made into, and subsequent proceedings for the enforcement thereof may be taken in, such last mentioned court.

O. XXV. r. 40A.

Where order of commitment or new order made in county court on judgment summons on judgment or order of a court other than a county court.

40A. Where a judgment summons is heard in a county court on a judgment or order of any competent court other than a county court, a memorandum of the result of such hearing shall be sent by the registrar to the registrar or other proper officer of the court in which the judgment or order was obtained.

If on such hearing an order of commitment or an order altering the terms of the judgment or order is made, then until such order is discharged all payments, whether under the order of commitment or under the new order, shall be made into, and execution or other process for enforcing either the order of commitment or the new order may be issued by, the court making the order of commitment or the new order. In any such case the office copy of the judgment or order filed in the court pursuant to Rule 30 of this Order shall be deemed to be a judgment or order of the court in which the judgment summons is heard; and if the judgment creditor subsequently desires to apply for a judgment summons to another court pursuant to Rule 29 of this Order, he shall obtain from the registrar of the court in which the order of commitment or new order was made a copy, certified by the registrar to be a correct copy, of the office copy of the judgment or order filed in that court pursuant to Rule 30 of this Order, and a certified copy of the order made on the hearing of the judgment summons, containing the particulars required by Rule 29 of this Order, according to the form in the Appendix, and shall file the same with his application.

Form 155.

Where order of commitment sent to a foreign court.

51 & 52 Vict. c. 43, s. 158.

Form 188.

41. Where an order of commitment is sent to a foreign court under the provisions of section one hundred and fifty-eight of the Act, the registrar of the foreign court shall indorse on it a notice, according to the form in the Appendix, addressed to the governor of the prison used by that court, and shall affix the seal of the court thereto.

The order is issued to the high bailiff (see 51 & 52 Vict. c. 43, s. 158).

No commitment after bankruptcy in respect of debt provable thereunder.

42. Where upon the return day of a judgment summons the judgment debtor satisfies the judge that a receiving order has been made for the protection of his estate, or that he has been adjudicated bankrupt, and that the debt was provable in the bankruptcy, no order of commitment shall be made.

See *In re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420.

Commitment not to be enforced where receiving order made after

43. Where a judgment debtor after the making of an order of commitment against him files in the court in which the order was made an affidavit according to the form in the Appendix, stating that a receiving order has been made for the protection of his estate, or that he has been adjudicated a bankrupt, and that the

debt was provable in the bankruptcy, and forthwith upon such affidavit being so filed gives notice to the judgment creditor of the filing thereof, the order of commitment shall not be issued, and if issued and not executed it shall be recalled. O. XXV. r. 43. order of commitment.

Where in any such case the order has been sent for re-issue to a foreign court, the registrar of the court in which the affidavit is filed shall forthwith give notice thereof to the registrar of the foreign court. Form 192. Where order issued to foreign court.

44. Where a judgment debtor is arrested, he may file in the court within the district of which he is in custody, an affidavit as mentioned in the last preceding rule, and thereupon he shall be discharged out of custody upon the certificate of the registrar of that court, who shall forthwith give notice to the judgment creditor of such discharge. Discharge of judgment debtor on filing affidavit as to bankruptcy. Forms 192, 194.

45. Where upon the return day of a judgment summons the judgment debtor satisfies the judge that an order for the administration of his estate (in these rules called an administration order) has been made under section one hundred and twenty-two of the Bankruptcy Act, 1883, and that the debt in respect of which the summons issued has been notified to the court in which the administration order was made, no order shall be made on such judgment summons except on proof that the creditor has obtained leave to proceed from the court in which the administration order was made, and in accordance with the terms, if any, imposed by that court. No commitment on judgment summons issued without leave after administration order. 46 & 47 Vict c. 52, s. 122.

45A. Where a judgment debtor after the making of an order of commitment against him files in the court in which the order was made an affidavit according to the form in the Appendix, stating that an administration order has been made, and that the debt in respect of which the order of commitment was made has been notified to the court in which the administration order was made, and that the judgment creditor has not obtained leave to proceed from that court, annexing to such affidavit a certificate of the registrar of the court in which the order was made, and forthwith upon such affidavit being so filed gives notice to the judgment creditor of the filing thereof, the order of commitment shall not be issued, and if issued and not executed it shall be recalled. Recall of commitment after administration order. Forms 192A, 193.

Where in any such case the order has been sent for re-issue to a foreign court, the registrar of the court in which the affidavit is filed shall forthwith give notice thereof to the registrar of the foreign court. Where order issued to foreign court.

O. XXV. r. 45B.

Discharge of judgment debtor on filing affidavit as to administration order.

45B. Where a judgment debtor is arrested, he may file in the court within the district of which he is in custody an affidavit as mentioned in the last preceding rule, and thereupon he shall be discharged out of custody upon the certificate of the registrar of that court, who shall forthwith give notice to the judgment creditor of such discharge.

Forms 192B, 193A, 194.

Certificate that administration order has been made.

Form 193A.

45C. For the purposes of the three last preceding rules the registrar of the court in which an administration order has been made shall, upon the application of the debtor, issue to him a certificate according to the form in the Appendix.

Application of money received under judgment summons or commitment.

45D. In any case coming within Rule 45A or Rule 45B of this Order, or where proceedings under a judgment summons or an order of commitment are stayed under section one hundred and twenty-two of the Bankruptcy Act, 1883, or under the rules made under that section, any money received under the judgment summons or order of commitment shall be dealt with as provided by Rule 24C of this Order with respect to money received under an execution.

Costs.

Where in any such case the costs of the judgment summons or order of commitment incurred by the creditor are not allowed out of the money received, the creditor shall be liable for such costs ; but they may be allowed as against the debtor, and may on application be added to the debt.

Where the debt is not provable, such as alimony ordered to be paid by the Probate Division, on proof of means the order may still be made (*Kerr* v. *Kerr*, (1897) 2 Q. B. 439 ; 66 L. J. Q. B. 838).

Order on judgment summons.

46.—(1) On the hearing of a judgment summons the judge, if he is of opinion that an order of commitment ought not to be made, may refuse to make any order, or may make a fresh order for payment of the amount remaining due and unpaid under the judgment or order, either at a specified time, or by instalments.

Suspension of order of commitment.

Form 191A.

(2) If an order of commitment is made, the judge may direct the execution of such order to be suspended to enable the debtor to pay the amount in respect of the non-payment of which the order is made, by instalments or otherwise ; and a note or minute of such direction shall be entered in the column " order " in Book H referred to in the Appendix. When such direction is given, notice shall be sent to the debtor according to the form in the Appendix.

Payments to be made into court.

(3) Subject to the provisions of Rules 48 and 49 of this Order, all payments under a fresh order or order of commitment shall be paid into court.

Form, date duration,

(4) An order of commitment shall be according to such one of the forms in the Appendix as shall be applicable to the circum-

stances of the case, and shall, on whatever day it may be issued from the registrar's office, bear date on the day on which the order of commitment was made, and shall, if unexecuted, remain in force for one year only from and exclusive of such date, unless renewed in manner hereinafter provided; but the judge may at any time before or after the expiration of such year extend the time within which the order may be executed for any time not exceeding one year from the date on which it would otherwise have ceased to be in force, and so on from time to time before or after the expiration of the last period of extension. An order of extension may be made either before or after the order of commitment is issued: and the fact of an order of extension having been made shall be indorsed on the order of commitment according to the form in the Appendix.

O. XXV. r. 46. and extension of order of commitment. Forms 187, 189, 191. Form 163A.

As to mode of issuing and executing orders of commitment, see 51 & 52 Vict. c. 43, s. 161.

Any fees payable on the extension of an order of commitment may be allowed as costs of that order, and if so allowed the amount and the fact of such allowance shall be entered on that order.

Fees on extension.

47. Where a judgment or order has been given or made for payment by instalments, and an order of commitment is made in respect of the non-payment of one or more of such instalments before the whole of such instalments have become due, then, if the judge orders the execution of the order of commitment to be suspended to enable the debtor to pay the amount in respect of the non-payment of which the order is made, by instalments or otherwise, he may, if he thinks fit, order that the judgment or order for payment of instalments shall also be suspended for so long as the execution of the order of commitment is suspended, or for any less period. If the judge makes such order as last mentioned, he may at any subsequent time order that the suspension of the judgment or order for payment of instalments shall cease; and if the plaintiff withdraws or abandons the order of commitment, the suspension of the judgment or order for payment of instalments shall cease to operate on such withdrawal or abandonment.

Power to suspend order for payment of future instalments during suspension of order of commitment in respect of past instalments.

47A.—(1) Where a party to an action has obtained an order of commitment in such action in a court within the district of which such party does not reside or carry on business, and desires such order of commitment to issue, he or his solicitor (if the solicitor has no office within the district) may, instead of attending at the office of the court, transmit, by prepaid post, to the registrar—

Issue of order of commitment by letter.

O. XXV. r. 47A.

(*a*) a præcipe containing the number of the plaint, and stating the full names and address of or otherwise sufficiently identifying every person against whom the order of commitment is to be issued :

(*b*) a money order for the fees payable upon the issue of the order of commitment payable to the registrar at the post office of the town or place at which the court is held ;

(*c*) an envelope addressed to himself, with a penny postage stamp thereon ;

and on receipt of the above the registrar shall issue the order of commitment and forward in the addressed envelope a note of the issue of the order and the date of issue.

(2) Paragraphs 2, 3, and 4 of Rule 30B of this Order shall apply to the issue of orders of commitment under this rule.

Payment on arrest.

48. When an order of commitment for non-payment of money is issued, the debtor may, at any time before his body is delivered into the custody of the gaoler, pay to the bailiff the amount entered on the order as that on payment of which he is to be discharged ; and on receiving such amount the bailiff shall discharge the debtor, and shall within twenty-four hours after receiving such amount pay over the same to the registrar of the court of which he is a bailiff.

Part payment after issue of order of commitment. 51 & 52 Vict. c. 43, s. 158.

48A.—(1) Where after the issue of an order of commitment for non-payment of money, but before the body of the debtor is delivered into the custody of the gaoler, money is paid into the court out of which the order issued, or into any foreign court to which the order has been sent for re-issue under section one hundred and fifty-eight of the Act, or to the bailiff holding the order, the following provisions shall apply.

(2) Where payment is made into the court in the district of which the order is to be executed, the registrar shall receive the amount so paid, and shall as soon as may be after such receipt,

(*a*) if he is high bailiff as well as registrar, notify the fact and amount of such payment to the bailiff holding the order ; or

(*b*) if he is not high bailiff, notify the fact and amount of such payment to the high bailiff, who shall as soon as may be after receiving such notification notify the same to the bailiff holding the order.

(3) Where payment is made into the court out of which the order issued (in this rule referred to as "the home court") after the order has been sent for re-issue to any foreign court, the registrar of the home court shall receive the amount so paid, and shall as

soon as may be after such receipt notify the fact and amount of such payment by post to the high bailiff of the foreign court, who shall as soon as may be after receiving such notification notify the same to the bailiff holding the order. O. XXV. r. 48A.

(4) The bailiff holding the order, on receiving any payment or notice of any payment, shall forthwith enter in ink on the face of the order, at the foot or in the margin thereof, the amount of such payment, and shall deduct the same from the amount indorsed on the order as that on payment of which the debtor may be discharged, and shall sign such entry, according to the form in the Appendix; and the order of commitment, unless withdrawn by the plaintiff, shall thenceforth operate as an order of commitment for non-payment of the amount remaining due after such deduction. Form 188A.

49.—(1) Where a prisoner has been delivered into the custody of the gaoler, the amount entered on the order of commitment as that upon payment of which the prisoner is to be discharged may be paid into the court out of which the order of commitment issued, or into the court in the district of which the order was executed, or to the gaoler in whose custody the prisoner is. Payment after debtor lodged in gaol

(2) Where payment is made into the court in the district of which the order was executed, the registrar shall sign and seal a certificate thereof, and shall forward the same by post or otherwise to the gaoler in whose custody the prisoner then is, who on receipt thereof shall forthwith discharge the prisoner. Form 195.

(3) Where payment is made into the court out of which the order of commitment issued (in this rule referred to as "the home court") after the order has been sent for re-issue to any foreign court, the fact of such payment shall forthwith be notified by post by the registrar of the home court to the registrar of the foreign court, who shall forthwith sign and seal a certificate thereof, and forward the same by post or otherwise to the gaoler in whose custody the prisoner then is, who on receipt thereof shall forthwith discharge the prisoner. Form 195.

(4) Where payment is made to the gaoler he shall, upon payment to him of the amount entered on the order of commitment as that on payment of which the prisoner is to be discharged, together with costs sufficient to pay for transmitting such amount, transmit such amount forthwith by money order to the registrar of the court under the order of which the prisoner was committed, and he shall sign a certificate of such payment, and discharge the prisoner, and such costs of transmission shall be part of the prescribed costs. Form 195.

O. XXV. r. 49A.

Part payment after debtor lodged in gaol.

49A.—(1) Where, after a prisoner has been delivered into the custody of the gaoler, money is paid into the court out of which the order of commitment issued, or into the court in the district of which the order was executed, but the amount paid is less than that entered on the order of commitment as that upon payment of which the prisoner may be discharged, the following provisions shall apply.

(2) Where payment is made into the court in the district of which the order was executed, the registrar shall receive the amount so paid, and shall as soon as may be after such receipt notify the fact and amount of such payment by post or otherwise to the gaoler.

(3) Where payment is made into the court out of which the order of commitment issued (in this rule referred to as " the home court ") after the order has been sent for re-issue to any foreign court, the registrar of the home court shall receive the amount so paid, and shall as soon as may be after such receipt notify the fact and amount of such payment by post to the registrar of the foreign court, who shall as soon as may be after receiving such notification notify the same by post or otherwise to the gaoler.

(4) The gaoler on receiving notice of any payment shall forthwith enter in ink on the face of the order, at the foot or in the margin thereof, the amount of such payment, and shall deduct the same from the amount entered on the order as that on payment of which the prisoner is to be discharged, and shall sign such entry, according to the form in the Appendix.

Form 188A.

This paragraph is new: Rule 151, 1914. See *ante*, p. 251.

(5) Upon payment to the gaoler of the balance of the amount entered on the order of commitment as that on payment of which the prisoner is to be discharged, after deducting the amount notified to the gaoler as having been paid into court, together with costs sufficient to pay for transmitting such balance, the gaoler shall transmit such balance forthwith by money order to the registrar of the court under the order of which the prisoner was committed, and he shall sign a certificate of such payment, and discharge the prisoner, and such costs of transmission shall be part of the prescribed costs.

Form 195.

Discharge of prisoner on request of judgment creditor.

Form 196

Form 197.

50. Upon the judgment creditor lodging with the registrar a request in writing, according to the form in the Appendix, that the judgment debtor, if in prison, may be discharged from custody, the registrar shall issue a certificate according to the form in the Appendix, and transmit the same by post to the gaoler in whose

custody the judgment debtor is; and the gaoler shall upon receipt of such certificate forthwith discharge the prisoner. O. XXV. r. 50.

In order to obtain a judgment debtor's discharge by payment, the above mode of proceeding must be strictly followed; for where a judgment debtor paid the debt and costs to the execution creditor, but no application was made to the court, and he was subsequently arrested by the bailiff of the court under the warrant of commitment, it was held that the arrest was legal (*Davies* v. *Fletcher*, (1853) 2 E. & B. 271; 22 L. J. Q. B. 429; 95 R. R. 538).

51. A certificate of payment by a prisoner shall be according to the form in the Appendix. Certificate of payment. Form 195.

52. If a judgment debtor appears on the return day, but the judgment creditor fails to appear, the judge may award costs to the judgment debtor. Costs on default of appearance of judgment creditor.

53. No costs shall be allowed to a solicitor for attending at the hearing of a judgment summons, unless the party for whom he appears resides out of the district of the court at which the summons is heard, or unless such summons is on a judgment or order of a court other than a county court, in either of which cases the judge may, if he thinks fit, allow the costs specified in the scale for attending in court to make or oppose an interlocutory application, or, where the amount for which the judgment summons is issued does not exceed ten pounds, a fee not exceeding five shillings. What costs allowable to solicitor on judgment summons.

54. Where on the hearing of a judgment summons on a judgment or order of a county court the judge, in lieu of making an order of commitment, makes a fresh order for payment of the amount remaining due and unpaid under the judgment or order, no costs for fees or witnesses shall be allowed to the judgment creditor, unless the judge is satisfied that the debtor has had since the date of the original judgment or order the means to pay the sum in payment of which he has made default, and a minute to that effect is entered in Book H. Where no costs are to be allowed on judgment summons.

55. Where on the hearing of a judgment summons the judge, in lieu of making an order of commitment, makes a fresh order for payment of the amount remaining due and unpaid under the judgment or order, or where an order for payment by instalments is made under Order XXIII. Rule 14, there shall be included in the amount payable under such order, for the purpose of any proceedings under such order otherwise than by way of judgment summons, the amount (if any) in respect of which an order of commitment has been made, and in respect of which the debtor Provisions as to amount for which debtor has been imprisoned, where fresh order made on judgment summons or under Order XXIII. r. 14,

O. XXV. r. 55. has been imprisoned, but so that the debtor shall not be liable to be imprisoned a second time for non-payment of such last-mentioned amount. On any subsequent judgment summons on default in payment of any instalments payable under such order, the amount (if any) in respect of which the debtor has been imprisoned before the date of the order shall be deducted on the face of the summons from the amount payable under the order; but in calculating for the purposes of any such subsequent summons the amount in payment of which the debtor has made default, the instalments payable under the order shall be considered as attributable in the first instance to the discharge of the amount payable under the order other than the amount in respect of which the debtor has been so imprisoned, and the summons may be issued for the full amount of the instalments in arrear, if such amount does not exceed the balance which remains payable under the order after deducting the amount in respect of which the debtor has been so imprisoned, or if the instalments in arrear exceed such balance, then for the amount of such balance.

and as to subsequent judgment summons under such order.

Form 178.

Where the judgment or order is for the payment of a sum not exceeding 20*l.*, exclusive of costs, by instalments or otherwise, and the judge is satisfied that the person liable is unable to pay at the time or by the instalments ordered, he may, upon the application of the person liable, made upon notice to the person entitled to enforce the judgment or order two days at least before the hearing, order the amount due and unpaid to be paid by instalments, or, if already payable by instalments, by the like or smaller instalments; the order may be varied from time to time. The judge may also, on the application of the person entitled to enforce the judgment or order made on the like notice to the person liable, order the amount to be paid in one sum or by larger instalments than those previously ordered, and may vary his order. An order made under this rule is entered in the minute book and prepared and served in accordance with Order XXIII. r. 7, and has the same effect as a fresh order for payment made on the hearing of a judgment summons (see Order XXIII. r. 15).

If the order or judgment be for payment by instalments, a power of committal arises on default of payment for each instalment (*Evans* v. *Wills*, (1876) 1 C. P. D. 229; 45 L. J. C. P. 420; and *Horsnail* v. *Bruce*, (1873) L. R. 8 C. P. 378; 42 L. J. C. P. 140).

If the creditor waits, however, until after the date for payment of all the instalments, the debtor can then doubtless be committed for one term only. If the order of commitment has never been executed, and by reason of lapse of time the order is inoperative, it seems that a fresh commitment may be made (*R.* v. *Stonor* (1), (1888) 57 L. J. Q. B. 510).

Costs of abortive execution not to be included in judgment summons or fresh order under Order XXIII. r. 14.

56. Costs incurred in endeavouring to enforce a judgment or order by way of execution against the goods, and not recovered under such execution, shall not be included in the amount due under such judgment or order for the purposes of a judgment summons, or of an application for a fresh order for payment under Order XXIII. Rule 14, nor shall money paid into court otherwise than under execution against the goods be attributed to payment of such costs.

Orders enforceable by attachment. 36 & 37 Vict. c. 66, s. 89. Form 349.

57. Orders in the nature of an injunction, and all orders, interlocutory or otherwise, within the competence of the court, which, if the same were made in an action or matter pending in the High Court, could in such court be enforced by attachment of the person or committal, may be enforced by order of the judge by warrant of attachment, which shall be according to the form in the Appendix.

Indorsement and service of order. Form 346.

58. Before any application is made for the issue of a warrant of attachment, a sealed copy of the order sought to be so enforced, indorsed with a notice in the form in the Appendix, shall be served upon the person to be bound thereby. The copy so indorsed shall be issued by the registrar for service, on the application of the party entitled to the benefit of the order. By leave of the registrar it may be issued to the applicant or his solicitor, and served by any person by whom a default summons may be served under Order VII. Rule 33, but in default of such leave it shall be issued to and served by a bailiff. Service shall in all cases be personal, unless the judge for good cause makes an order for substituted service pursuant to Order VII. Rule 40.

Even after such service, the attachment can be obtained by express order of the court only (*Abud* v. *Riches* (M.R.), (1870) 2 Ch. D. 528; 45 L. J. Ch. 649).

Issue and service of notice of attachment on failure to obey order after service of copy thereof. Form 347.

59. If the person bound by the order fails to obey it, the registrar, on the application of the party entitled to the benefit of the order, shall, not less than three days after service of the copy indorsed as provided by the preceding rule, issue for service a notice under the seal of the court requiring the person who has failed to obey the order to attend the court on a day and at an hour to be named in such notice, to show cause why he should not be committed for his contempt in neglecting to obey such order. The notice shall be issued for service and served in the same manner and under the same conditions as the indorsed copy mentioned in the last preceding rule. By leave of the judge the notice may be issued and served at an earlier period than as above prescribed.

Order of judge for attachment. Forms 348, 349.

60. On the day named in the notice mentioned in the last preceding rule, the judge, on proof of service of the copy order duly indorsed as provided by Rule 58, and of the above notice as provided by the last preceding rule of this Order, and of the disobedience of the person in default, may order a warrant of attachment to issue, either unconditionally or on such terms as may be just, and may make such order as to costs as he may

O.XXV.r.60. think fit. Provided that if the party in default appears proof of service of the copy order and notice shall not be necessary, unless the judge otherwise orders.

The order must set out the particular ground of committal, in order that the person committed may know exactly what he ought to do to purge his contempt (*R.* v. *Lambeth C. C.* (2), (1887) 36 W. R. 475).

The warrant authorises the high bailiff to take the body of the person in default, and all constables and peace officers in their jurisdiction must aid in its execution, and the governor of the prison must receive and keep such prisoner until duly discharged (51 & 52 Vict. c. 43, s. 161).

Order to be drawn up and copy served.

61. The order of the judge authorising the issue of the warrant shall be drawn up and a sealed copy thereof shall be served on the person in default either before or at the time of the execution of the warrant, unless the judge otherwise orders.

Discharge of person in custody by judge.

Form 350.

62. Any person in custody under any order (other than an order under the Debtors Act, 1869), in which it is directed that the application for his discharge shall be made to the judge, may make such application at the court, or by leave of the judge at any place which he may appoint, on filing an affidavit showing that he has cleared or is desirous of clearing his contempt, and giving to the party at whose instance he was committed notice in writing of his intention so to apply, with a copy of such affidavit, two clear days at least before making the application, and such discharge, if granted, shall be given according to the form in the Appendix.

Form 351.

On the return, the judge or registrar, as the case may be, can now, by virtue of the 41 & 42 Vict. c. 54, s. 1, in case of failure to purge the contempt by paying money, inquire into the case, and exercise a judicial discretion in deciding whether or not the prisoner should be kept in custody. This was not the case before the Act just cited (*Ransom* v. *Boyd*, (1877) W. N. 236).

In other cases of contempt not purged, the discharge cannot generally be granted. An appeal would possibly lie from the registrar to the judge where the order directs that the application for discharge be made to the registrar, which it is thought should only be done where the judge cannot hear the application himself. If the judge declined to hear the application, an order in the nature of a mandamus would lie; but if the case were decided on the merits and the discharge refused, there would appear to be no remedy except perhaps by *habeas corpus* from the High Court.

Discharge of person in custody by registrar.

Form 350.

Form 351.

63. Any person in custody under any order (other than an order under the Debtors Act, 1869), in which it is not directed that the application for his discharge shall be made to the judge, may apply to the registrar to be discharged, on filing an affidavit showing that he has cleared or is desirous of clearing his contempt, and giving to the party at whose instance he was committed notice in writing of his intention so to apply, with a copy of such affidavit, two clear days at least before making the application; and such discharge, if granted, shall be given according to the form in the Appendix.

If application to the judge was directed, it must be made accordingly, the same practice being followed. The judge may hear the application at any place which he may appoint (Order XXV. r. 62). O. XXV. r. 63. Notes.

Warrant of Possession.

64. A judgment or order for the recovery or for the delivery of the possession of land, or for the recovery of possession of a tenement, whether made in an action of ejectment or in any other action or matter, may be enforced by warrant of possession, which shall be according to such of the forms in the Appendix as shall be applicable to the case. Recovery of land or possession to be enforced by warrant of possession. Forms 251, 263, 264, 265.

65. Where in an action of ejectment judgment is given for the plaintiff, execution may issue upon the day named in the judgment; and if no day is named, then it may issue after the expiration of fourteen clear days from the day on which judgment is given. Execution on judgment in action of ejectment.

66. Where in an action of ejectment judgment is given for the recovery of possession and costs, there may be either one warrant or separate warrants of execution for the recovery of possession and for the costs, at the election of the plaintiff. Separate warrants for possession and costs on judgment in ejectment.

67. Where in an action of ejectment judgment is given for the defendants or any of them with costs, execution may issue for the costs on the day named in the judgment; and if no day is named, then at the expiration of fourteen clear days from the day on which judgment is given. Execution for costs against plaintiff in action of ejectment.

68. When an order is made for the recovery or for the delivery of the possession of land to any person (other than an order in an action for the recovery of possession of a tenement under section one hundred and thirty-eight or section one hundred and thirty-nine of the Act), the warrant of possession shall not be issued by the registrar without evidence by affidavit of service of the order and disobedience thereto. Warrant for recovery of land not to issue till service of and disobedience to order proved.

Warrant of Delivery.

69. Where a judgment or order is for the recovery of any property other than land or money, the court may, upon the application of the plaintiff, order in default of delivery that a warrant shall issue for the delivery of the property, without giving the defendant the option of retaining the same upon payment of the value assessed, if any, and that if the property cannot be found, and unless the court otherwise orders, the bailiff shall distrain the defendant by all his lands and chattels within the district of the court of which he is bailiff, till the Execution for delivery of property other than land or money.

O. XXV. r. 69. defendant delivers the property; or, at the option of the plaintiff, that the bailiff shall cause to be made of the defendant's goods the assessed value, if any, of the property.

See *Bryant* v. *Herbert*, (1877) 3 C. P. D. 189; 47 L. J. C. P. 354; (C. A.), 389; 47 L. J. C. P. 760; *Corbett* v. *Lewin*, (1884) W. N. 62.

An attachment may be granted where the defendant wilfully refuses to comply with the judgment, and this, notwithstanding that the bailiff, on failing to find the chattel, has abstained from distraining under the warrant; the value of the chattel need not be assessed as a condition precedent to the making by the county court judge of the order for delivery (*Hymas* v. *Ogden* (C. A.), (1905) 1 K. B. 246; 74 L. J. K. B. 101).

Warrants of delivery.

Forms 293, 294, 295, 297.

70. Warrants of delivery shall be according to the forms in the Appendix; and when a warrant of delivery is issued, the plaintiff shall, either by the same or a separate warrant of execution, be entitled to have made of the defendant's goods the damages and costs awarded.

Miscellaneous Provisions.

Examination of debtor when judgment, etc., for recovery of money.

71.—(1) Where a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the court on notice in accordance with the rules as to interlocutory applications for an order that the debtor liable under such judgment or order, or in the case of a corporation that any officer thereof, be orally examined as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before the court, as the court shall appoint; and the court may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents.

By the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 60, power was conferred on the superior courts to order the examination of a judgment debtor as to debts owing to him for the purpose of attachment of such debts to answer the judgment, and the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126) amplifies this power. This procedure was extended to county courts by orders in council. The same procedure is now expressly provided by the rule *supra*.

The order may be made for the examination of a married woman as to her separate estate (*Aylesford* v. *G. W. Rail. Co.*, (1892) 2 Q. B. 626). See sub-s. 4.

Form 346.

(2) Where an order is made under this rule a sealed copy of the order, indorsed with a notice in the form in the Appendix, shall be served upon the person to be bound thereby. The copy so indorsed shall be issued by the registrar for service, on the application of the party entitled to the benefit of the order. By leave of the registrar it may be issued to the applicant or his solicitor, and served by any person by whom a default summons may be served under Order VII. Rule 33, but in default of such

leave it shall be issued to and served by a bailiff. Service shall in all cases be personal, unless the judge for good cause makes an order for substituted service pursuant to Order VII. Rule 40. O. XXV. r. 71.

(3) Any person wilfully disobeying an order for attendance and examination or the production of any books or documents under this rule, to whom payment or a tender of payment shall have been made of a sum reasonably sufficient to cover travelling expenses, not exceeding the scale of allowances for the travelling expenses of witnesses prescribed by these rules, shall be deemed guilty of contempt of court, and may be dealt with accordingly.

Following *Rendell* v. *Grundy*, (1895) 1 Q. B. 16 ; 64 L. J. Q. B. 135.

(4) In this rule the expression " debtor liable under such judgment or order " includes a married woman against whom judgment has been obtained in respect of her separate estate.

(5) Where the debtor or other person for whose attendance and examination an order is made does not reside or carry on business within the district of the court, the court may make an order for the attendance and examination of such debtor or other person before the registrar of any court within the district of which such debtor or other person resides or carries on business, at such time and place as such last-mentioned registrar shall appoint. Examination before registrar of court in district in which debtor resides.

(6) In any such case the sealed copy of the order for attendance and examination to be served upon the person to be bound thereby shall be sent by the registrar of the court in which the order is made to the registrar before whom the examination is to take place, and such last-mentioned registrar shall insert therein a notice of the time and place appointed for the examination, and shall issue the copy for service in accordance with paragraph 2 of this rule.

(7) Rules 25 to 30 of Order XVIII. shall, with the necessary modifications, apply to examinations under this rule; and in the application of those rules to cases in which the examination is to be held before the registrar of another court the word "examiner" shall mean the registrar of that court, and the word "registrar" shall mean the registrar of the court in which the order for examination is made. Application of Order XVIII., Rules 25 to 30.

72. The costs of any application under Rules 5 and 71 of this Order, or either of them, and of any proceedings arising from or incidental thereto, shall be in the discretion of the court, and paragraphs 4 to 6 of Order XII. Rule 11, shall apply to such costs. (R. S. C., Order XLII. r. 34.) Costs of applications under Rules 5 and 71.

O. XXV. r. 73. Impounded documents.

73. Impounded documents while in the custody of the court are not to be parted with ; and are not to be inspected, except on a written order signed by the judge. Such documents shall not be delivered out of the custody of the court except upon an order made on application to the judge, or upon an order of the High Court. Provided that impounded documents in the custody of the court shall, upon the request in writing of the Law Officers of the Crown, or either of them, or of the Director of Public Prosecutions representing the Crown, be given into the custody of such Law Officers, or of the Director of Public Prosecutions. (R. S. C., Order XLII. r. 33A.)

Application to judge to suspend judgment, etc. 51 & 52 Vict. c. 43, s. 153.

74.—(1) An application to the judge to suspend or stay any judgment, order, or execution, or to order the discharge of any debtor confined in prison by order of a court, under section one hundred and fifty-three of the Act, shall be made in accordance with the rules as to interlocutory applications.

See Order XII., r. 11.

Application to registrar pending application to judge.

(2) When any person desires to apply to the judge under the said section to suspend or stay any judgment, order, or execution, he may in the absence of the judge apply to the registrar, who may in his discretion, and on such terms as he shall think fit, suspend or stay such judgment, order, or execution until application can be made to the judge.

ORDER XXVI.

Attachment of Debts.

Rule 1. Proceedings against garnishee. Form 198. 51 & 52 Vict. c. 43, s. 74. Form 199.

1.—(1) Any person who has obtained a judgment or order for the recovery or payment of money may, either before or after any oral examination of the debtor liable under such judgment or order, upon lodging with the registrar of the court in which the judgment or order was given or made an affidavit by himself or his solicitor stating that judgment has been recovered or an order made, and that it is still unsatisfied, and to what amount, and that any other person (hereinafter called the garnishee) is indebted to such debtor, and is in respect of such debt within the jurisdiction of the court, and could be or has been sued therein with or without leave under section seventy-four of the Act (*a*), enter a plaint to obtain payment to him of the amount of the debt due to the said debtor from the garnishee, or so much thereof as may be sufficient to satisfy the said judgment or order, together with the costs of the garnishee proceedings ; and thereupon a summons in the form in the Appendix, calling upon the garnishee to show

cause why he should not pay to the person who has obtained such judgment or order (hereinafter called the judgment creditor) the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs aforesaid, shall be issued by the registrar; and the name and address of the person entering the plaint, or of his solicitor, shall be entered on the summons. In this rule the expression "debtor" includes a married woman against whom judgment has been obtained in respect of her separate estate. O. XXVI. r. 1.

NOTE.—(*a*) See sub-sect. (2) of this rule.

(2) For the purposes of this rule the garnishee shall be deemed to be within the jurisdiction of the court in respect of the debt due from him to the debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings, notwithstanding the fact that the debt due from him to the debtor, or the amount thereof required to satisfy the judgment or order and the costs of the proceedings, exceeds the amount for which an action can be brought in the county court, in any case in which he could be sued in the court with or without leave under section seventy-four of the Act in respect of such debt, or so much thereof as aforesaid, if it did not exceed that amount. Where debt sought to be attached exceeds the amount for which an action could be brought.

NOTE.—This sub-section is new. Rules of 1917. It makes debts attachable irrespective of the amount being within the jurisdiction of the county court, if, assuming the debt had been a sum within the jurisdiction of the court, the garnishee could have been sued for it, with or without leave under sect. 74 of the Act, *supra*.

A debt is not "unsatisfied" within the meaning of the rules until the time has elapsed within which it ought to be paid; therefore where judgment was recovered on September 20th, but the judgment debtor had until October 13th to pay the amount into court, it was held that a garnishee summons issued on September 29th was wrongly issued (*White, Son and Pill* v. *Stennings* (C. A.), (1911) 2 K. B. 418; 80 L. J. K. B. 499).

The affidavit will be sufficient if it states on information and belief that the garnishee is indebted (*Vinall* v. *De Pass*, (1892) A. C. 90; 61 L. J. Q. B. 507).

2. Where the garnishee is not in respect of such debt within the jurisdiction of the court in which the judgment or order was obtained, the judgment creditor, upon lodging with the registrar of the court in the district of which the garnishee resides or carries on business a certificate of the judgment or order, and also an affidavit similar to that prescribed by the last preceding rule, may enter a plaint against the garnishee in such last-mentioned court; and thereupon a summons shall be issued and all proceedings shall be had and taken thereon as if the judgment or order had been obtained in that court. When garnishee not within jurisdiction. Form 155. Form 198. Form 199.

O. XXVI. r. 3.

Service and effect of garnishee summons.

3. The summons shall be personally served on the garnishee, by any person by whom a default summons may be served under Order VII. Rule 33, or on the solicitor of the garnishee in accordance with Order VII. Rule 12; and when so served it shall bind in the hands of the garnishee all debts due, owing, or accruing from him to the debtor liable under the judgment or order.

Examination of Debtor.]—A creditor who has obtained a judgment or order for payment of money, may apply to the court for an order that the judgment debtor, or in case of a corporation, any officer thereof, be orally examined before the court as to any and what debts are owing to the debtor, and the court may make an order for the attendance and examination of the judgment debtor, or of any other person, and for the production of any books or documents (Order XXV. r. 71 (1)). The assignee of a judgment debt may obtain an attachment (*Goodman* v. *Robinson*, (1887) 18 Q. B. D. 332; 56 L. J. Q. B. 392).

A sealed copy of the order for attendance and examination, indorsed with a notice (Form 346) must be served upon the person to be bound by it, the copy so indorsed being issued by the registrar for service on the application of the party entitled to the benefit of the order. By leave of the registrar it may be issued to the applicant or his solicitor, and served by any person by whom a default summons may be served under Order VII. r. 33, but in default of leave, it must be issued to and served by a bailiff. The service must in all cases be personal, unless the judge for good cause makes an order for substituted service pursuant to Order VII. r. 40 (Order XXV. r. 71 (2)). A person wilfully disobeying such an order, to whom payment or tender of payment has been made of a sum reasonably sufficient to cover travelling expenses (not exceeding the scale of allowances for travelling expenses of witnesses under the rules) will be deemed guilty of contempt of court, and may be dealt with accordingly (Order XXV. r. 71 (3)). This rule applies to a married woman against whom judgment has been obtained in respect of her separate estate (Order XXV. r. 71 (4)).

Costs of any such application are in the discretion of the court, and the provisions of Order XII. r. 11 (4), (6), apply to them (Order XXV. r. 72).

Garnishee Proceedings.]—The jurisdiction of the county court in proceedings for attachment of debts is derived from the Common Law Procedure Acts, 1854 and 1860. By sect. 105 of the Act of 1854 it is provided that an Order in Council may direct that all or any part of the Act shall apply to any court or courts of record in England and Wales, and by an Order in Council of November 18th, 1867, the powers given by sects. 60—67 of that Act were made exerciseable by judges of county courts. Under a like provision in the Act of 1860, an Order in Council of May 18th, 1870, extended the provisions of sects. 28—31 of that Act to those courts. The respective sections of the Acts of 1854 and 1860 have not been repealed so far as regards their application to county courts, but are preserved by sect. 7 of the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 49).

Plaint.]—Any person who has obtained a judgment or order for the recovery or payment of money may either before or after any such oral examination as above mentioned, upon lodging with the registrar of the court in which the judgment or order was given or made an affidavit by himself or his solicitor, stating that the judgment or order has been obtained and is unsatisfied and to what amount, and that another person (called the garnishee) is indebted to the debtor (which expression includes a married woman against whom judgment has been obtained in respect of her separate estate), and is in respect of such debt within the jurisdiction of the court, and could be or has been sued therein, either with or without leave of the court (*a*) (Form 198), enter a plaint for the amount of the debt due to the debtor from the garnishee, or so much thereof as may be sufficient to satisfy

the judgment or order together with the costs of the garnishee proceedings (Order XXVI. r. 1). But a debt is not "unsatisfied" within the meaning of the rules until the time has elapsed within which it ought to be paid; therefore where judgment was recovered on September 20th, but the judgment debtor had until October 13th to pay the amount into court, it was held that a garnishee summons issued on September 29th was wrongly issued (*White, Son & Pill* v. *Stennings* (C. A.), (1911) 2 K. B. 418; 80 L. J. K. B. 499). The affidavit will be sufficient if it states on information and belief that the garnishee is indebted (*Vinall* v. *De Pass*, (1892) A. C. 90; 61 L. J. Q. B. 507). O. XXVI. r. 3. Notes.

Where the garnishee is not in respect of such debt within the jurisdiction of the court, the person who has obtained such judgment or order, upon lodging a certificate (Form 155) of the judgment or order and an affidavit similar to that above mentioned with the registrar of the court in the district of which the garnishee resides or carries on business, may enter a plaint there (Order XXVI. r. 2).

NOTE.—(*a*) "Within the jurisdiction of the court, and could be . . . sued therein." It is not now necessary that the debt should be for a sum within the county court jurisdiction if the garnishee himself is within the jurisdiction of the court. See Order XXVI. r. 1 (2), new rule of 1917.

Summons and Service.]—A summons then issues, calling upon the garnishee to show cause why he should not pay to such person the debt due to the debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings; the name and address of the person entering the plaint, or of his solicitor, must be entered on the summons (Order XXVI. rr. 1, 2; Form 199).

The summons must be personally served on the garnishee by any person by whom a default summons may be served (Order VII. r. 33), or on the garnishee's solicitor (Order VII. r. 12), and when so served it will bind in his hands all debts due, owing, or accruing from him to the debtor liable under the judgment or order (Order XXVI. r. 3). Notice must be given to the judgment debtor (*post*, r. 41B; Form 199A). Where the garnishee summons has been served otherwise than by a bailiff, an affidavit of service must be made and sent to the registrar of the court out of which the summons issues (*post*, r. 4A; Form 37).

Where the garnishee is a firm or corporation, the summons need not be served personally, but in the same way as an ordinary summons (Order XXVI. r. 4).

Payment into Court by Garnishee.]—The garnishee may at any time before the return-day pay into court the amount admitted by him to be due, less the costs (if actually incurred) allowed by the scales; if the amount, after deduction of costs, is more than sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied together with the fees and solicitor's costs indorsed on the garnishee summons, he need only pay into court a sum sufficient to satisfy such amount, fees, and costs (Order XXVI. r. 5 (1)). The registrar will send notice of the payment into court to the person who obtained the order, and if the latter elects to accept the money in satisfaction of his claim against the garnishee, he must send notice of acceptance to the registrar and the garnishee, whereupon all further proceedings against the garnishee will abate, except as provided by Order XXVI., and the person who obtained the judgment or order will not be liable to the garnishee for any costs incurred after the receipt of the notice (Order XXVI. r. 5 (2), (3), (4); Forms 73, 74, 76).

If the garnishee pays into court five clear days before the return-day, he is not liable for any further costs incurred by the person who obtained the judgment or order; but if he does so less than five clear days before the return-day, the court has a discretion to order him to pay such fees and costs, beyond those paid into court by him, as the person who obtained the judgment or order has properly incurred for work done before receipt of the

O. XXVI. r. 3. Notes.

notice of payment into court and in attending the court to obtain the order, but no hearing fee will be charged. Notice of intention to apply for such costs must be given in the notice of acceptance; but where the time of payment into court does not permit of notice of acceptance being given, costs may be applied for without giving such notice (Order XXVI. r. 5 (5); Forms 76, 77). If notice of acceptance is not given, the money may still be accepted at any time before the case is called on and opened, subject to payment of costs reasonably incurred by the garnishee since the payment into court and allowed by the court (Order XXVI. r. 5 (6)). In default of acceptance, the proceedings against the garnishee may proceed (Order XXVI. r. 5 (7)).

Payment out of Court.]—Money paid into court, and accepted by the person who obtained the judgment or order, may be paid out to him under the following conditions (Order XXVI. r. 6 (1)): The court must first be satisfied that the person who obtained the judgment or order has not already been paid from any other source, and has not obtained an order for payment under any other garnishee proceedings; if he has received payment or obtained an order for payment of any part, only so much will be paid out as will make up the full amount payable under the judgment or order and any fees or costs allowed, the balance being dealt with under the direction of the court (Order XXVI. r. 6 (2) (*a*)). Before payment out, the court may send to the debtor notice of the issue of the garnishee summons (together with a copy of the summons) and of the payment into court, together with a notice informing him that the money will be paid out unless he appears and shows cause to the contrary (Order XXVI. r. 6 (2) (*b*); Form 200). The notice may be delivered or sent by post to the debtor's usual residence or place of business; the debtor may appear and show cause, and the court may thereupon make such order as to the money paid into court and as to costs as may be just (Order XXVI. r. 6 (2) (*c*)). If it appears, upon the suggestion of the debtor or otherwise, that the money paid into court belongs to, or is claimed by, a third person, or that any third person has, or claims to have, a lien or charge on it, the court may determine the question under Order XXVI. r. 10 (Order XXVI. r. 6 (2) (*d*)). No hearing fee is payable on an application for payment out, unless notice is directed to be given under Rule 6, and the debtor to whom it is given appears and shows cause, or unless it appears to the court that the money belongs to, or is claimed by, a third person, or that a lien or charge is claimed upon it, and the court proceeds in accordance with Order XXVI. r. 10; in those cases a hearing fee is payable on the amount paid into court (Order XXVI. r. 6 (2) (*e*)).

Return Day.]—Upon the return-day, if no amount is paid into court, or if the amount paid into court is not accepted, and the garnishee appears and disputes his liability, the judge will determine as to the liability of the garnishee to pay any sum or further sum on account of the debt claimed and as to the party by whom the costs of the garnishee proceedings must be paid, and make order accordingly (Order XXVI. r. 8; Form 201), or he may, instead of giving judgment, order that any issue or question necessary for determining his liability to pay any sum or further sum be tried or determined in any manner in which any issue or question in an action may be tried or determined. The garnishee must, besides showing that he disputes the particular debt alleged, show that he owes no debt whatever to the judgment debtor (*Vinall* v. *De Pass*, (1892) A. C. 90; 61 L. J. Q. B. 507).

If the garnishee does not pay into court the money admitted by him to be due, or so much as is sufficient to satisfy the amount due in respect of the judgment or order, with fees and solicitor's costs, and does not dispute the debt, or if he does not appear on the return-day, the judge may give judgment for the person who obtained the judgment or order, and order execution to issue (Order XXVI. r. 7; Form 201).

Costs.]—The costs of any application for attachment of debts and of any

proceedings arising from or incidental thereto, are in the discretion of the court. Costs allowed to the judgment creditor, and not ordered to be paid by the garnishee personally, are (unless otherwise directed) to be taxed by the registrar and retained by the judgment creditor out of the money recovered by him on the garnishee proceedings, in priority to the amount due under the judgment or order obtained by him against the debtor (Order XXVI. r. 12). O. XXVI. r. 3. Notes.

Entries by Registrar.]—The registrar is to make a memorandum in the books of the amounts paid or ordered to be paid by the garnishee (exclusive of costs ordered to be paid by him personally), and of the costs allowed to the judgment creditor and allowed to be retained by him out of the money required (Order XXVI. r. 13).

Foreign Court.]—Where the court in which the garnishee is sued is not the court in which the judgment or order upon which he is garnished was given, the registrar of such court must forthwith send a certificate (Form 155) of the order of his court to the court in which such judgment was given, and must also from time to time send notice of any payment made on, before, or after the return-day (Order XXVI. r. 9).

Enforcing Order.]—The order for payment may be enforced in the same manner as a judgment for debt or damages (Order XXV. r. 1).

Payment.]—Payment made by, or execution (Form 202) levied upon the garnishee will be a valid discharge to him as against the debtor, liable under a judgment or order, to the amount paid or levied (inclusive of any amount allowed to the garnishee for costs, and which he is by the rules or by order of the court allowed to deduct from the amount due from him to the debtor, but exclusive of the amount paid or levied in respect of any costs ordered to be paid by the garnishee personally), although such proceeding may be set aside, or the judgment or order reversed (Order XXVI. r. 11; *Randall* v. *Lithgow*, (1884) 12 Q. B. D. 525; 53 L. J. Q. B. 518).

It seems that the garnishee is not protected if he pays the debt to the judgment creditor before an order upon him has been obtained (*Turner* v. *Jones*, (1857) 1 H. & N. 878; 26 L. J. Q. B. 262; 108 R. R. 872). A judgment debtor, who had been served with a garnishee summons, paid, before the return-day, the amount of the judgment debt sought to be attached to the sheriff, under an execution levied on his goods in respect of such debt; it was held that he was justified in so doing (*Turnbull* v. *Robertson*, (1878) 47 L. J. C. P. 294).

The judge may, in proceedings under the above-mentioned provisions, refuse to interfere where, from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious (Order XXVI. r. 14).

Whenever it is suggested by the garnishee or by the debtor liable under the judgment or order, or is otherwise made to appear to the judge, that the debt sought to be attached belongs to, or is claimed by, some third person, or that any third person has, or claims to have, a lien or charge upon it, the judge may order such third person to appear and state the nature and particulars of his claim upon such debt, and after hearing the allegations of such third person and of any other person whom by the same or any subsequent order the judge may order to appear, or in case of such person not appearing, the judge may decide in favour of the person who obtained the judgment or order, or may order any issue or question to be tried or determined between the third person and the person who obtained the judgment or order, and may bar the claim of such third person or make such other order as the judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge shall think just and reasonable (Order XXVI. r. 10).

O. XXVI. r. 4.

Service on firm or company.

4. Where the garnishee is a firm or a person carrying on business in a name or style other than his own, or a company or other corporation, the summons may be served as provided by Order VII. with respect to the service of an ordinary summons.

Where service effected otherwise than by bailiff.

Form 37.

4A. Where a garnishee summons has been served otherwise than by a bailiff, a copy of the summons, with the date and place of service indorsed thereon, and an affidavit of service according to the form in the Appendix, shall within three clear days after the day of service, or such further time as may be allowed by the registrar of the court issuing the summons, be delivered or transmitted to such registrar by the judgment creditor; and the costs of such affidavit may be included in the costs entered on the summons.

Notice to judgment debtor.

Form 199A.

4B.—(1) On the return of the copy of the garnishee summons, if served by a bailiff, or the filing of an affidavit of service of the garnishee summons, if served otherwise than by a bailiff, the registrar shall issue a copy of the summons for service on the debtor liable under the judgment or order (hereinafter called the judgment debtor) with a notice according to the form in the Appendix, that if he has any cause to show why the court should not order the garnishee to pay to the judgment creditor the debt alleged to be due from the garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the sum due from the judgment debtor to the judgment creditor, with the costs of the garnishee proceedings, he must appear at the court on the return day of the summons and show such cause accordingly.

Service of notice.

(2) The copy and notice mentioned in the preceding paragraph shall be delivered for service to a bailiff of the court, or where service of the garnishee summons is to be effected by the judgment creditor or his solicitor, to the judgment creditor or his solicitor, and shall be served on the judgment debtor five clear days at least before the return day of the summons. Service may be effected in accordance with Order LIV., Rules 2 and 3; and where service is effected otherwise than by a bailiff an affidavit of service must be lodged with the registrar on or before the return day; and the costs of service and proof of service shall be deemed to be costs in the garnishee proceedings, and may be included in the costs entered on the summons.

Adjournment where notice to judgment debtor cannot be served in due time.

(3) Where the copy of a garnishee summons served by a bailiff is not returned, or the affidavit of service of a garnishee summons served otherwise than by a bailiff is not filed, in sufficient time to allow the copy and notice mentioned in paragraph 1 of this rule to be served on the judgment debtor five

clear days before the return day in accordance with paragraph 2 of this rule, the registrar shall adjourn the hearing of the garnishee summons to enable such service to be effected, and shall enter in the notice to be served on the judgment debtor the day of the adjourned hearing as the day on which he must appear, and shall give notice of such adjournment to the judgment creditor and to the garnishee. O. XXVI. r. 4B.

5.—(1) The garnishee may at any time before the return-day of the summons pay into court the amount admitted by him to be due from him to the debtor liable under the judgment or order, less the costs allowed by the scales in Part IV. of the Appendix in respect of such payment, if such costs are actually incurred; or if the amount so admitted, after deduction of such costs, is more than sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied, and the fees and solicitor's costs (if any) indorsed on the garnishee summons, the garnishee may pay into court a sum sufficient to satisfy such amount, fees, and costs. Payment into court by garnishee.

(2) The registrar shall send notice of any payment into court to the judgment creditor, according to the form in the Appendix. Form 199B.

(3) The registrar shall also send notice of such payment to the judgment debtor, according to the form in the Appendix, warning him that the money paid into court will be ordered to be paid out to the judgment creditor unless the judgment debtor appears on the return day of the summons and shews cause to the contrary. Form 200.

(4) If the judgment creditor elects to accept the money paid into court in satisfaction of his claim against the garnishee, he shall send notice of such acceptance to the registrar and the garnishee, as in the case of payment into court in an action. Form 76.

(5) Thereupon all further proceedings against the garnishee shall abate, except as herein provided, and the judgment creditor shall not be liable to any costs incurred by the garnishee after receiving such notice.

(6) If payment into court is made by the garnishee five clear days before the return-day, he shall not be liable for any further costs incurred by the judgment creditor; but if it is made less than five clear days before the return-day, the court may, in its discretion, order the garnishee to pay such fees and costs, beyond the fees and costs (if any) paid into court by the garnishee, as the judgment creditor may have properly incurred for work done before receipt of the notice of payment into court, and in attending the court to obtain the order for the same: and if the judgment creditor intends to apply for such Form 77. Form 76.

O. XXVI. r.5. costs, he shall give notice of his intention in his notice of acceptance of the sum paid in; or where the time of payment into court by the garnishee does not permit of notice of acceptance being given, he may apply for such costs without giving such notice.

(7) Where the judgment creditor has not given notice of acceptance in accordance with paragraph 4 of this rule, he may nevertheless accept the money paid into court at any time before the case is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the garnishee since the date of payment into court, and which may be allowed by the court.

(8) In default of acceptance by the judgment creditor, the proceedings against the garnishee may proceed.

Payment out of court of money paid in by garnishee.

Form 202.

6.—(1) Subject to the provisions of this rule, money paid into court by the garnishee, and accepted by the judgment creditor shall, on application made by the judgment creditor on the return day of the summons be ordered to be paid out to him.

(2) Provided as follows:—

(*a*) Before such money is paid out the court shall be satisfied by evidence on oath or affidavit, or otherwise, that the judgment creditor has not received payment of the amount payable under the judgment or order from any other source, and has not obtained an order for payment of such amount under any other garnishee proceedings: And if it appears that he has received payment or obtained an order for payment of any part of such amount, so much only of the money paid into court shall be paid out to him as will, with the amount so received or for payment whereof an order has been obtained, make up the full amount payable under the judgment or order, and any fees or costs allowed to the judgment creditor in the garnishee proceedings; and the balance of the money paid into court shall be dealt with as the court shall direct;

(*b*) If the judgment debtor appears and shews cause, according to the notice sent to him, why the money should not be paid out to the judgment creditor, the court may thereupon make such order as to the money paid into court, and as to costs, as may be just;

(*c*) If the judgment debtor suggests, or it is otherwise made to appear to the court, that the money paid into court belongs to or is claimed by some third person, or that any third person has or claims to have a lien or charge

on it, the court may proceed in accordance with Rule 10 of this Order.

(*d*) If the judgment creditor does not intend to apply for an order against the garnishee for payment of any further costs, and obtains the consent in writing of the judgment debtor to the payment out of the money paid into court, he may apply for an order for payment out on any day earlier than the return day, and on the production of such consent to the registrar the money shall, subject to the last preceding paragraph and to Rule 10 of this Order, be ordered to be paid out accordingly.

(*e*) The costs of any application for payment out under this rule, including the costs of any affidavit required under paragraph (*a*), or of obtaining any consent under paragraph (*d*), may be allowed as costs in the garnishee proceedings, and may be retained by the judgment creditor out of the money recovered by him in accordance with Rule 12 of this Order.

(*f*) No hearing fee shall be payable on an application for payment out of money paid into court by a garnishee, unless the judgment debtor appears and shows cause, in which case a hearing fee shall be payable by him on the amount paid into court, or unless the judgment debtor suggests, or it is otherwise made to appear to the court, that the money paid into court belongs to or is claimed by a third person, or that any third person has or claims to have a lien or charge on it, and the court thereupon proceeds in accordance with Rule 10 of this Order, in which case, if the third person appears, a hearing fee shall be payable by him on so much of the amount so paid into court as is claimed by him.

Order on return-day if garnishee does not appear or dispute liability.

7. If the garnishee does not before the return-day of the summons pay into court the amount admitted by him to be due from him to the judgment debtor, or so much thereof as shall be sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied, and the fees and solicitor's costs (if any) indorsed on the garnishee summons, and does not on the return-day dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear on the return-day, the judge may, if the judgment debtor does not appear and shew cause to the contrary, give judgment for the judgment creditor against the garnishee for the amount due from him to the judgment debtor, or so much thereof as shall be sufficient to satisfy the judgment or order, and any costs allowed, and in

Form 201.
Form 202.

O. XXVI. r. 7.

default of payment execution may issue to levy such amount; or if the judgment debtor appears and shews cause, the judge may make such order in the garnishee proceedings, and as to the party by whom the costs of the proceedings shall be paid, as may be just.

Proceedings on return-day, if garnishee disputes liability. Form 201.

8. If no amount is paid into court, or the amount (if any) paid into court under Rule 5 of this Order is not accepted, and the garnishee appears on the return-day and disputes his liability, the judge may, after hearing the judgment creditor and the garnishee, and the judgment debtor if he appears, determine as to the liability of the garnishee to pay any sum or further sum on account of the debt claimed to be due from him to the judgment debtor, and as to the party by whom the costs of the garnishee proceedings shall be paid, and make such order as may be in accordance with such determination; or he may, instead of giving judgment, order that any issue or question necessary for determining the liability of the garnishee to pay any sum or further sum be tried or determined in any manner in which any issue or question in an action may be tried or determined.

The garnishee must, besides showing that he disputes the particular debt alleged, show that he owes no debt whatever to the judgment debtor (*Vinall* v. *De Pass*, (1892) A. C. 90; 61 L. J. Q. B. 507).

Certificate where garnishee sued in court other than that in which judgment obtained.

9. Where the court in which the garnishee is sued is not the court in which the judgment or order upon which he is garnished was given or made, the registrar of such first-mentioned court shall send forthwith a certificate of the order of his court to the court in which such judgment or order was given or made, and shall also send notice from time to time of any payment made on, before, or after the return-day.

Where debt is stated to belong to a third person, or there is a lien thereon.

10. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee or the debtor liable under the judgment or order, or is otherwise made to appear to the judge, that the debt sought to be attached belongs to or is claimed by some third person, or that any third person has or claims to have a lien or charge upon it, the judge may order such third person to appear, and state the nature and particulars of his claim upon such debt. After hearing the allegations of such third person, and of any other person whom the judge by the same or any subsequent order may order to appear, or in case of such person not appearing when ordered, the judge may decide in favour of the person who obtained the judgment or order, or may order any issue or question to be tried or determined between such third

person and the person who obtained the judgment or order, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge may think just and reasonable.

O. XXVI. r. 10.

See *Mitchell* v. *Lee*, (1867) L. R. 2 Q. B. 259; 36 L. J. Q. B. 154.

Debts Attachable.]—These provisions only apply to *debts*, and they must be due and payable, so that an action could be maintained for them, or they must be existing debts which will become payable at some future time (*Tapp* v. *Jones*, (1875) L. R. 10 Q. B. 591; 44 L. J. Q. B. 127; *Webb* v. *Stenton* (C. A.), (1883) 11 Q. B. D. 518; 52 L. J. Q. B. 584). Thus rent due from a tenant and payable constitutes an existing debt (*Mitchell* v. *Lee*, (1867) L. R. 2 Q. B. 259); but rent accruing and not yet payable does not constitute either a debt due or accruing (*Jones* v. *Thompson*, (1858) E. B. & E. 63; 27 L. J. Q. B. 234; 113 R. R. 545, *per* Crompton, J.); nor does salary accruing but not fully earned (*Hall* v. *Pritchett*, (1877) 3 Q. B. D. 215; 47 L. J. Q. B. 15); nor does income accruing from a trust fund, but the time for payment of which has not arrived (*Webb* v. *Stenton*, *supra*); nor does an instalment of an annuity not due (*Jones* v. *Thompson*, *supra*); nor fees due by a solicitor to counsel, for they are not debts (*Wells* v. *Wells*, (1914) P. 157; 83 L. J. P. 81); but a debt due from an insurance committee to a panel doctor under the National Insurance Act, 1911, is attachable (*O'Driscoll and Another* v. *Sweeny* (*Manchester Insurance Committee*), (1915) 1 K. B. 811; 84 L. J. K. B. 734; on appeal (1916) 85 L. J. K. B. 83). A mere claim for unliquidated damages secured by a bond does not constitute a debt (*Johnson* v. *Diamond*, (1855) 11 Ex. 73; 24 L. J. Ex. 217); and even when ascertained by verdict, in the High Court, if anything is required to be done to perfect the judgment there is no debt until that is done (*Jones* v. *Thompson*, *supra*).

Attachment of Judgment Debts.]—Where the debt sought to be attached is a judgment debt in the county court, the procedure to be adopted depends upon whether the debt has or has not been paid into court. If it has not been paid into court, the case comes within the very words of Order XXVI. r. 1, which gives a judgment creditor power to take garnishee proceedings where the garnishee "could be or has been sued" in the court. But when once the judgment debt has been paid into court (and all payments under a judgment are required by sect. 105 of the County Courts Act, 1888, to be made into court) garnishee proceedings in the strict sense of the term cannot be taken, for moneys when in court are not attachable in the hands of the registrar (*Dolphin* v. *Layton*, (1879) 4 C. P. D. 130; 48 L. J. C. P. 426). In such case the judgment creditor's remedy is to apply to the judge under Order XXVI. r. 16, to order the money to be paid out to him by the registrar. The procedure under that rule is as follows:—

Nothing in Order XXVI. is to be taken to authorise a person who has obtained a judgment or order (which by a recent order (Order XXVI. r. 16, para. 2, passed to meet the decision in *Llewellyn* v. *Rowland*, (1907) 97 L. T. 433) means not only a judgment or order in a county court, or inferior court, but also includes a judgment or order in the High Court) to take proceedings to obtain an attachment of any sum which is due to the debtor from any other person under a judgment or order obtained by the debtor, and which has been paid into court under such last-mentioned judgment or order for the use of the debtor; but in any such case the person who has obtained the judgment or order against the debtor may, on giving two days' notice in writing to the debtor and to the registrar, apply to the judge to order the sum to be paid to him. On receipt of the notice the registrar will retain the money in court until the hearing, and the judge may on the hearing make such order as to the money in court and as to costs as he may think just;

O. XXVI. r. 10.

Notes.

a memorandum is to be made in the books relating to the judgment or order obtained by the debtor and the judgment or order obtained against him of the manner in which the money is ordered to be applied (Order XXVI. r. 16).

The following provisions apply to cases where the amount due from the garnishee to the debtor is due under a judgment or order obtained by the debtor. The garnishee is not to be liable to pay the amount due from him to the debtor to the person who obtained the judgment or order against the debtor by larger instalments than those by which he is liable to pay the debtor, unless the judge for good cause otherwise orders (Order XXVI. r. 15 (*a*)). The registrar is to enter in the books a memorandum of the amounts paid or ordered to be paid by the garnishee in the garnishee proceedings (inclusive of any amount allowed to him for costs, and which he is by the rules or by order of the court allowed to deduct from the amount due from him to the debtor, but exclusive of the amount of any costs ordered to be paid by the garnishee personally), and the judgment or order will be deemed to be satisfied to the amount paid by or levied by execution on the garnishee in the garnishee proceedings (inclusive of the amount of costs allowed to be deducted as aforesaid, but exclusive of the amount paid or levied in respect of any costs ordered to be paid by the garnishee personally), although such proceedings may be subsequently set aside, or the judgment or order obtained against the debtor may be subsequently reversed, and shall be deemed to be satisfied to the amount (exclusive as aforesaid) ordered to be paid in the garnishee proceedings, unless such proceedings are subsequently set aside, or the judgment or order obtained against the debtor is subsequently reversed, in which latter case the liability of the garnishee to the debtor under the judgment or order obtained by the debtor against him will be revived to the amount (exclusive as aforesaid) ordered to be paid in the garnishee proceedings which remains unpaid at the time of such setting aside or reversal, and a memorandum to that effect is to be made in the books relating to such judgment or order (Order XXVI. r. 15 (*b*)).

Money paid into court in an administration action by the executors of a person indebted to the judgment debtor is not attachable (*Stevens* v. *Phelips*, (1875) L. R. 10 Ch. 417; 44 L. J. Ch. 689); nor is a dividend in a bankruptcy in the hands of an official receiver (*Prout* v. *Gregory*, (1889) 24 Q. B. D. 281; 59 L. J. Q. B. 118).

Where judgment is recovered against several defendants, a debt due to one of them may be attached (*Miller* v. *Mynn*, (1859) 1 E. & E. 1075; 28 L. J. Q. B. 324; 117 R. R. 582). But a debt due to a judgment debtor and another, not a party to the action, cannot be attached (*Macdonald* v. *Tacquah Co.*, (1884) 13 Q. B. D. 535; 53 L. J. Q. B. 376). Where the judgment is against an executor, a debt due to the testator's estate may be attached (*Burton* v. *Roberts*, (1861) 6 H. & N. 93; 29 L. J. Ex. 484; 123 R. R. 403).

The wages of servants, labourers or workmen cannot be attached (Wages Attachment Abolition Act, 1870 (33 & 34 Vict. c. 30), s. 1, *ante*, p. 235; see *Jones* v. *Thompson*, (1858) 27 L. J. Q. B. 234; *Dresser* v. *Jones*, (1859) 28 L. J. C. P. 281). This will not prevent the attachment of the quarterly salary of a secretary to a company (*Gordon* v. *Jennings*, (1882) 9 Q. B. D. 45; 51 L. J. Q. B. 417), nor of a superannuation allowance (*Booth* v. *Trail*, (1880) 12 Q. B. D. 8; 53 L. J. Q. B. 24), nor of a pension (*Willcock* v. *Terrell* (C. A.), (1878) 3 Ex. D. 323). By the Merchant Shipping Act, 1894, seamen's wages, whether due or accruing, cannot be attached (57 & 58 Vict. c. 60, s. 163).

Debts owing from a Firm.]—Debts owing from a firm carrying on business in England or Wales may be attached, although one or more of the members of the firm is resident abroad, provided that any person having the control or management of the partnership business, or any member of the firm within England or Wales, is served with the garnishee summons (Order XXVI. r. 17).

Effect of Order.]—A prior equitable assignment of a debt will have priority over an order of attachment (*Ex parte Whitehouse*, (1886) 32 Ch. D. 512; 55 L. J. Ch. 608; 54 L. T. 898; *Badeley* v. *Cons. Bank* (C. A.), (1888) 38 Ch. D. 238; 57 L. J. Ch. 468). An order attaches the whole of the moneys in the hands of the garnishee, but once the order is satisfied an assignment by the judgment debtor of the balance over and above the amount of the judgment debt is valid, and must be satisfied before an order of attachment obtained subsequent to the assignment (*Yates* v. *Terry* (C. A.), (1902) 1 K. B. 527; 71 L. J. K. B. 282, reversing (1901) 1 K. B. 102; 70 L. J. K. B. 24; see as to garnishee order *nisi* in High Court, *Rogers* v. *Whiteley*, (1892) A. C. 118; 61 L. J. Q. B. 512; as to garnishee order absolute, see *Geisse* v. *Taylor*, (1905) 2 K. B. 658; 74 L. J. K. B. 912).

An order of attachment creates no debt as between garnishor and garnishee (*Re Combined Weighing Co.* (C. A.), (1889) 43 Ch. D. 99; 59 L. J. Ch. 26); but gives garnishor a cause of action for the amount attached (*Pritchett* v. *English & Colonial Syndicate*, (1899) 2 Q. B. 428; 68 L. J. Q. B. 801) (these two decisions are difficult to reconcile, they are both in the Court of Appeal); the action is not to be resorted to if the amount can be recovered by execution.

After an order of attachment, the garnishee has no right to set-off a debt from the judgment debtor accruing after the attachment, although it seems he would have a right to set-off a cross-debt due at the date of the order (*Tapp* v. *Jones*, (1875) L. R. 10 Q. B. 591, 593; 44 L. J. Q. B. 127, *per* Blackburn, J.).

Bankruptcy Act, 1914.]—Under the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 40, a creditor who has attached a debt due to the debtor cannot retain it against the trustee unless the attachment has been completed by receipt of the debt before the date of the receiving order and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

An attachment of a debt is completed by receipt of the debt (*ib.*, sect. 40 (2)).

The actual receipt of the debt is essential, the undertaking of the garnishee to pay will not suffice (*In re Trehearne* (C. A.), (1890) 60 L. J. Q. B. 50).

Deposit in Post Office Savings Bank.]—Where a judgment creditor seeks to obtain payment to himself of a sum of money deposited by the judgment debtor in the post office savings bank, he must obtain the award of the registrar of friendly societies, whose jurisdiction to decide a dispute "between the Postmaster-General and any depositor or other person claiming from or under a depositor" arises under 39 & 40 Vict. c. 52 (The Savings Bank (Barrister) Act, 1876). In applying to the registrar for an award, the judgment creditor should give the reference number to the account, and must claim to be entitled to the money by virtue of the judgment recovered by him; at the same time he should give notice to the comptroller of the post office savings bank to prevent the money being dealt with. The registrar will give an appointment to the claimant and the depositor, and will, if satisfied as to the claim, make his award declaring that the judgment creditor is entitled to the money. This procedure is, of course, not strictly attachment.

Appeal.]—It was held (*Mason* v. *Wirral Highway Board*, (1879) 4 Q. B. D. 459; 48 L. J. Q. B. 679) under 13 & 14 Vict. c. 61, s. 14, that a garnishee had no right of appeal against a garnishee order, on the ground that he was not an original party to the action within the ruling of the court in *Beswick* v. *Boffey*, (1854) 9 Ex. 315; 23 L. J. Ex. 89. The County Courts Act, 1888, gives an appeal to any party in any action or matter (51 & 52 Vict. c. 43, s. 120); and the interpretation of party (51 & 52 Vict. c. 43, s. 186), so clearly includes a garnishee that these cases are no longer binding.

O. XXVI. r. 11.

Payment by or execution levied on garnishee a discharge against debtor.

11. Payment made by or execution levied upon the garnishee under any such proceedings as aforesaid shall be a valid discharge to him as against the debtor liable under the judgment or order, to the amount paid or levied (inclusive of any amount allowed to the garnishee for costs, and which he is by these rules or by order of the court allowed to deduct from the amount due from him to the debtor, but exclusive of the amount paid or levied in respect of any costs ordered to be paid by the garnishee personally), although such proceedings may be set aside, or the judgment or order reversed.

See *Randall* v. *Lithgow*, (1884) 12 Q. B. D. 525; 53 L. J. Q. B. 518. It seems that the garnishee is not protected if he pays the debt to the judgment creditor before an order upon him has been obtained (*Turner* v. *Jones*, (1857) 1 H. & N. 878; 26 L. J. Ex. 262; 108 R. R. 872). A judgment debtor, who had been served with a garnishee summons, paid, before the return day, the amount of the judgment debt sought to be attached to the sheriff, under an execution levied on his goods in respect of such debt; it was held, that he was justified in so doing (*Turnbull* v. *Robertson*, (1878) 47 L. J. C. P. 294).

Costs.

12. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court. Any costs allowed to the judgment creditor, which are not ordered to be paid by the garnishee personally, shall, unless otherwise directed, be taxed by the registrar, and retained by the judgment creditor out of the money recovered by him in the garnishee proceedings, in priority to the amount due under the judgment or order obtained by him against the debtor. (See R. S. C., Order XLV. r. 9A, July, 1901.)

Entry of amount recovered from garnishee in books relating to judgment against debtor.

13. The registrar shall enter in the books relating to the judgment or order obtained against the debtor a memorandum of the amounts paid or ordered to be paid by the garnishee (exclusive of the amount of any costs ordered to be paid by the garnishee personally) and of the costs allowed to the judgment creditor and allowed to be retained by him out of the money recovered by him in the garnishee proceedings. (*Conf.* R. S. C., Order XLV. r. 8.)

Judge may refuse to interfere.

14. In proceedings to obtain an attachment of debts, the judge may, in his discretion, refuse to interfere, where from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious.

Provisions as to money due from

15. Where the amount due from the garnishee to the debtor liable under the judgment or order is due under a judgment or

order obtained by the debtor against the garnishee, the following provisions shall apply :— O. XXVI. r. 15.

(*a*) The garnishee shall not be liable to pay the amount due from him to the debtor to the person who obtained the judgment or order against the debtor by any larger instalments than those by which he is liable to pay such amount under the judgment or order obtained by the debtor against him, unless the judge for good cause otherwise orders. Garnishee under judgment or order obtained by debtor against him.

(*b*) The registrar shall enter in the books relating to the judgment or order obtained by the debtor against the garnishee a memorandum of the amounts paid or ordered to be paid by the garnishee in the garnishee proceedings (inclusive of any amount allowed to the garnishee for costs, and which he is by these rules or by order of the court allowed to deduct from the amount due from him to the debtor, but exclusive of the amount of any costs ordered to be paid by the garnishee personally), and such judgment or order shall be deemed to be satisfied to the amount paid by or levied by execution upon the garnishee in the garnishee proceedings (inclusive of the amount of costs allowed to be deducted as aforesaid, but exclusive of the amount paid or levied in respect of any costs ordered to be paid by the garnishee personally), although such proceedings may be subsequently set aside, or the judgment or order obtained against the debtor may be subsequently reversed, and shall be deemed to be satisfied to the amount (exclusive as aforesaid) ordered to be paid in the garnishee proceedings, unless such proceedings are subsequently set aside, or the judgment or order obtained against the debtor is subsequently reversed, in which latter case the liability of the garnishee to the debtor under the judgment or order obtained by the debtor against him shall be revived to the amount (exclusive as aforesaid) ordered to be paid in the garnishee proceedings which remains unpaid at the time of such setting aside or reversal, and a memorandum to that effect shall be made in the books relating to such judgment or order.

See *ante*, p. 580.

16. Nothing in this order shall be taken to authorise a person who has obtained a judgment or order to take proceedings to obtain an attachment of any sum which is due to the debtor liable under such judgment or order from any other person under a judgment or order obtained by the debtor against such other Application by judgment creditor as to money paid into court under

O. XXVI. r. 16.

judgment or order obtained by debtor against third person.

person, and which has been paid into court under such last-mentioned judgment or order for the use of the debtor; but in any such case the person who has obtained such judgment or order against the debtor may, on giving two days' notice in writing to the debtor and to the registrar to whom such sum has been paid, apply to the judge to order such sum to be paid to him. On the receipt of any such notice the registrar shall retain the money in court until after the application has been heard, and the judge on the hearing of the application, may make such order as to the money so paid into court, and as to costs, as he may think just; and a memorandum shall be made in the books relating to the judgment or order obtained by the debtor and the judgment or order obtained against him of the manner in which such money is ordered to be applied.

This rule shall, with the necessary modifications, apply to any case in which a person has obtained a judgment or order against the debtor either in the High Court or in the county court into which money has been paid under a judgment or order obtained by the debtor, or in any other county court or inferior court.

Last paragraph passed in order to meet the decision in *Llewellyn* v. *Rowland*, (1907) 97 L. T. 433. See *ante*, p. 579.

Attachment of debts owing from a firm.

17. Debts owing from a firm carrying on business within England and Wales may be attached under this order, although one or more members of such firm may be resident abroad; provided that any person having the control or management of the partnership business or any member of the firm within England or Wales is served with the garnishee summons. (R. S. C., Order XLVIIIA. r. 9.)

ORDER XXVII.

Interpleader.

Notice of claim to execution creditor. Form 203.

1.—(1) Where a claim is made to or in respect of any goods or chattels taken in execution under the process of a court it shall be in writing; and thereupon the high bailiff shall forthwith send notice to the execution creditor, according to the form in the Appendix.

Notice by execution creditor of admission of claim or to withdraw from possession. Form 204.

(2) If within four days after receiving the notice mentioned in paragraph (1) of this rule the execution creditor gives notice to the high bailiff that he admits the title of the claimant to the goods or chattels, or requests the high bailiff to withdraw from possession, according to the form in the Appendix, or to the like effect, he shall only be liable to the high bailiff for any possession fees or expenses incurred by the high bailiff prior to the receipt of such notice; and the judge may, if he thinks fit, on application

O. XXVII. r. 1.

by the high bailiff, make an order for payment of any such fees or expenses by the execution creditor to the high bailiff. Any such application shall be made in writing, and intituled in the matter of the execution, and three clear days' notice in writing thereof shall be given by the high bailiff to the execution creditor.

Order for possession fees.

This rule enables the judge to order payment of the fees and expenses which *Thomas* v. *Peek*, (1888) 20 Q. B. D. 727; 57 L. J. Q. B. 497, decided he had power to award.

(3) The high bailiff shall also forthwith send notice to the claimant, according to the form in the Appendix, requiring him to make deposit or give security in accordance with section one hundred and fifty-six of the Act.

Notice to claimant to make deposit or give security.

Form 205.

51 & 52 Vict. c. 43, s. 156.

2. Where the execution creditor gives notice in due time to the high bailiff, as directed by Rule 1 of this Order, that he admits the title of the claimant to the goods or chattels or requests the high bailiff to withdraw from possession, the high bailiff may thereupon withdraw from possession, and may apply for an order protecting him from any action in respect of the seizure and possession of the said goods and chattels, and the judge may make any such order as may be just and reasonable in respect of the same. Any such application shall be made in writing, and intituled in the matter of the execution, and three clear days' notice in writing thereof shall be given by the high bailiff to the claimant, who may, if he desires it, attend the hearing of the application; and if he attends, the judge may, in and for the purposes of such application, make all such orders as to costs as may be just and reasonable.

Power to make order protecting high bailiff from action by claimant, where execution creditor admits claim or requests bailiff to withdraw before interpleader summons issued.

3. Where the execution creditor does not in due time, as directed by Rule 1 of this Order, admit the title of the claimant to the goods or chattels, or request the high bailiff to withdraw from possession, and the claimant persists in his claim, the high bailiff shall apply for an interpleader summons to be issued; and if before the return day of such summons the claimant files notice that he withdraws his claim, and at the same time gives notice of such withdrawal to the execution creditor, or the execution creditor files an admission of the title of the claimant, and at the same time gives notice of such admission to the claimant, the goods and chattels taken in execution or the proceeds of sale thereof, or the money paid into court (as the case may be), shall be dealt with and disposed of as if such claim had not been made, or as if the execution had been withdrawn (as the case may be), and the judge may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges, and expenses as may be just and reasonable.

Issue of summons where execution creditor does not admit claim or requests bailiff to withdraw.

Forms 209—210.

O. XXVII. r. 3A.

Security or undertaking for costs where claimant not resident in England or Wales.

3A. Where it appears that the claimant does not reside in England or Wales, the execution creditor or the high bailiff may apply to the court on notice in writing in accordance with Order XII. Rule 11, for an order directing the claimant to give security for costs, and the court may make an order accordingly: and if such order is made, and security is not given within the time limited by the order, the claimant shall be debarred from appearing to support his claim, unless the judge otherwise orders. Where an order is made, an undertaking by the claimant's solicitor to be responsible for the costs shall be sufficient, and Order V. Rule 10, shall apply.

NOTE.—New rule added by Rules of 1917, dated February 19th, 1917.

Proceedings generally.

4. Where any claim is made to or in respect of any goods or chattels taken in execution, or in respect of the proceeds or value thereof, and summonses have been issued on the application of the high bailiff, such summonses shall be served in such time and mode as by these rules directed for the service of an ordinary summons to appear to a plaint, and the case shall proceed as if the claimant were the plaintiff, and the execution creditor the defendant: Provided that where the claimant has not made deposit or given security in accordance with section one hundred and fifty-six of the Act, the time of service may, if the high bailiff so desires, by leave of the court, be such as will obtain a speedy decision on the claim.

51 & 52 Vict. c. 43, s. 156.

Claimant to lodge particulars and grounds of claim.

Forms 211, 212.

5. The claimant shall, five clear days at least before the return day, or, if the time for service of the summons has been abridged under the last preceding rule, then within such reasonable time before the return day as the time of service of the summons permits, deliver to the high bailiff, or leave at the office of the registrar, two copies of the particulars of any goods or chattels alleged to be the property of the claimant, and of the grounds of his claim, or in case of a claim for rent of the amount thereof, and for what period and in respect of what premises the same is claimed to be due; and the name, address, and description of the claimant shall be fully set forth in such particulars, and the high bailiff shall forthwith send by post to the execution creditor one of the copies of such particulars. Any money paid into court under the execution shall be retained by the registrar until the claim has been adjudicated upon: Provided that by consent of all parties, or without such consent if the judge so directs, an interpleader claim may be tried, although this rule has not been complied with.

The particulars ought to state how, and by what right, the claimant asserts his title; and where a notice stated only that the goods were the property of the claimant, but omitted to state any grounds of claim, it was

held insufficient (*R.* v. *Chilton*, (1850) 15 Q. B. 220; S. C., *Ex parte Tanner*, 19 L. J. Q. B. 318; 81 R. R. 564). Where, however, the particulars stated that the goods were assigned to the claimant by an indenture (giving the date and the parties), but without specifying them in a schedule, it was held sufficient (*R.* v. *Richards*, (1851) 2 L. M. & P. 263; 20 L. J. Q. B. 351; 86 R. R. 898). It is not necessary that the claim should specify the goods or set them forth in the schedule if they are identified (*Heslop* v. *McGeorge*, (1851) 18 L. T. (O. S.) 109). The court was equally divided as to whether particulars describing the goods, etc., seized, as "the goods and money seized by virtue of the warrant," were sufficient or not (*Richardson* v. *Wright*, (1875) L. R. 10 Ex. 367; 44 L. J. Ex. 230). Where the address of the claimant was stated as "Elizabeth Street," instead of "Terrace," "Islington," it was held that, not being calculated to mislead, it was sufficient (*Ex parte McFee*, (1854) 9 Ex. 261; 23 L. J. Ex. 57; 96 R. R. 700).

In all cases the judge is bound to adjudicate at some time upon a claim, although the particulars delivered by the claimant are insufficient, or have not been delivered in time. In such a case the judge should amend the particulars, or, if the particulars have not been delivered in time, order a new summons to issue, so that he may decide the case on the merits (*Beswick* v. *Boffey*, (1855) 9 Ex. 315; 23 L. J. Ex. 89; *R.* v. *Stapylton* (1851) 2 L. M. & P. 603; 21 L. J. Q. B. 8; *Fraser* v. *Fothergill*, (1854) 14 C. B. 298; 23 L. J. C. P. 53). Still, the insufficiency justifies the judge in refusing to hear it in its then form (*R.* v. *Chilton*, *supra*).

Where a judge of a county court, upon an interpleader summons, erroneously decides against a claimant, on the ground that the notice of claim is insufficient, the High Court may direct him to hear and adjudicate upon the claim (*Churchward* v. *Coleman*, (1866) L. R. 2 Q. B. 18; 36 L. J. Q. B. 57).

So the High Court may in such a case by writ of prohibition, prohibit him from proceeding on the original plaint until the interpleader has been determined (*Ex parte McFee*, (1854) 9 Ex. 261; 23 L. J. Ex. 57; 96 R. R. 700).

6. The judge upon the hearing shall adjudicate upon any claim of the high bailiff for fees, and may, if he thinks fit, order the same, or such part thereof as he may think just, to be paid by the claimant or by the execution creditor. High bailiff's fees.

See *Goodman* v. *Blake*, (1887) 19 Q. B. D. 77; 56 L. J. Q. B. 441.

It was formerly held that if the bailiff neglected to retain his costs, he could not, after paying over the proceeds, recover them from the execution creditor (*Bloor* v. *Huston*, (1854) 15 C. B. 266; 24 L. J. C. P. 26).

7. In the event of the claimant of any goods taken in execution not making, in accordance with the provisions of section one hundred and fifty-six of the Act, a deposit with the bailiff either of the amount of the value of the goods claimed, or of the sum which the bailiff is allowed to charge as costs for keeping possession of such goods until a decision can be obtained, and not giving security for such value, the bailiff may, in his discretion, delay selling such goods until the judge has adjudicated on the claim; and for the keeping of such continued possession he shall be allowed such costs out of pocket only as the judge may order. Power to delay sale where claimant fails to comply with provisions of 51 & 52 Vict. c. 43, s. 156.

Where the bailiff pays into court the sum of money deposited with him by the claimant, he must be deemed to have taken it on the assumption that it represented the value of the goods, and he has therefore no right to remain

O. XXVII. r. 7. Notes.

in possession, or to possession fees, after the date of the deposit (*Newsum, Sons & Co.* v. *James*, (1909) 2 K. B. 384; 78 L. J. K. B. 761). Where a creditor, who has assigned a debt together with all securities for the same, subsequently recovers judgment against his debtor in the county court, and the goods of the judgment debtor are taken in execution, the assignee of the debt cannot claim the proceeds of sale under sects. 156 and 157 of the Act (*Plant* v. *Collins*, (1912) 2 K. B. 459; 81 L. J. K. B. 868; (C. A.) (1913) 1 K. B. 242; 82 L. J. K. B. 467).

Claim of damages by claimant. Form 211.

8.—(1) Where the claimant to goods taken in execution claims damages from the execution creditor or from the high bailiff for or in respect of the seizure of the goods, he shall in the particulars of his claim to the goods state the amount he claims for damages, and the grounds upon which he claims damages.

It is probably necessary that where damages are claimed from the execution creditor or high bailiff that the claim should be made in the interpleader proceedings, and not by independent action; but if a claim for damages is made against a stranger to the proceedings, *e.g.*, the solicitor of the execution creditor who has given express instructions for the seizure of the goods, this, as it is not contemplated by the rule, may probably be enforced by an independent action. See opinion of Lush, J. in *Salbstein* v. *M. Isaacs & Sons, Ltd. and Another*, (1916) 85 L. J. K. B. 112.

Where damages not claimed until filing of particulars.

(2) Where the claimant has not claimed damages before the issue of the interpleader summons, but claims such damages in his particulars of claim, he may be ordered to pay the costs of any adjournment which may be necessary to enable the execution creditor or the high bailiff to prepare his defence to the claim so made.

NOTE.—Formerly no claim for damages could be made in the trial of an interpleader issue remitted for trial by the High Court, but Order XXXIII. r. 11, is now superseded by the Rules of 1917 (Order XXXIII. r. 11), which, where there are no directions to the contrary in the Order transferring the proceedings to the county court, allows such a claim to be made against the execution creditor, as in ordinary interpleader proceedings. See *Salbstein* v. *M. Isaacs & Sons, Ltd., and Another, supra.*

Claim of damages by execution creditor against high bailiff. 51 & 52 Vict. c. 43, s. 157. Form 222.

9. Where under section one hundred and fifty-seven of the Act an execution creditor claims damages against a high bailiff arising out of the execution of any process, he shall five clear days at least before the return-day of the interpleader summons give notice in writing of such claim to the registrar and to the high bailiff, stating the grounds and amount of such claim, according to the form in the Appendix; and he may thereupon apply to the judge at the hearing of the interpleader summons to adjudicate upon such claim. For the purposes of fees and costs such claim shall be deemed to be a claim in an interpleader.

For forms of orders, see Forms 223—225; and warrant of execution, Form 221.

Though the seizure was made in good faith, and there was no misconduct, the high bailiff may be liable in damages (*London, Chatham & Dover Rail. Co.* v. *Cable*, (1899) 80 L. T. 119).

O. XXVII. r. 10.

Payment into court where damages claimed under 51 & 52 Vict. c. 43, s. 157.

10. Where a claim for damages under section one hundred and fifty-seven of the Act is made against any high bailiff and execution creditor, or either of them, they or either of them may pay into court money in satisfaction of such claim for damages; and such payment into court shall be made in the same manner and have the same effect, and the parties respectively shall have the same rights and remedies, as they would respectively have if the proceeding were an action in which the claimant was plaintiff, and the high bailiff and execution creditor were defendants. A high bailiff may in like manner pay money into court in satisfaction of a claim for damages made against him by an execution creditor.

Interpleader summons.

11. Interpleader summonses shall be issued by the registrar, on the application of the high bailiff, without leave of the judge, and shall be served on the solicitor of any party who acts by a solicitor.

From what court issued.

12. Interpleader summonses shall be issued from the court of the district in which the levy was made, and the execution creditor and claimant shall be summoned to such court.

Judge may direct sale of goods claimed under bill of sale, etc.

13.—(1) When goods or chattels have been seized in execution under process of the court, and any claimant alleges that he is entitled under a bill of sale or otherwise to such goods or chattels by way of security for a debt, the judge may order a sale of the whole or part thereof, and may direct the application of the proceeds of such sale in such manner and upon such terms as may be just. A duplicate of such order shall be delivered by the registrar to the high bailiff, who shall thereupon forthwith sell the goods or chattels pursuant to the order, and after deducting the expenses of the sale and the taxes and rent, if any, directed by the order to be paid, shall pay the balance of the proceeds into court, and such balance shall thereupon be applied by the registrar in accordance with the directions contained in the order of the court.

Form of order.

(2) An order for sale under this rule shall be according to the form in the Appendix, with such modifications as may be necessary and as the judge shall direct. Form 212A.

Costs of application.

(3) The costs of an application for sale under this rule shall be borne as between the parties to the application as the judge shall direct.

The order may be made, although the execution creditor cannot contest the title of the bill of sale holder (*Miller & Co.* v. *Solomon*, (1906) 2 K. B. 91; 75 L. J. K. B. 671).

This provision is intended to prevent an execution from being defeated by a claimant under a bill of sale by way of security for a sum less than the

O. XXVII. r. 13. Notes.

value of the goods. It appears that there is no obligation on the bailiff to apply for an order for sale under these provisions. He may withdraw, if satisfied that the bill of sale or security is valid, and return *nulla bona* without exposing himself to an action. If he interpleads, it appears that the order for the sale may be made on the hearing of the interpleader summons (*Scarlett* v. *Hanson* (C. A.), (1884) 12 Q. B. D. 213; 53 L. J. Q. B. 62).

A secured claimant is not entitled to receive out of the balance any sum not included in his particulars or mentioned in the order (*Hockey* v. *Evans* (C. A.), (1887) 18 Q. B. D. 390; 56 L. J. Q. B. 253).

Order on interpleader. Forms 213—220, 223—225.

14. The order made upon the hearing of an interpleader summons shall contain directions as to how any money paid into court in the proceeding is to be disposed of. A minute of every such order shall be entered in the minute book, but no order need be drawn up or served unless any of the parties shall require it, or the court otherwise orders. The order, if drawn up, shall be according to such one of the forms in the Appendix as shall be applicable to the case.

As between the execution creditor, the claimant, and the high bailiff, the order will not only dispose of claims actually brought forward, but will also bar claims which might have been brought forward and adjudicated upon (*Death* v. *Harrison*, (1871) L. R. 6 Ex. 15; 40 L. J. Ex. 26; *Hills* v. *Renny*, (1880) 5 Ex. D. 313; 49 L. J. Ex. 710), whether they exceed 50*l.* or not, the judge's jurisdiction as to them being unlimited (*Smith* v. *Benskin*, (1893) 94 L. T. (Journal) 285).

Where the execution creditor is successful, he will be entitled to the whole sum deposited by the claimant with the bailiff and paid into court by the latter, although some of the goods seized may admittedly be the property of another and subsequent claimant (*Wells* v. *Hughes*, (1907) 2 K. B. 845; 76 L. J. K. B. 1125).

The claimant must succeed by the strength of his own title to the goods, not by showing that he has some interest in the goods, or that they belong to some one else than the judgment debtor. Where a claimant only satisfied the jury that goods which he claimed as his absolute property belonged to a partnership of which he was a member, it was held by the Court of Appeal (reversing the decision of the Divisional Court) that the execution creditors were entitled to judgment (*Flude, Ltd.* v. *Goldberg* (*Isaacs claimant*), (1916) 85 L. J. K. B. 219—In Divisional Court, (1915) 2 K. B. 157; 84 L. J. K. B. 511). But see now *Peake* v. *Carter*, (1916) 85 L. J. K. B. 761, where *Flude, Ltd.* v. *Goldberg* is explained and distinguished.

Goods were seized under an execution, and claimed by a third person; the value being assessed at 25*l.*; the claimant paid the money into court to avoid a forced sale, and the bailiff withdrew. On an interpleader, the judge found for the execution creditor, and the 25*l.* was paid to him. His debt being still unsatisfied, he levied the same goods again which remained on the same premises, and the claimant again claimed and paid 25*l.* The judge again found for the execution creditor, and ordered the 25*l.* to be paid to him; but the High Court held that the execution creditor was debarred from denying as against the claimant that the goods were his, and he could not therefore take them in execution a second time (*Haddow* v. *Morton* (C. A.), (1894) 1 Q. B. 565; 63 L. J. Q. B. 431).

But by payment into court a claimant acquires no property in the goods, and if they are again seized by a different creditor, must again pay the full value into court on the condition of an interpleader issue (*Kotchie* v. *Golden Sovereigns, Ltd.*, (1898) 2 Q. B. 164; 67 L. J. Q. B. 722).

O. XXVII. r. 15.

15.—(1) Where the defendant in an action brought by the assignee of a debt or chose in action has had notice that the assignment is disputed, as to the whole or any part of such debt or chose in action, by the assignor or anyone claiming under him, or where the defendant in any such action, or in any other action for any debt, chose in action, money, goods, or chattels, has had notice of any other opposing or conflicting claims to the whole or any part of such debt, chose in action, money, goods, or chattels, the defendant may, within five days of the service of the summons, apply to the registrar for a summons against the assignor or the person making such opposing or conflicting claim, hereinafter called the claimant.

Interpleader in action by assignee, where assignor disputes assignment or in action for debt, chose in action, or chattel, where defendant has notice of conflicting claims.

There must be inconsistent claims, and they must arise with respect to a debt, money, goods or chattels before interpleader proceedings can be taken (*Sun Insurance Office* v. *Galinsky and Others*, (1914) 2 K. B. 545; 83 L. J. K. B. 633).

Costs recovered in a judgment and taxed may be legally assigned though not entered upon the record (*Hambleton* v. *Brown*, (1917) 2 K. B. 93).

(2) The defendant must satisfy the registrar, by affidavit according to the form in the Appendix, that he claims no interest in the subject matter in dispute other than for charges or costs, and does not collude with either the plaintiff or the claimant, and is willing to pay or transfer the subject matter into court, or dispose of it as the court may direct. On filing such affidavit the defendant shall lodge with the registrar copies thereof for the plaintiff and the claimant.

Form 226.

(3) The defendant shall not be disentitled to relief by reason only that the titles of the plaintiff and the claimant have not a common origin, but are adverse to and independent of each other.

(4) The registrar shall, on being satisfied as aforesaid, issue for service on the claimant an interpleader summons according to the form in the Appendix, returnable as soon as conveniently may be, and shall annex thereto a copy of the original summons and of the defendant's affidavit, and shall adjourn the trial of the action to the day on which the interpleader summons is made returnable, and shall give notice to the plaintiff and defendant of the issue of the interpleader summons and of the adjournment of the trial of the action, according to the forms in the Appendix.

Form 227.

Forms 228 229.

The interpleader summons shall be served in such time and mode as by these rules directed for the service of an ordinary summons to appear to a plaint.

(5) The claimant shall, five clear days at least before the return-day of the interpleader summons, leave at the office of the registrar either three copies of a notice that he relinquishes his claim, or three copies of particulars stating the grounds on which he disputes the assignment or founds his claim to the subject

Claimant to file notice of relinquishment, or particulars of claim.

Form 230.

O. XXVII. r. 15.

matter in the action; and the registrar shall forthwith send by post one of such copies to the plaintiff, and one other of such copies to the defendant. Provided that by consent of all parties, or without such consent if the judge so directs, the interpleader may be tried although this rule has not been complied with.

Payment into court by defendant.

(6) On filing his affidavit, or at any time after the issue of the interpleader summons, the defendant may pay the debt or money or bring the chose in action, goods, or chattels into court, to abide its decision.

Interpleader, how disposed of.

(7) Upon the return day of the interpleader summons—

Where plaintiff does not appear.

(*a*) If the plaintiff does not appear, the action and interpleader summons shall be struck out, and the judge may make such order as to costs as may be just.

Where claimant does not appear.

(*b*) If the claimant does not appear, the judge shall hear and determine the action as between the plaintiff and the defendant, and may make an order declaring the claimant and all persons claiming under him for ever barred against the defendant and all persons claiming under him, and may make such order as to costs against the claimant as may be just, but the order shall not affect the rights of the plaintiff and the claimant between themselves; or if the claimant has filed notice that he relinquishes his claim, the judge may make an order declaring him and all persons claiming under him for ever barred against both the plaintiff and the defendant and all persons claiming under them, and may make such order against the claimant as to costs incurred by the other parties before the receipt of notice of relinquishment as may be just.

Where both appear. Forms 231—233.

(*c*) If both the plaintiff and the claimant appear, the judge shall, whether the defendant does or does not appear, hear the cases of the plaintiff and the claimant (and the case of the defendant if he appears), and shall give such judgment thereon as shall finally determine the rights and claims of all parties; but the judge shall not make any order in favour of the claimant against the defendant unless the claimant requests him so to do.

Discovery, trial, costs and incidental matters in interpleader proceedings.

16.—Orders XVI. and XXII. shall, with the necessary modifications, apply to interpleader proceedings; and the judge may in and for the purposes of any such proceedings make all such orders as to costs and all other matters (including, in the case of proceedings under the last preceding rule, the repayment to the defendant of any costs paid by him into court, and the disposal

of any money, chose in action, goods or chattels paid or brought by the defendant into court) as may be just and reasonable. O. XXVII. r. 16.

ORDER XXVIII.

Transmission of Proceeds of Warrants from Foreign Districts.

1. In all cases of warrants against the goods or orders of commitment to be executed in a foreign district, the high bailiff of the court from which the warrant or order issued shall send the same with a warrant according to the form in the Appendix, under the hand of the high bailiff and the seal of the court, to the registrar of the foreign court, as required by section one hundred and fifty-eight of the Act; and the registrar of the foreign court shall immediately on the receipt of the warrant or order make an entry of the receipt thereof in the "Foreign Executions Re-issued Book." Transmission and entry of warrants, etc., to be executed in a foreign district. Form 173. 51 & 52 Vict. c. 43, s. 158.

(2) In the case of a warrant against goods, the high bailiff of the court from which the warrant issued shall also annex to the notice to be left with the debtor pursuant to Order XXV. Rule 17, a notice according to the form in the Appendix, under the hand of the high bailiff and the seal of the court, that all payments under the warrant should be made and all notices or claims in respect of the execution or the goods taken in execution should be given or sent to the high bailiff of the court of the district in which the levy is made, and not to the high bailiff of the court out of which the warrant originally issued. Notice to be annexed to warrant that payment should be made or notices or claims given or sent to high bailiff of foreign court. Form 173A.

NOTE.—Order XXVIII. Rule 1 (2), added by Rules of 1917, dated February 19th, 1917.

2.—(1) Subject to the provisions of Order II. Rules 34A, 35, and 36, where by virtue of any warrant against the goods sent to a foreign district any money has been received by the bailiff of the foreign court, such bailiff shall, within twenty-four hours from the receiving of such money, pay over the same to the registrar of the foreign court, and shall, unless an interpleader summons as to such money is pending, make a return in writing of the amount received according to the form in the Appendix; and in the case of a levy having been made, the bailiff shall state in the return the gross amount produced by such levy, the particulars of the appraiser's and broker's charges, and the fees allowed for keeping possession, and he shall pay over to the registrar of the foreign court the amount levied, less such charges and fees; and the registrar of the foreign court shall certify in the said return the amount paid into court, and the correctness of Accounting for and transmission of money received under execution sent to foreign district. Form 175.

O. XXVIII. r. 2

the said charges, and shall account for and pay over such amount to the treasurer of his court at such time as the treasurer shall require; and the high bailiff shall thereupon transmit such return to the high bailiff of the home court, as directed by section one hundred and fifty-eight of the Act, and such latter bailiff shall, within twenty-four hours from the receipt of such return, deliver the same to the registrar of his court, who shall file such return and shall (subject to Order II. Rule 34A) pay out of any money in his hands to the execution creditor the amount certified in such return to have been received by the registrar of the foreign court as the proceeds of the execution, and shall enter in a book the amount so certified, according to the form in the Appendix; and the registrar shall be allowed by the treasurer of his court, at his audit, the amount so paid.

51 & 52 Vict. c. 43, s. 158.

Appendix, Part II., Form M.

Where proceeds of execution are to be held for 14 days.

(2) Provided that where the bailiff is by subsection two of section forty-one of the Bankruptcy Act, 1914, required to hold the proceeds of sale under an execution, or the money paid in order to avoid sale, for fourteen days, he shall proceed in accordance with Order II. Rule 35, and shall not proceed under paragraph one of this rule until such period of fourteen days has expired.

4 & 5 Geo. 5, c. 59, s. 41 (2).

Where interpleader pending.

(3) And where an interpleader is pending as to the amount received, the high bailiff shall postpone the making of a return under paragraph one of this rule until the interpleader is disposed of, and shall when it is disposed of make a return showing how the money received is to be disposed of, and the amount (if any) payable to the execution creditor: and such return shall be certified and the amount payable to the execution creditor shall be dealt with in accordance with the said paragraph.

NOTE.—Rule amended by Rules of 1917, dated February 19th, 1917.

Certificate of payment into foreign court under order of commitment.

Form 175.

3. Where by virtue of any order of commitment to be executed in a foreign district any money has been paid into the court of such district, the registrar shall transmit a certificate, according to the form in the Appendix, to the registrar of the home court of the amount so paid in, and shall account for and pay over the amount to the treasurer of his court at such time as the treasurer shall require; and the registrar of the home court shall upon the receipt of the certificate file the same and pay out of any money in his hands to the judgment creditor the amount so certified to have been received by the registrar of the foreign court, and shall enter the same in the book mentioned in the last preceding rule, and he shall be allowed by the treasurer of his court, at his audit, the amount so paid.

ORDER XXIX.

O. XXIX. r. 1.

Security.

1. Where a party proposes to give a bond by way of security, he shall serve, by post or otherwise, on the opposite party and upon the registrar, at his office, notice of the proposed sureties, according to the form in the Appendix, and the registrar shall forthwith give notice to both parties of the day and hour on which he proposes that the bond shall be executed, and shall state in the notice to the obligee that any valid objection which he may have to make to the sureties or either of them must be made on such day. Security by bond. Form 235. Form 237.

2. The sureties shall make an affidavit of their sufficiency according to the form in the Appendix, unless the opposite party dispenses with such affidavit. Affidavit of sufficiency Form 236.

3. The bond shall be executed in the presence of the judge or registrar or of a commissioner to administer oaths, or of a clerk to the registrar nominated to take affidavits. Execution of bond.

4. Where a party makes a deposit of money in lieu of giving a bond, he shall forthwith give notice to the opposite party, by post or otherwise, of such deposit having been made. Deposit in lieu of bond.

5. In all cases where the security is by bond, the bond shall be given to the party or persons requiring the security, and shall be deposited with the registrar until the action is finally disposed of. Bond to be deposited.

The registrar has only to see that the bond is duly executed, and that the sureties are sufficient; he cannot decline to approve of the bond upon the ground that the defendant is by law incompetent to execute it (*Young* v. *Brompton Waterworks Co.*, (1862) 1 B. & S. 675; 31 L. J. Q. B. 14; 124 R. R. 709), in which case it was held that an incorporated joint-stock company, limited, could properly execute such a bond.

In cases of objection to trial in the county court under sect. 62, the bond must be in a sum not exceeding 150*l.*, and the security must be approved by the registrar (51 & 52 Vict. c. 43, s. 62).

In cases of replevin, the bond must be in a sum sufficient to cover the alleged rent or damage, and the probable costs of the action in the High or county court, according to the court in which the replevisor elects to sue (51 & 52 Vict. c. 43, ss. 135, 136).

Where the high bailiff is ordered to take possession of goods until security is given for their safe keeping or payment of their value in default, but the amount of security is not specified, an inventory and appraisement must be made; upon receiving as a deposit the amount of the appraisement, or sufficient security to be approved by the registrar, for their safe custody and for their delivery up on request, the high bailiff will relinquish possession on condition that they shall be re-delivered to him on request or held to abide the order of the court. Where the warrant specifies the amount of security, no less deposit or security will be sufficient (Order II. r. 40).

O. XXIX. r. 5. Notes.

In cases other than those which have been above mentioned, where the Act or rule does not specify the sum for which security must be given, the amount must be fixed by the judge or registrar.

If any action be brought on the bond, the court in which the action is brought may, by order, give such relief to the obligors as may be just, and such order will have the effect of a defeasance of the bond (51 & 52 Vict. c. 43, s. 108).

See, as to bond by defendant objecting to jurisdiction, Form 82. As to bond by defendant in an action under the Bills of Exchange Act, Form 42; in replevin, Forms 287 and 288; by receiver, Form 303; for security for costs by plaintiff out of England, Form 16.

If Security by Deposit.]—Where a party is required to give security, he may, in lieu of giving a bond, deposit with the registrar a sum equal in amount to the sum for which he would otherwise give security, together with a memorandum, to be approved of by the registrar, and to be signed by the party, his solicitor or agent, setting forth the conditions on which the money is deposited, and the registrar must give a written acknowledgment of the deposit (51 & 52 Vict. c. 43, s. 109; Form 234). The party, upon making the deposit, must give notice to the opposite party, by post or otherwise, of the deposit having been made (Order XXIX. r. 4).

Any objection to receive the money without the memorandum named in the statute should be made before the acknowledgment is given by the registrar, as the want of the memorandum cannot afterwards be relied on as vitiating the deposit if the other requisite forms have been complied with (*Griffin* v. *Coleman*, (1859) 4 H. & N. 265; 28 L. J. Ex. 134; 118 R. R. 426; *Walters* v. *Coghlan*, (1872) L. R. 8 Q. B. 61; 42 L. J. Q. B. 20).

Payment out of Court of Deposit.]—The judge of the court in which the money has been deposited, may, on the same evidence as would be required to enforce or avoid a bond, given by way of security, order the sum deposited to be paid out to such party or parties as he shall think just (51 & 52 Vict. c. 43, s. 109).

In High Court.]—Where security is required to be given in the High Court, it may be by bond or deposit, as if it were required to be given in a county court; and if an action be brought on the bond, the High Court or a judge has the same powers, as to giving relief to the obligors, and to the disposal of the money deposited, as are above stated to be possessed by the county court (51 & 52 Vict. c. 43, ss. 108, 109).

Officer of court not to be surety.

6. No registrar, deputy registrar, registrar's clerk, high bailiff, bailiff, broker, or other officer of the court, shall become surety in any case where, by the practice of the court, security is required.

ORDER XXX.

Proceedings by and against Executors and Administrators.

Costs where plaintiff fails.

1. In actions by executors or administrators, if the plaintiff fails, the costs shall, unless the court otherwise orders, be awarded in favour of the defendant, and shall be levied *de bonis propriis*.

Costs on non-appearance.

51 & 52 Vict. c. 43, ss. 88, 89, 91.

2. Where an executor or administrator, plaintiff or defendant, does not appear on the day of hearing, the provisions of sections eighty-eight, eighty-nine, and ninety-one of the Act shall apply

respectively, subject to the rules applicable to executors or administrators suing or sued. O. XXX. r. 2.

3. A party suing an executor or administrator may charge in the summons that the defendant has had assets and has wasted them, and he shall state in his particulars the amount of assets alleged to have been left by the deceased, and the manner in which the said assets have been wasted. Waste of assets.

See *Winch* v. *Winch*, (1853) 13 C. B. 128; 22 L. J. C. P. 104; 93 R. R. 469.

4. Where a defendant is charged with waste in the summons, if the judge is of opinion that the defendant has wasted the assets the judgment shall be that the debt or damages and costs shall be levied *de bonis testatoris, si,* &c. *et si non, de bonis propriis;* and the non-payment of the amount of the demand immediately on the judge finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable. Judgment where waste charged. Form 238.

See form of warrant, Form 245; see also *Winch* v. *Winch*, (1853) 13 C. B. 128; 22 L. J. C. P. 104, where it was held that the county court has jurisdiction to try a *devastavit*.

4A. Where a defendant sued as an executor or administrator does not appear at the trial, or admits his representative character and the plaintiff's demand, and does not deny assets, the judgment shall be that the demand and costs shall be levied *de bonis testatoris, si,* &c., *et si non,* as to the costs, *de bonis propriis*. Judgment on default of appearance, or where representation and demand admitted, and assets not denied. Form 238A.

5. Where a defendant, sued as an executor or administrator admits his representative character, and only denies the demand, if the plaintiff proves the demand the judgment shall be that the demand and costs shall be levied *de bonis testatoris, si,* &c., *et si non,* as to the costs, *de bonis propriis*. Judgment where representation admitted, but demand denied. Form 239.

6. Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be to levy the costs of proving the demand *de bonis testatoris, si,* &c., *et si non, de bonis propriis;* and as to the demand, judgment of assets, *quando acciderint;* and the plaintiff shall pay the defendant's costs of proving the administration of assets, unless the court otherwise orders. Judgment where representation admitted and demand denied but proved, and administration alleged and proved. Form 240.

7. Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the Judgment in like case

O. XXX. r. 7.

where administration not proved. Form 241.

defendant does not prove the administration alleged, the judgment shall be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si,* &c., *et si non,* as to the costs, *de bonis propriis,* and as to the residue of the demand, if any, judgment of assets, *quando acciderint.*

Judgment where representation and demand admitted, and administration alleged and proved. Form 242.

8. Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of assets, and proves the administration alleged, the judgment shall be of assets, *quando acciderint,* and the plaintiff shall pay the defendant's costs of proving the administration of assets, unless the court otherwise orders.

Procedure after Judgment of Quando, etc.]—It was formerly held that, if, after a plea of *plene administravit* and judgment of assets *quando acciderint,* the defendant received assets, the plaintiff must proceed by summons stating the judgment *quando,* and suggesting assets, and that a suggestion of a *devastavit* would be wrong (*Ellis* v. *Watt,* (1851) 8 C. B. 614; 19 L. J. C. P. 113). This was provided for by a rule of practice (Order XXX. r. 10, *infra*), which directs that, where judgment has been given against an executor or administrator that the amount be levied upon assets of the deceased *quando acciderint,* the plaintiff may issue a summons in the prescribed form (Form 244); and, if it appears that assets have come to the hands of the executor or administrator since the judgment, the judge may order that the debt, damages and costs be levied *de bonis testatoris, si,* etc., *et si non,* as to the costs, *de bonis propriis.* The party applying may also charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in an original summons, and the provisions of Rule 4 apply to such inquiry. The judge may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si,* etc., *et si non, de bonis propriis* (see form of judgment, Form 246; of warrant, Form 245).

Judgment in like case where administration not proved and no other defence established. Form 243.

9. Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of assets, but does not prove the administration alleged, and has not established any other ground of defence, the judgment shall be to levy the amount of the demand, if such amount of assets is shown to have to come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si,* &c., *et si non,* as to the costs, *de bonis propriis,* and as to the residue of the demand, if any, judgment of assets, *quando acciderint.*

Proceedings after judgment on assets *quando acciderint.* Form 244.

10. Where judgment has been given against an executor or administrator that the amount be levied upon assets of the deceased, *quando acciderint,* the plaintiff may issue a summons according to the form in the Appendix; and if it appears that assets have come to the hands of the executor or administrator

since the judgment, the judge may order that the debt, damages, and costs be levied *de bonis testatoris, si,* &c., *et si non,* as to the costs, *de bonis propriis :* Provided that it shall be competent for the party applying to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in Rule 3 of this Order, and the provisions of Rule 4 shall apply to such inquiry ; and the judge may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si,* &c., *et si non, de bonis propriis.* O. XXX. r. 10. Form 246.

11. Where a defendant admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into court, subject to the rules relating to payment into court in other cases. Payment into court on defendant's admission of demand and of assets.

12. In actions against executors or administrators for which provision is not hereinbefore specially made, if the defendant fails as to any of his defences, the judgment shall, unless the court otherwise orders, be for the plaintiff as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris, si,* &c., *et si non, de bonis propriis.* Judgment in other cases.

ORDER XXXI.

New Trial.

1. An application for a new trial, or to set aside proceedings, may be made and determined on the day of trial, if both parties are present, or such application may be made at the first court held next after the expiration of twelve clear days from such day of trial : Provided that the intended applicant shall, seven clear days at least before the holding of such court, deliver to the registrar at his office, and also give to the opposite party by serving the same personally on such party, or by leaving the same at his residence or place of business, or, where the opposite party acts by a solicitor, by service upon such solicitor in accordance with Order LIV. Rule 3, a notice in writing stating that such an application is intended to be made at such court, and setting forth shortly the grounds of the intended application ; but the notice shall not operate as a stay of proceedings unless the judge otherwise orders ; and if any money paid into court under any execution or order in the action has not been paid out at the time when such notice in writing is given to the registrar, the registrar shall retain the same to abide the event of the application, or until the judge shall otherwise order ; and if Application for new trial.

O. XXXI. r. 1.

no application is made, the money shall, if required, be paid over to the party in whose favour the order was made, unless the judge otherwise orders; and if notice is not given in manner aforesaid, or application is not made at the court mentioned in the notice, no application for a new trial or to set aside proceedings shall be subsequently made, unless by leave of the judge, and on such terms as he may think fit: Provided that this rule shall not apply to cases falling within the provisions of section ninety-one of the Act.

51 & 52 Vict. c. 43, s. 91.

Power of Court to Grant.]—We have seen that where judgment is given in the defendant's absence, the judge may grant a new trial on such terms as he thinks fit (51 & 52 Vict. c. 43, s. 91). The practice here under consideration does not apply to such cases.

Compromise by Jury.]—If the smallness of the damages shows that the jury must have made a compromise, and instead of deciding the real question upon which the right to any damages depends, must have agreed to find a verdict for nominal damages (*Falvey* v. *Stanford*, (1874) L. R. 10 Q. B. 54; 44 L. J. (N. S.) Q. B. 7), or to split the difference (*Hall* v. *Poyser*, (1845) 13 M. & W. 600; 14 L. J. Ex. 98), a new trial may be granted.

Misconduct of Jury.]—Misconduct of the jury and undue influence upon them, when they give rise to a suspicion of bias or unfairness, may also be grounds (*Morris* v. *Vivian*, (1842) 10 M. & W. 137; 11 L. J. Ex. 367; 62 R. R. 550; *Hughes* v. *Budd*, (1840) 8 Dowl. 315; 159 R. R. 835). The presence of a stranger for an appreciable time in the room with the jury is of itself sufficient to invalidate the verdict, and entitle the losing party to a new trial (*Goby* v. *Wetherill*, (1915) 2 K. B. 674).

Where one of the jury was a member of the borough council which was the defendant it was held the verdict could not stand (*Atkins* v. *Fulham Borough Council* (1915), 31 T. L. R. 564).

Separation of Jury.]—See *ante*, p. 107.

Perjury of Witnesses.]—The fact that witnesses on whose testimony a verdict has been obtained, have since been convicted of perjury committed in the cause, is a ground for a new trial (*Benfield* v. *Petrie*, (1781) 3 Doug. 24); but a mere prosecution without conviction, even if a bill has been found, is no ground (*Thurtell* v. *Beaumont*, (1823) 1 Bing. 339; 2 L. J. C. P. 4; 25 R. R. 644; *Seeley* v. *Mayhew*, (1828) 4 Bing. 561).

Mistake of Witness.]—The fact that a material witness, presumably for the successful party, after the trial admits, on affidavit, that he made a serious mistake in giving his evidence, is a ground (*Richardson* v. *Fisher*, (1823) 1 Bing. 145; 24 R. R. 690).

Parties unprepared, Witness absent.]—Generally the fact that a party was unprepared with his evidence (*Cooke* v. *Berry*, (1745) 1 Wils. 98; *Turquand* v. *Dawson*, (1835) 1 C. M. & R. 709; 40 R. R. 690), that a material witness was absent (*Edwards* v. *Dignam*, (1834) 2 Dowl. 642), that evidence was not given which might have been given (*Spong* v. *Hog*, (1772) 2 W. Bl. 802), are not grounds for a new trial.

Discovery of New Evidence.]—But the unexpected discovery after the trial of new evidence has sometimes been allowed to be a ground for a new trial (*Thurtell* v. *Beaumont*, (1823) 1 Bing. 339; 2 L. J. C. P. 4; 25 R. R. 644; *Broadhead* v. *Marshall*, (1774) 2 W. Bl. 955; *Robinson* v. *Smith*, (1915) 1 K. B. 711; 84 L. J. K. B. 783); but not where such evidence might have been obtained at the trial by reasonable diligence, or when there is serious delay in bringing the discovery of such new evidence to the

notice of the court (*Nash* v. *Rochford Rural Council*, (1917) 86 L. J. K. B. 370).

Misdirection, Improper Reception of Evidence, etc.]—Misdirection and improper reception or rejection of evidence are also good grounds for the grant of a new trial, if substantial wrong or miscarriage of justice has been occasioned thereby (R. S. C., Order XXXIX. r. 6; Order LIX. r. 7; these are also grounds of appeal, 51 & 52 Vict. c. 43, s. 120). The onus of showing that misdirection did not cause a miscarriage of justice lies on the party resisting the application for a new trial (*Anthony* v. *Halstead*, (1877) 37 L. T. 433).

Right to begin.]—If a mistake be made in deciding the right to begin, it is a ground for a new trial, if a manifest wrong has been occasioned by it (*Ashby* v. *Bates*, (1846) 15 M. & W. 589; see note to *Booth* v. *Millns*, (1849) 15 M. & W. 671).

Application for.]—The application for a new trial ("trial," in the rules, means the hearing of any action or matter in court (Order LV.)), or to set aside proceedings, may be made and determined on the day of trial, if both parties be present, or it may be made at the first court held next after the expiration of twelve clear days from such day. If made after the day of trial, the party intending to apply must, seven clear days at least before the holding of the court, deliver to the registrar at his office, and also give to the opposite party notice, personally, or to his solicitor, or by leaving it at his residence or place of business, in accordance with Order LIV. r. 3, a notice in writing of his intention, stating shortly the grounds of the application. These provisions are only directory; therefore, although a party has omitted to give notice in time, the judge may in his discretion entertain an application for a new trial (*Carter* v. *Smith*, (1856) 4 E. & B. 696; 24 L. J. Q. B. 141; 99 R. R. 699). So, it is believed, the right to receive notice may be waived by the opposite party (*Park Gate Co.* v. *Coates*, (1870) L. R. 5 C. P. 634; 39 L. J. C. P. 317).

The notice does not operate as a stay of proceedings unless the judge otherwise orders; but money paid into court which has not been paid out must be retained to abide the event of the application, or until the judge otherwise orders. If no application be made, the money, if required, must be paid to the party in whose favour the order was made, unless the judge otherwise orders. If the notice be not duly given, or the application be not made at the court mentioned in the notice, no application for a new trial, or to set aside proceedings, may be subsequently made, unless by leave of the judge on such terms as he thinks fit. This does not apply to applications for a new trial under sect. 91 of the Act, *i.e.*, where defendant has not appeared at the original hearing (rule 1, *supra*).

Extended Jurisdiction.]—In the case of an action sent for trial to a foreign court, the application for a new trial must be made to the foreign court, and the new trial, if granted, takes place there (Order XXIIA. r. 26 (1)). Notice of the application does not operate as a stay, unless the judge otherwise orders (Order XXIIA. r. 26 (2)). If notice of the application is given before the registrar has transmitted the documents in the action to the registrar of the home court under Order XXIIA. r. 26, the notice and the documents will, if proceedings are not stayed, be transmitted to the registrar of the home court; but if there is a stay, the registrar of the foreign court will retain the documents until the application is disposed of (Order XXIIA. r. 26 (3)). If the notice is given after transmission of the documents in the action to the home court, the registrar of the foreign court will transmit it to the registrar of the home court, and must also give notice to the latter of a stay of proceedings, if any is ordered (Order XXIIA. r. 26 (4)). If the documents in the action have been already transmitted to the registrar of the home court, he will re-transmit them to the registrar of the foreign

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court for use on the application for a new trial (Order XXIIA. r. 26 (5)). If the application is refused or abandoned, the registrar of the foreign court will proceed as directed by Order XXIIA. r. 26 (Order XXIIA. r. 26 (6)(*a*)); if it is granted, he will retain the documents in the action until the case has been re-tried or otherwise disposed of, when the procedure of Rule 26 will be followed (Order XXIIA. r. 26 (6) (*b*)). Money paid into the foreign court and certified to the registrar of the home court, or money paid into the home court under an execution or order in the action, which has not been paid out by the registrar of the home court when he receives notice of application for a new trial, will be retained by him to abide the result of the application, or until the judge otherwise orders; if the application for a new trial is not made, the money will, unless the judge otherwise orders, be paid by the registrar of the home court to the parties entitled, and the provisions of Order XXIIA. r. 26, as to money paid into the foreign court will apply (Order XXIIA. r. 26 (7)).

Finality of Decision.]—An order made on an application for a new trial is final; the judge is then *functus officio*, and cannot entertain a second application (*G. N. Rail. Co.* v. *Mossop*, (1856) 17 C. B. 130; 25 L. J. C. P. 22; 104 R. R. 626)

Where the plaintiff applied for a new trial immediately after verdict the judge refused it, but after the next case had been called on he said he would grant it. No entry of the refusal had been made on the minutes. The defendant's solicitor was present both when the application was made and when the judge made the order. The court on these facts held that the judge had not definitely refused to grant a new trial, and that his order was good. They further held that the presence of the defendant himself was unnecessary (*Barton* v. *Titchmarsh* (C. A.), (1880) 49 L. J. Ex. 573; see also *Moxon* v. *London Tram. Co.*, (1889) 57 L. J. Q. B. 446; S. C., *R.* v. *Greenwich C. C.* (C. A.), 37 W. R. 132; 60 L. T. 248).

Jury.]—In granting a new trial, the judge may make it a condition that it shall take place before a jury, although the former trial did not (Order XXXI. r. 2). On a new trial either party may demand a jury, although there was no jury on the first (*R.* v. *Harwood*, (1853) 1 B. C. C. 144; 22 L. J. Q. B. 127; 94 R. R. 860; *Ford* v. *Taylor*, (1878) 3 C. P. D. 21; 47 L. J. C. P. 116).

Costs.]—If a new trial is granted on payment of costs, which are afterwards paid, the party accepting them is precluded from objecting to the order (*Sparrow* v. *Reed*, (1848) 5 D. & L. 633; 17 L. J. Q. B. 183). The judge has the same power over the costs of the new trial as over the first. Should he require a bond to be given by either party, the expense of it must be borne by the party giving it (51 & 52 Vict. c. 43, s. 108).

Appeal.]—Under the Act of 1888, an appeal lies against the order of the judge granting (*Murtagh* v. *Barry*, (1890) 24 Q. B. D. 632; 59 L. J. Q. B. 388; *Bryant* v. *North Met. Tram. Co.*, (1890) 6 T. L. R. 396; *How* v. *L. & N. W. Rail. Co.* (C. A.), (1892) 1 Q. B. 391; 61 L. J. Q. B. 368) or refusing (*Dingor* v. *Mathews*, (1889) 65 L. T. 748, n.; *Pole* v. *Bright*, (1892) 1 Q. B. 603; 61 L. J. Q. B. 139) a new trial. The ground of appeal applicable appears to be "the determination or direction of the judge in point of law or equity." It would appear therefore that to give rise to an appeal, the judge in granting or refusing a new trial must have misapplied either law or equity.

If the judge grants (*How* v. *L. & N. W. Rail. Co.* (C. A.), (1892) 1 Q. B. 391; and see *Smith* v. *Baker* (H. L.), (1891) A. C. 325; 60 L. J. Q. B. 683) or refuses (*Wilton* v. *Leeds Co.*, (1882) 32 W. R. 461) a new trial applied for merely on the ground that the verdict is against the weight of evidence no appeal will lie unless the judge misapplies the law in determining the question before him.

If the judge grants a new trial on the ground that the damages given by the jury are excessive, this cannot be questioned on appeal, unless as

above some wrong principle of law is involved in his decision (*Cole* v. *De Trafford*, (1917) 1 K. B. 911; 33 T. L. R. 249).

Order.]—The court may, on an appeal by a plaintiff against an order for a new trial, order judgment to be entered for the defendant (*Bryant* v. *North Met. Tram. Co.*, (1890) 6 T. L. R. 396); but a county court judge has no such power (*Robinson* v. *Fawcett*, (1901) 2 K. B. 325; 70 L. J. K. B. 639).

Time for Appeal.]—The time for giving notice of appeal is within twenty-one days from the order granting or refusing a new trial. In *Dingor* v. *Mathews*, (1889) 65 L. T. 748, n., the trial was on July 15th; motion for a new trial was made in the county court, and refused, on August 1st; notice of motion by way of appeal was given on August 20th, and it was held to be duly given.

General Power of Judge to Order New Trial.]—The judge may also "in every case whatever" (sect. 91), whether tried by himself or by jury, order a new trial on such terms as he thinks fit, and may in the meantime stay proceedings (51 & 52 Vict. c. 43, s. 93; see form of order for new trial, Form 154. No fee is chargeable for the application). The power given under sect. 91 is very wide, and the words "in every case whatever" mean that his judicial discretion is unfettered, though he must act on well-ascertained legal principles. He has no power on an application for a new trial to enter judgment for the applicant (*Robinson* v. *Fawcett*, (1901) 2 K. B. 325; 70 L. J. K. B. 639).

The power extends to cases where on the evidence the judge has decided that he has no jurisdiction, and has ordered the cause to be struck out (*Lister* v. *Wood* (C. A.), (1889) 23 Q. B. D. 229); also, where, on application, he is satisfied that he misdirected himself on a question of fact (*Sanatorium, Ltd.* v. *Marshall*, (1916) 85 L. J. K. B. 941).

It has been held, contrary to the opinion which formerly obtained, but in accordance with the principle of the cases which established that the power to nonsuit was no greater than at common law, that the power of the judge to grant a new trial is the same as that of the High Court itself in actions in the High Court, and subject to the same limitations (*Murtagh* v. *Barry*, (1890) 24 Q. B. D. 632; 59 L. J. Q. B. 388). This view has recently received the sanction of the House of Lords (*Brown* v. *Dean* (H. L.), (1910) A. C. 373; 79 L. J. K. B. 690; affirming (C. A.), (1909) 2 K. B. 573; 78 L. J. K. B. 840), and it is now settled law that the discretion of the judge to grant a new trial "if he shall think just" is a judicial discretion, which must be exercised on certain well-ascertained principles. It is proposed, therefore, shortly to consider the principal grounds on which new trials are granted in the High Court.

Verdict against Evidence.]—A new trial may be granted on the ground that the verdict of a jury is against the weight of the evidence, or that the damages are excessive or insufficient. The rule is the same even if the parties have agreed to accept the verdict of the majority (*Groom* v. *Shuker*, (1894) 69 L. T. 293). In the Supreme Court, where the damages given by a jury are excessive and unreasonable, the court has no jurisdiction, without the defendant's consent, to order that there shall be a new trial unless the plaintiff consents to a reduction of the damages (*Watt* v. *Watt*, (1905) A. C. 115; 74 L. J. K. B. 438); and the same rule would apply in the county court.

Improper Damages.]—In many cases, such as actions for non-delivery of goods for which there is a market, the *quantum* of damages is ascertainable with precision according to well-known rules; but in cases of injury to the person, character, or reputation, the damages are generally at large, and the principal difficulty in controlling verdicts so far as they relate to damages is generally in such actions. The rule in regard to them appears to be much the same as that which applies to the grant of a new trial on the ground that

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the verdict is against evidence (*Praed* v. *Graham* (C. A.), (1889) 24 Q. B. D. 53; 59 L. J. Q. B. 230, *per* Lord Esher, M.R.), and the rule has of late years been frequently stated to be that the verdict ought not to be disturbed, even though the judge would himself have given a different one, unless the court thinks that, having regard to all the circumstances of the case, no sensible men could reasonably have given it (*Phillips* v. *Martin*, (1890) 15 App. Cas. 193; *Metropolitan Rail. Co.* v. *Wright*, (1885) 11 App. Cas. 152; 55 L. J. Q. B. 401; *Praed* v. *Graham* (C. A.), (1889) 24 Q. B. D. 53).

The expression of the rule in the older cases as to damages seems to be that the verdict ought not to be disturbed unless the damages awarded are so far in excess or below what seems reasonable to the court as to satisfy it that the jury must have been actuated by improper motive or have proceeded upon a wrong principle (*Creed* v. *Fisher*, (1854) 9 Ex. 472; 23 L. J. Ex. 143; 96 R. R. 801; *Kelly* v. *Sherlock*, (1866) L. R. 1 Q. B. 686; 35 L. J. Q. B. 209; *Phillips* v. *L. & S. W. Rail. Co.*, (1879) 5 Q. B. D. 78). Thus in an action for breach of promise of marriage, in which heavier damages were given than any member of the court approved, a new trial was refused, as no error or misconduct could be suggested (*Berry* v. *Da Costa*, (1866) L. R. 1 C. P. 331; 35 L. J. C. P. 191). Where, however, the damages in an action for personal injury were, though substantial, unreasonably small under the circumstances, the court inferred from it that the jury must have omitted to consider some of the elements of damage and granted a new trial (*Phillips* v. *L. & S. W. Rail. Co.* (C. A.), (1879) 5 Q. B. D. 78).

Where an action was tried by jury and the judge gave judgment, but reserved leave to move, and a motion for a new trial was afterwards made and refused, it was held that final judgment for the purpose of appeal was not given until the refusal of the motion, and that the time for appeal ran from the day of refusal (*Foster* v. *Green*, (1861) 6 H. & N. 793; 30 L. J. Ex. 263).

Even if the judge reserves leave to move, the dissatisfied party may at once appeal to the High Court, and need not move in the county court (*Outhwaite* v. *Hudson*, (1851) 7 Ex. 380; 21 L. J. Ex. 151).

Staying Execution.] —If the judge at any time is satisfied that a defendant in any action is unable from sickness or other sufficient cause, which mere inability to pay owing to want of means is not (*Attenborough* v. *Henschel*, (1895) 1 Q. B. 833; 64 L. J. Q. B. 255), to pay and discharge the debt or damages recovered against him, or any instalment thereof, he may, in his discretion, suspend or stay any judgment, order, or execution for such time, and on such terms, as he thinks fit, and so from time to time until it shall appear that such temporary cause of disability has ceased; or he may order the discharge of any debtor, who on account of sickness, insanity, or other sufficient cause ought, in the opinion of the judge, to be discharged (51 & 52 Vict. c. 43, s. 153; Form 153).

Except as above, the County Courts Act contains no express power to stay proceedings.

Staying Proceedings.] —It remains to be seen how far the provisions of the Judicature Acts may justify a stay of proceedings before or after judgment. A county court judge was held to be justified in refusing to try, and in staying proceedings, until the plaintiff had paid the costs of an action brought previously in the High Court, and decided in favour of the defendant, and involving substantially the same questions as the case in the county court (*R.* v. *Bayley*, (1881) 8 Q. B. D. 411; 51 L. J. Q. B. 244; see, where stay ordered in High Court for non-payment of costs by married woman, *In re Payne*, (1883) 23 Ch. D. 288; 52 L. J. Ch. 544); and there are strong grounds for believing that a judge might stay proceedings in his own court in any case in which, if the action were in the High Court, an order to stay might be made (see *King* v. *Hawkesworth*, (1879) 4 Q. B. D. 371; 48 L. J. Q. B. 484; *Poyser* v. *Minors* (C. A.), (1881) 7 Q. B. D. 329; 50 L. J. Q. B. 555).

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Under sect. 4 of the Arbitration Act, 1889 (which reproduces sect. 11 of the Common Law Procedure Act, 1854), a county court judge has power to stay proceedings where an action has been commenced notwithstanding the existence of a submission to arbitration of the parties. This seems to follow from the definition of "Court" in that Act when read in conjunction with sect. 89 of the Judicature Act, 1873, and has recently been decided to be the law (*Morriston Tinplate Co.* v. *Brooker*, (1908) 1 K. B. 403; 77 L. J. K. B. 197). But it is a matter of considerable doubt whether the registrar of a county court, as such, has jurisdiction to make the order, and the safest course would appear to be to make the application to the judge, except in cases where the registrar is also a district registrar of the High Court. Where fraud is alleged the proceedings are not usually stayed, though an arbitration clause exists (*Jureidini* v. *National British and Irish Millers' Insurance Co.*, (1915) A. C. 499; 84 L. J. K. B. 640; *Monro* v. *Bognor Urban Council*, (1915) 3 K. B. 167; 84 L. J. K. B. 1091), nor is the discretion of the county court judge, if exercised judicially, interfered with (*Clough* v. *County Live Stock Insurance Co., Ltd.*, (1916) 85 L. J. K. B. 1185).

Judge may direct new trial to be had with jury.

2. The judge may, in his discretion, make it a condition of granting a new trial that it shall take place with a jury, although the former trial did not take place with a jury.

On a new trial, either party may demand a jury, although there was no jury on the first (*R.* v. *Harwood*, (1853) 1 B. C. C. 144; 22 L. J. Q. B. 127; *Ford* v. *Taylor*, (1878) 3 C. P. D. 21; 47 L. J. C. P. 116).

Application for new trial where there are two or more judges.

3. Where there are two or more judges of any court, an application for a new trial or to set aside proceedings in an action or matter tried or determined before one of such judges shall, wherever practicable, be made to that judge; and for that purpose an application of which notice has been given for a day on which that judge is not sitting may be adjourned to a day on which that judge will sit, if such adjournment will not involve unreasonable delay.

ORDER XXXII.

Appeals.

Appeals. 47 & 48 Vict. c. 61, ss. 23, 24.

1. Appeals shall be brought in accordance with the provisions of the Rules of the Supreme Court, made under the Supreme Court of Judicature Act, 1884.

The Rules of the Supreme Court referred to are Order LVIII. r. 20, and Order LIX. rr. 4—18. They will be found at pp. 230—232.

Judgment of Court of Appeal to be deposited.

2. When the Court of Appeal has pronounced judgment, either party may deposit the same, or an office copy thereof, with the registrar of the county court, and upon being so deposited such judgment shall be filed and may be enforced as if it had been given by the county court.

New trial.

3. A new trial in pursuance of an order of the Court of Appeal shall be entered for trial at the first county court which shall

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be held next after twelve clear days from the time when such order or office copy thereof has been deposited as aforesaid, unless the parties agree that it shall take place sooner, or the judge otherwise orders; and it shall be conducted in the same manner as any new trial granted by the county court itself.

Proceedings on judgment of Court of Appeal.

4. If the order of the Court of Appeal be that judgment shall be entered for either party, then such judgment shall be entered accordingly, and the successful party shall be at liberty to proceed on such judgment as on a judgment of the county court.

Costs.]—Although the court refuses to hear an appeal on the ground that the appeal will not lie, it frequently does entertain it so far as to dismiss it with costs (*Carr* v. *Stringer*, (1858) E. B. & E. 123; 113 R. R. 570), but as its power depends on jurisdiction, it is difficult to see how it can do so (*Lawford* v. *Partridge*, (1857) 1 H. & N. 621; 26 L. J. Ex. 147; 108 R. R. 749; *Brown* v. *Shaw*, (1876) 1 Ex. D. 425; *Clarke* v. *Roche* (2), (1877) 36 L. T. 78; see, however, *Ex parte Pringle* (C. A.), (1889) 60 L. T. 796). It seems that the court cannot make a conditional order that the costs of the appeal shall abide the event of the new trial (*Gibbon* v. *Gibbon*, (1853) 13 C. B. 205; 22 L. J. C. P. 131. 135, *in notis*). The costs of appeal, as a general rule, follow the event; and unless there are special circumstances to take a case out of the rule, the appellant, if successful, is now allowed his costs of appeal (*Mountnoy* v. *Collier*, (1852) 1 E. & B. 630; 93 R. R. 317; *Schroeder* v. *Ward*, (1863) 13 C. B. N. S. 410; 32 L. J. C. P. 150; *Richardson* v. *N. E. Rail. Co.*, (1872) L. R. 7 C. P. 75, 83; 41 L. J. C. P. 60).

Where the judge of a county court ruled a point of law against a plaintiff, with leave to move to set aside the verdict, and the plaintiff, instead of so moving, appealed to a superior court, which decided the point in his favour, it was held that he ought to have his costs of appeal, since he was not bound to try the experiment of going a second time before the same judge, who had once expressed an opinion against him (*Outhwaite* v. *Hudson*, (1851) 7 Ex. 380; 21 L. J. Ex. 151).

Costs of appeal will not be allowed unless the application for them is made at the time the case is disposed of (*Taylor* v. *G. N. Rail. Co.*, (1866) L. R. 1 C. P. 430; 35 L. J. C. P. 210).

The order of the court in favour of the appellant will, it is conceived, discharge his sureties, if any, providing that he has not been ordered to pay the costs of the appeal, a very improbable contingency. If money has been paid into court as security for the costs of the appeal, the court, in granting costs to the appellant, will order the money paid into court to be paid out to him (*Kelly* v. *Webster*, (1852) 16 Jur. 838).

The costs of the proceedings in the court below must be dealt with as accessory to the judgment; therefore the reversal of the judgment below, and order for a new trial, reverses an order for costs in the court below (*Gage* v. *Collins*, (1867) L. R. 2 C. P. 381; 36 L. J. C. P. 144; *Ashby* v. *Sedgwick*, (1873) L. R. 15 Eq. 245; 42 L. J. Ch. 355).

ORDER XXXIII.

Actions or Matters remitted from or transferred to the High Court.

Where action or

1. Where, by order of the High Court, any action or matter is remitted or transferred to a county court, the plaintiff shall

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lodge with the registrar the order, or a duplicate thereof, and the writ, together with the pleadings, affidavits, and other documents filed in the High Court, or copies thereof, and also a statement of the names and addresses of the several parties to the action or matter, and their solicitors, if any, and (if no statement of claim has been delivered in the High Court) a concise statement of the particulars of claim, such as would be required upon entering a plaint; and the registrar shall thereupon enter the action or matter for trial, and give notice to the parties of the day appointed for such trial, by post or otherwise, ten clear days at least before such day, and shall annex to the notice to the defendant a copy of the particulars.

matter remitted from High Court.

Forms 280, 282.

Forms 281, 283.

Proceedings in County Court.]—After the transfer, the action must proceed in the county court as if it had been originally commenced there, and no order, except on appeal, can be made in it by the High Court (*Harris* v. *Judge* (C. A.), (1892) 2 Q. B. 565; 61 L. J. Q. B. 577; *Duke* v. *Davis* (C. A.), (1893) 2 Q. B. 260; 62 L. J. Q. B. 549). Until the writ and order are lodged with the registrar the action remains in the High Court, and there is no transfer (*D'Errico* v. *Samuel* (C. A.), (1896) 1 Q. B. 163; 65 L. J. Q. B. 197). Unless defence has already been delivered, the defendant must, if he relies on any of the special defences of which notice is required, give notice in the ordinary way; see Order XXXIII. r. 3. The judge at the trial may amend or add parties (*R.* v. *Clerkenwell C. C.*, (1890) 7 T. L. R. 40). In an action for demurrage at a specified rate he may even amend the particulars by substituting a claim for unliquidated damages (*Spencer, Whatley & Co.* v. *Foster & Co.*, (1905) 1 K. B. 434; 74 L. J. K. B. 288). In a proper case he may refuse to try and stay proceedings (*R.* v. *Bayley*, (1881) 8 Q. B. D. 411; 51 L. J. Q. B. 244. See *R.* v. *Mellor*, *ante*, p. 45).

High Court Costs.]—The right to the costs incurred in the High Court, of and prior to the order of transfer, is governed by the express words of sect. 65, controlled, as mentioned below, by sect. 116, as extended by sect. 3 of the Act of 1903. A judge of the High Court, after the trial, has no power to make any order as to them (*Harris* v. *Judge* (C. A.), (1892) 2 Q. B. 565; 61 L. J. Q. B. 577); nor can the county court judge, or the master, by any order, prevent the application of the rules contained in sect. 116 (*White* v. *Cohen* (C. A.), (1893) 1 Q. B. 580; 62 L. J. Q. B. 274; *Dun* v. *Appleton*, (1898) 1 Q. B. 564; 67 L. J. Q. B. 428; overruling *Armitage* v. *Fison*, (1890) 67 L. T. 415). The effect of those rules is as follows: If, before the order to remit, the plaintiff recovers judgment under Order XIV. for 20*l.* or more, his costs of and prior to the order must be taxed on the High Court scale, if he recovers anything at all in the county court. If he recovers no judgment at all under Order XIV., or one for less than 20*l.*, but recovers in all as much as 20*l.*, but less than 100*l.*, his costs will be taxed on the county court scale. If he recovers in all less than 20*l.*, he will be entitled to no costs whatever of or prior to the order.

Recovery, meaning of.]—Plaintiff claimed 104*l.*, the defendant under an order paid 90*l.*, and by an order the action was remitted to and lodged in the county court; before the return day the defendant paid into court the balance of the claim; the plaintiff was held to have "recovered" 104*l.* and to be entitled to High Court costs prior to, and of, the order to remit, and costs in the county court on C scale. Where an action was brought for 27*l.* and the defendant paid 8*l.* without any order, the action was subsequently remitted to the county court and particulars claiming 19*l.* delivered, and the

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plaintiff obtained judgment for 19*l.* Held that plaintiff had in substance "recovered" a sum not less than 20*l.*

Costs of Successful Defendant.]—The right to costs of a defendant who is successful in the county court depends upon the same principle. In an action for 71*l.*, 23*l.* was paid into court under an order under Order XIV., and the action sent to the county court as to the residue of 48*l.*; the defendant consented to judgment for the 23*l.*; in the county court there was judgment for the defendant in respect of the residue; the defendant was held entitled to costs on C scale from the date of his consent to judgment for the 23*l.*, the subject-matter exceeding 50*l.*

County Court Costs in Remitted Actions.]—In remitted actions, costs generally follow the event, and the rules as to scale apply (51 & 52 Vict. c. 43, ss. 65, 113); in such an action, which could have been commenced in the county court, if the plaintiff in all recovers in contract less than 20*l.*, he gets no costs (*White* v. *Cohen* (C. A.), (1893) 1 Q. B. 580; 62 L. J. Q. B. 274, overruling *Armitage* v. *Fison*, (1890) 67 L. T. 415); but if he recovers anything, either in the High Court by means of Order XIV., or in the county court by verdict, failing an order as to costs by the county court judge, the defendant gets no costs (*Wright* v. *Bull*, (1900) 2 Q. B. 124; 69 L. J. Q. B. 529). The provision in sect. 65 that the costs of proceedings, subsequent to the order of remittal, are to be allowed according to the scale in use in the county court, does not take away the general discretionary power of the judge over costs under sect. 113 (*Everall* v. *Brown*, (1905) 2 K. B. 196; 74 L. J. K. B. 708; (C. A.), (1906) 2 K. B. 884; 75 L. J. K. B. 960; and see *M'Eachen* v. *Sallyco Mineral Water Co.*, (1903) 19 T. L. R. 206).

Special Costs.]—An action in the High Court to recover 46*l.* was remitted, the defendant paid 16*l.* into court without a denial of liability, which the plaintiff refused to accept; the judge found that 16*l.* only was due, and gave judgment for the defendant with costs; held, that the defendant was entitled to the costs of the High Court proceedings, which, having been incurred prior to the payment into court, were not governed by sect. 107, but were under sect. 116 in the judge's discretion (*Bennett* v. *Drake*, (1907) 97 L. T. 132). And where 3*l.* was recovered by the plaintiffs in proceedings under Order XIV. and the action was remitted to the county court, where judgment was entered for the defendant with costs on the higher scale, it was held that the county court judge had a discretion under sect. 113 to order the plaintiffs to pay the costs of the proceedings under Order XIV., notwithstanding that the plaintiffs had by those proceedings succeeded in obtaining satisfaction for a portion of their claim (*Mentors, Ltd.* v. *Evans*, (1912) 1 K. B. 254; (C. A.), (1912) 3 K. B. 174; 81 L. J. K. B. 1111).

Where two defendants are represented by the same solicitor, and judgment with costs is given for one and against the other, the successful defendant is entitled to recover from the plaintiff half the costs of the defence (*Beaumont* v. *Senior*, (1903) 1 K. B. 282; 72 L. J. K. B. 141).

Although the county court judge cannot interfere with the operation of sect. 116 upon the costs, he is probably able, as the action is to be treated as if commenced in his court, by an order refusing costs generally, to deprive a successful party of costs to which he would otherwise be entitled.

The judge may in these actions, by special order, where a solicitor appears without counsel, allow the special items of costs mentioned in the scales, viz., items 31 and 70; and may where the court-town (if more than twenty-five miles from Charing Cross) has no local bar within twenty miles of it, and counsel is instructed, allow the additional fee to counsel mentioned in item 86. Under item 93, the judge may also allow a fee to counsel for settling particulars, interrogatories, etc. (Order LIII. rr. 7, 8; and see Scales).

After the transfer, the action becomes a county court action for all

purposes, and is subject to the same provisions as to new trial and appeal as other actions (see *Moody* v. *Steward*, (1870) L. R. 6 Ex. 35; 40 L. J. Ex. 25; *Bowles* v. *Drake* (C. A.), (1882) 8 Q. B. D. 325, 327; 51 L. J. Q. B. 66, *per* Brett, L.J.). O. XXXIII. r. 1. Notes.

Order to be filed.

2. The registrar shall forthwith indorse on the order or duplicate thereof the date on which the same was lodged, and file the same, and the action or matter shall proceed in all things as if it were an ordinary action in the court. No notice of defence under Order X. shall be required where a statement of defence has been delivered in the High Court.

Proceedings in county court.

Defendant to proceed as if action originally brought in county court.

3. Upon being served with a notice of trial under Rule 1 of this Order, a defendant shall proceed in all things in the same way as if the action had been brought in the county court, and the notice so served upon him was an ordinary summons.

Transmission to county court of money paid into High Court.

3A. Where any money has been paid into the High Court in an action or matter which is remitted or transferred to a county court, the registrar of the county court shall, on the request of any party to the action or matter, apply to the Paymaster-General, or, where money has been paid into a district registry, to the district registrar, to transmit such money to the registrar; and such money, when transmitted in accordance with the application, shall be subject to the order of the county court in like manner as if it had been paid into the county court in the action or matter. An application to the Paymaster-General or district registrar under this rule shall be in accordance with the form in the Appendix.

Form 283A.

Times for interlocutory proceedings, where writ indorsed for sum exceeding 50*l.*, or for damages where no amount specified.

3B. Where the amount claimed on the writ exceeds fifty pounds, or where damages are claimed but the amount of the claim is not specified, the notice of trial required by Rule 1 of this Order shall be given twenty clear days at least before the day appointed for the trial, and the provisions of Order XXIIA. Rules 6 to 11, 13, 14, and 16 to 19, as to the times within which proceedings are to be taken, shall apply; and in the application of those rules the day appointed for the trial shall be deemed to be the return-day.

Order and service, where defendant added or substituted.

Forms 94, 95

3C. Where a defendant is added or substituted in an action or matter remitted or transferred to a county court, except where a defendant is substituted under Order XIV., Rule 4, an order shall be drawn up: and such order, together with a copy of the writ or other proceedings, and of the pleadings, affidavits, and other documents filed in the High Court, and of the statement and particulars filed in the county court pursuant to Rule 1 of this Order, and a notice according to the form in the Appendix as to

O. XXXIII. r. 3c.

the day upon which he is to attend at the court, shall be served on the added or substituted defendant according to the rules applicable to the service of default summonses, and the proceedings as against such party shall be deemed to have begun only on the service of such notice.

Special notice in action for libel or slander.

6 & 7 Vict. c. 96, ss. 1, 2.

Forms 86, 87.

4. Where in any action for libel or slander remitted under section sixty-six of the Act, to be tried in a county court, the defendant intends to avail himself of the provisions of sections one and two of the Libel Act, 1843, he shall give notice in writing of such intention to the registrar five clear days at least before the day appointed for the trial of the action.

Where a common law action of negligence is remitted, the plaintiff may add in the county court an alternative claim under the Employers' Liability Act, 1880 (*Wood* v. *Weber*, (1908) 99 L. T. 195).

Transfer of equitable action or matter to Chancery Division under

51 & 52 Vict. c. 43, ss. 67, 68, 70.

Form 331.

5. If during the progress of any action or matter under section sixty-seven or section seventy of the Act, or of any other action or matter commenced under the equitable jurisdiction of the court, it is made to appear that the subject-matter of the action or matter exceeds the limit in point of amount to which the jurisdiction of the court is limited, the judge if requested may forthwith make an order for the transfer of the action or matter to the Chancery Division of the High Court, but if not so requested the order shall not be made before fifteen days at least; and the registrar shall make and file a copy of such order, and shall transmit the order, by post or otherwise, to the proper officer of the Chancery Division of the High Court, and shall also send notice, by post or otherwise, of the fact to all parties and persons entitled to be served with a copy of the order.

See *Prangnell* v. *Prangnell*, (1893) 62 L. J. Q. B. 346.

When the excess of jurisdiction appears from the evidence at the trial, the judge ought not to strike out the action or matter; but he ought to do so if the want of jurisdiction appears on the plaint or petition itself (*Birks* v. *Silverwood*, (1871) L. R. 14 Eq. 101; 41 L. J. Ch. 638; *Thomson* v. *Flinn*, (1881) L. R. 17 Eq. 415; 43 L. J. Ch. 256; but see 51 & 52 Vict. c. 43, s. 114).

Report by registrar, and proceedings where limit of jurisdiction in equitable action or matter found to be exceeded.

6. If during the progress of taking any accounts or making any inquiries in any action or matter under section sixty-seven or section seventy of the Act, or of any other action or matter commenced under the equitable jurisdiction of the court, it appears to the registrar that the subject-matter of the action or matter exceeds the limit in point of amount to which the jurisdiction of the court is limited, he may if he thinks fit proceed with and complete the particular account or inquiry, but he shall at the next sitting of the court present a certificate of the state of the proceed-

O. XXXIII. r. 6.

ings in the action or matter, and if the judge is of opinion that such excess exists, he shall make an order of transfer as under the last preceding rule.

51 & 52 Vict. c. 43, ss. 67, 68, 70.

Form 331.

Transmission of documents, etc., to High Court by registrar, after order of transfer.

36 & 37 Vict. c. 66, s. 90; and 51 & 52 Vict. c. 43, ss. 68, 126.

7. Where any order is made by the High Court of Justice or any division or judge thereof for the transfer of any action or matter from a county court to the High Court under section ninety of the Supreme Court of Judicature Act, 1873, or under section one hundred and twenty-six of the Act, or where an order is made by the judge under section sixty-eight of the Act, and Rules 5 and 6 of this Order, then, subject to such order, the record in such proceeding shall be transmitted by the registrar in the following manner. The registrar shall make and certify under his hand office copies of all entries of record in the books of the court, and shall forthwith transmit by post or otherwise to the proper officer of the High Court such copies, together with all documents filed in the action or matter, and also, where the proceedings have been transferred from a county court, the order of such court. Such copies and the cost of transmission shall be paid for in the first instance by the party on whose application the transfer has been made, unless the transfer has been made by the judge under Rule 5 or Rule 6 of this Order without any application to transfer being made to him, in which case such copies and the costs of transmission shall be paid for in the first instance by the plaintiff in the action or matter; and the registrar may require deposit of the cost of making such copies and transmission before making or transmitting the same; but such payment shall be without prejudice to any question as to the party by whom such costs are ultimately to be borne.

Registrar to apply to judge for directions after transfer from High Court under 51 & 52 Vict. c. 43, s. 69.

8. Where any action or matter is transferred, under section sixty-nine of the Act, to a county court, the registrar shall forthwith apply to the judge for directions as to the further steps in the action or matter; and thereupon the judge may give such directions for carrying on the action or matter as he may think fit, or he may appoint a time to hear and determine any matters in such action or matter, and direct the registrar to summon all parties to appear on the day so appointed. And the judge may also, if he thinks fit, order the registrar to give notice to the parties to the action or matter, or any of them, that the order of transfer has been made.

Claimant to lodge order of High Court transferring

9. Where a proceeding by way of interpleader has been transferred to a county court under the powers given by section seventeen of the Supreme Court of Judicature Act, 1884, the claimant shall within the time (if any) limited by the order

O. XXXIII. r. 9.

interpleader proceeding under 47 & 48 Vict. c. 61, s. 17.

Form 284.

transferring the proceeding, or if no time is so limited, then within seven days from the date of such order, lodge with the registrar the order transferring the proceeding, or a duplicate or copy thereof, under the seal of the High Court, together with office copies of all affidavits filed on the application to the High Court, and a copy of the issue, if any, directed to be delivered between the parties by any order of the High Court, and also a statement in writing setting forth the names and addresses of the several parties to such proceeding, and their solicitors, if any, and stating concisely the nature of the proceeding transferred, together with a request to enter the same for hearing. If the claimant fails to lodge such documents and request within the time limited as aforesaid, any other party to the proceeding, or the sheriff, may lodge the same. The registrar shall thereupon enter the proceeding for hearing, and shall give notice of the day, time, and place for the hearing of the proceeding to the parties, and where the order is made on an interpleader summons issued at the instance of the sheriff, to the London agent of the under-sheriff, by post or otherwise, ten clear days at least before such day, unless any shorter notice is directed in the order transferring the proceeding, or by the judge or registrar as hereinafter provided.

Entry for hearing.

Form 285.

Claimant to lodge two copies of particulars and grounds of claim.

Form 211.

10. Where the order is made on an interpleader summons issued at the instance of the sheriff, the claimant shall five clear days at least before the day fixed for the hearing of the proceeding (unless such time is reduced as hereinafter provided) lodge with the registrar two copies of the particulars of any goods or chattels alleged to be the property of the claimant, and of the grounds of his claim; and the registrar shall forthwith send by post to the execution creditor one of the copies of such particulars: Provided that by consent of all parties, or without such consent if the judge so directs, the interpleader claim may be tried, although this rule has not been complied with.

Claims to damages.

11. Subject to any directions to the contrary which may be contained in the order transferring the proceeding, damages may be claimed against the execution creditor in a proceeding by way of interpleader transferred from the High Court to a county court in the same manner as in an interpleader proceeding commenced in a county court.

NOTE.—New rule of 1917, dated February 19th, 1917, and reversing the previous rule.

In *Salbstein* v. *M. Isaacs & Sons and Another*, (1916) 85 L. J. K. B. 109, it was argued that the county courts rule committee exceeded their powers

in making the rule that "no claim for damages shall be allowed in an interpleader issue remitted from the High Court," but the Divisional Court decided that this rule was not *ultra vires*. Now, if not contrary to the terms of the order transferring the proceedings to the county court, damages may be claimed from the execution creditor in the same way as in ordinary interpleader proceedings (*supra*). Apparently there is no power to claim damages from the sheriff in the county court in such a case.

O. XXXIII. r. 11. Notes.

12. Any proceeding by way of interpleader transferred from the High Court to a county court shall be tried in such manner and under such conditions as may be prescribed by the order directing such transfer. In the event of no directions as to the manner and conditions of trial being given in such order, any of the parties to the proceeding (or the sheriff, where the order is made on an interpleader summons issued at his instance), may apply to the court to which the proceeding is transferred for directions as to the mode of trial, or as to any proceeding with reference to the property seized; and subject to any such directions the proceeding shall be tried by the judge without a jury, and the ordinary procedure on the trial of an action shall apply.

Mode of trial of interpleader transferred from High Court. 47 & 48 Vict. c. 61, s. 17.

13.—(1) In particular, where the order directing such transfer directs the sheriff to withdraw from possession on payment of any sum by the claimant, and in default of such payment to sell the goods seized, but provides that such directions for sale shall be subject to any order which may before the goods are sold be made by the county court, directing the sheriff to remain in possession of the goods or to hand over possession thereof to the high bailiff of the county court, any party to the proceeding, or the sheriff may, on notice to the other parties to the proceeding, and (where notice is given by one of the parties) to the London agent of the under-sheriff, apply to the court under Rule 11 of Order XII. to postpone the sale, and to expedite the hearing of the proceeding; and the court may thereupon order the sheriff to remain in possession of the goods until the hearing, or to hand over possession thereof to the high bailiff of the court, instead of proceeding to a sale, upon such terms as to possession money or other charges as may be prescribed by the order directing the transfer, or, if no such terms are prescribed, upon such terms as may be just and reasonable; and the court may also expedite the hearing.

Provisions for interim custody of goods, and for expediting hearing.

(2) For the purpose of expediting the hearing of any such proceeding as aforesaid, the following provisions shall have effect:

O. XXXIII. r. 13.

(*a*) The court may fix an early day for the hearing, and may for that purpose reduce the length of notice of hearing required by Rule 9 of this Order, and the time before the hearing fixed by Rule 10 for the filing of particulars ;

(*b*) The judge may also order the hearing to take place at any convenient court of which he is the judge ;

(*c*) On the day, time, and place for the hearing being fixed, the registrar of the court in which the proceeding is pending shall forthwith give notice thereof to the parties in accordance with Rule 9, together with notice of the time within which particulars are to be filed ;

(*d*) Where the hearing is to take place at another court, the registrar of the court in which the proceeding is pending shall forthwith send notice to the registrar of such other court that the judge has ordered the hearing to take place there ; and he shall in sufficient time before the hearing transmit the papers to the registrar of the court at which the hearing is to take place, who shall act at the hearing for such first-mentioned registrar, and shall after the hearing return the papers to him, with a minute of the order made ; and such order shall be settled, sealed, filed, entered, and proceeded on in the court in which the proceeding is pending, in like manner as if the hearing had taken place there.

Sheriff's charges.

14. No order made by the court in any proceeding by way of interpleader transferred from the High Court shall prejudice or affect the rights of the sheriff to any proper charges ; and the judge shall make such orders as may be just with respect to any such charges ; but such charges shall be ultimately borne, as between the parties to the proceeding, in such manner as the judge shall direct.

High bailiff's charges.

15. Where any goods are handed over to the high bailiff in pursuance of any such order as aforesaid, he shall hold or dispose of the same in accordance with the directions contained in such order, or in any subsequent order made in the proceeding ; and he shall be allowed for keeping possession of such goods such reasonable charges, not exceeding those which might be made by the sheriff, as the judge may order, and for a sale of such goods, if he is directed to sell the same, the same charges as are allowed on a sale under an execution issued by the county court ;

and such charges shall be ultimately borne, as between the parties to the proceeding in such manner as the judge shall direct. O. XXXIII. r. 15.

16. Where any proceeding by way of interpleader, or any action or matter pending in the Chancery Division, is ordered to be transferred from the High Court to a county court, and no order to the contrary has been made in the High Court, the costs of the order and of the proceedings prior thereto shall be in the discretion of the judge of the county court, and shall be taxed in the county court upon such scale, whether of the High Court or the county court, as the judge may think just. The costs in the county court shall be in the discretion of the judge, and shall be taxed on such county court scale as he may think just. Costs of interpleader and Chancery proceedings transferred from High Court. 47 & 48 Vict. c. 61, s. 17. 51 & 52 Vict. c. 43, s. 69.

17. Where any proceeding by way of interpleader is transferred from the High Court to a county court, the judge may order that the sheriff shall have his costs of the interpleader proceeding in the High Court, and may direct by which party the said costs shall be paid. Sheriff's costs.

Where the claimant succeeds and is awarded costs, he is entitled to be allowed, as against the execution creditor, the sheriff's charges subsequent to the issue (*Goodman* v. *Blake*, (1887) 19 Q. B. D. 77).

18. The order made upon a proceeding by way of interpleader transferred from the High Court to a county court shall contain directions as to how any money paid into court or in the hands of the sheriff is to be disposed of, and an order on the sheriff to deal with any money in his hands accordingly. A minute of every such order shall be entered in the minute book, but no order need be drawn up or served unless any of the parties require it, or the court otherwise orders. The order, if drawn up, shall be according to such one of the forms provided for orders on the hearing of interpleader proceedings commenced in the county court as shall be applicable to the case, with such variations as the case may require. Order on remitted interpleader. Forms 213, 214.

19. Where the registrar of the court to which any action, matter, or proceeding is transferred from the High Court, or a partner or clerk of such registrar, has acted as solicitor for any party to such action, matter or proceeding in the High Court, the judge may order such action, matter, or proceeding to be transferred to some other court under section eighty-five of the Act; and the provisions of Order VIII. Rule 9, shall apply to any application for such transfer. Transfer of action, etc., remitted from High Court to another court, where registrar has acted for any party in High Court. 51 & 52 Vict. c. 43, s. 58.

ORDER XXXIV.

REPLEVIN.

Rule 1.

No other cause of action to be joined.

1. In actions of replevin no other cause of action shall be joined in the summons.

Particulars. Mode of trial. Forms 151, 290, 291.

2. On entering a plaint in replevin, the plaintiff shall specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken, and the distress or other taking of which he complains.

3. An action of replevin shall be tried in the same way as other actions, and the judgment therein, in ordinary cases, whether for plaintiff or defendant, shall be, unless otherwise ordered, according to the forms in the Appendix.

Where defendant succeeds in action where distress is for rent, etc. Form 290.

4. Where the distress is for rent, or for any other sum of money for which a distress may be lawfully taken, and the defendant succeeds in the action, if the defendant so requires, the judge shall, if the action is tried without a jury, and the jury shall, if the action is tried with a jury, find the value of the goods distrained, and if the value is less than the amount of rent or other sum of money in arrear, judgment shall be given for the amount of such value, but if the amount of the rent or such other sum of money in arrear be less than the value so found, judgment shall be given for the amount of such rent or other sum of money, and such judgment may be enforced in the same manner as any other judgment of the court.

Where defendant entitled to a return in damage feasant.

5. Where the distress is for damage feasant, and the defendant is entitled to judgment for a return, if the plaintiff so requires, the judge shall, if the action is tried without a jury, and the jury shall, if the action is tried with a jury, find the amount of the damage sustained by the defendant, and judgment shall then be given in favour of the defendant, in the alternative, for a return, or for the amount of the damage so found.

See Bacon's Abridg., "Replevin."

Where defendant succeeds in other cases.

6. In all cases of replevin, other than those arising out of a seizure by way of distress, where the defendant justifies the taking and proves his case, the judgment for the defendant shall be for a return of the goods, with or without costs.

One who has replevied goods distrained, and obtained judgment in an action of replevin, cannot maintain an action for damages in respect of the taking of the goods (*Gibbs* v. *Cruikshank*, (1873) L. R. 8 C. P. 454; 42 L. J. C. P. 273).

Costs.]—The judge may, by special order, order costs to be taxed under columns A, B, or C of the scales; if he makes no special order they will be taxed under column B (Order LIII. rr. 10, 11).

ORDER XXXV.

THE SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT, 1855.

Rule 1.

Summons and particulars of claim under 18 & 19 Vict. c. 67. Forms 25, 26.

1. A summons under the Summary Procedure on Bills of Exchange Act, 1855, shall be according to the form in the Appendix; and particulars of demand shall be filed on the entry of the plaint, which shall state that the bill or note sued upon became due and payable within six months before the commencement of the action, and shall be according to the form in the Appendix, *mutatis mutandis*.

See form of plaint-note, Form 21; of summons, Form 25; of particulars, Form 26. See Act and notes, *ante*, p. 310.

Form of judgment under 18 & 19 Vict. c. 67, s. 1. Form 151.

1A. Where the plaintiff signs final judgment under section 1 of the Summary Procedure on Bills of Exchange Act, 1855, such judgment shall be in the same form as when judgment is entered up under sub-sections 1 and 2 of section 86 of the County Courts Act, 1888.

Leave to defend under 18 & 19 Vict. c. 67, s. 2.

2. Where under the said Act a defendant applies for leave to defend he shall satisfy the court, by affidavit, that good grounds exist for granting leave to defend the action, and shall file with the registrar such affidavit, together with a copy thereof, and shall, if required so to do by the court, give security according to the provisions of section two of the said Act.

If the judge or registrar is satisfied that the defendant has a good defence, and it is sufficient that the affidavit should show reasonable and plausible grounds of defence (*Clay* v. *Turley*, (1858) 27 L. J. Ex. 2; *Mathews* v. *Marsland*, (1858) 27 L. J. Ex. 148); or if the defendant pays the amount into court, leave will be given to defend on such terms, as to security or otherwise, as the judge or registrar thinks fit (18 & 19 Vict. c. 67, s. 2).

Notice of trial to be given. Forms 40, 41.

3. Where leave is given to defend, the registrar shall fix a day for the action to be tried, and shall send to the plaintiff by post notice thereof according to the form in the Appendix, together with a copy of the affidavit made by the defendant, and shall also send to the defendant by post a notice according to the form in the Appendix. Such notices shall be sent at least ten clear days before the day so fixed, and the day for trial shall be fixed for the first convenient sitting of the court after the expiration of the notice.

The defendant is not, at the hearing, limited to the grounds of defence disclosed by the affidavit upon which he obtained leave to defend (*Saul* v. *Jones*, (1859) 1 E. & E. 59; 28 L. J. Q. B. 37; 117 R. R. 137).

O. XXXV. r. 4.

Applications under 18 & 19 Vict. c. 67, s. 3.

4. Any application, under section three of the said Act to set aside the judgment shall be made to the judge; but until the judge can hear the same, execution shall be stayed, upon the defendant giving security to abide the decision of the judge.

The judge may, under special circumstances, set aside the judgment, and, if necessary, stay or set aside execution, and give the defendant leave to appear and defend if it seems to him reasonable, and on such terms as he thinks just (18 & 19 Vict. c. 67, s. 3).

ORDER XXXVI.

Registry of Judgments.

Return of judgments in City of London Court.

1. A return of every judgment entered in the City of London Court for the sum of ten pounds and upwards shall be transmitted by the registrar to the registrar of county courts judgments in London, in the same manner as returns of judgments entered in a county court are now transmitted.

Note of order in Admiralty or equity actions to be sent.

2. A note of every judgment or order in an admiralty action, or in any action or matter under section sixty-seven or seventy of the Act, or any other action or matter commenced under the equitable jurisdiction of the court, shall within ten days of the making thereof be transmitted by the registrar to the registrar of county courts judgments in London, who shall register the same as heretofore.

The publication of extracts from the register of judgments is privileged (*Searles* v. *Scarlett* (C. A.), (1892) 2 Q. B. 56; 61 L. J. Q. B. 573).

ORDER XXXVII.

Funds.

Payment into court in equitable actions or matters.

51 & 52 Vict. c. 43, ss. 67, 69.

1. Where a party is directed to pay money into court in any action or matter mentioned in sections sixty-seven and sixty-nine of the Act, or in any other action or matter commenced under the equitable jurisdiction of the court, he shall attend and pay the same into the office of the registrar, and obtain a receipt for the amount; and the registrar shall, unless otherwise ordered by the judge, pay the same into a post office savings bank, in accordance with the provisions of section seventy-one of the Act.

The ordinary rules as to payment into and out of court do not apply (Order IX. r. 23). Persons deriving benefit under moneys so paid in are not debarred from depositing moneys in their own name in other post office or other savings banks (51 & 52 Vict. c. 43, s. 71).

Entry of payments. Payment of interest.

2. The registrar shall enter in the "Cash Book" and "Ledger for Equitable Proceedings" any money so paid, to the account of the action or matter in which it is paid; and where the interest of any fund paid into a post office savings bank has been directed

to be paid to any person, the registrar shall pay the same half-yearly out of any general moneys in his hands. O. XXXVII. r. 2.

3. The registrar, whenever he is directed by order to draw out of a post office savings bank any fund or part of any fund standing to the account of any action or matter, shall send a letter to the Treasury according to the form in the Appendix. Mode of withdrawing moneys from post office savings bank. Form 343.

4. Where money has before the 1st day of January, 1868, been invested in stocks, and the investment is in the names of the treasurer and registrar alone, the registrar shall from time to time receive the dividends of all the funds so standing in their names, and shall re-invest the dividends in the same names, except where and so far as the court otherwise directs, and shall apportion the amount so re-invested in his books to the same accounts as the original investments. Re-investment of interest on stocks in names of treasurer and registrar.

Legacy and Succession Duty.]—Before executing any order directing the payment or transfer of any fund, or part of any fund, in respect of which any duty is payable to the revenue under the Acts relating to legacy, succession or estate duty, the registrar must, before making the payment, require a certificate from the proper officer of, or the production of the receipt for, the payment of the duty chargeable in respect of such fund, or any part thereof respectively (Order II. r. 14).

5. Where any married woman is interested in any principal money, stocks, shares, or securities exceeding in value 200*l.*, or 10*l.* in annual payments, and is not entitled to the same as her separate property, she shall be examined by the judge apart from her husband to ascertain whether the same shall be paid to him or made the subject-matter of a settlement, and if the judge thinks that a settlement should be made, and in all cases where the married woman is under age, the judge shall in his judgment make such settlement accordingly: Provided always, that the judge may, if he thinks fit, order such settlement to be prepared by counsel and settled by the judge. Examination of married woman interested in fund. Settlement.

6. Where in any action, matter, or proceeding the estate of a deceased person who has died intestate is entitled to a fund or to a share of a fund in court not exceeding 100*l.*, and it is proved to the satisfaction of the judge that no administration has been taken out to such deceased person, and that his assets do not exceed the value of 100*l.*, including the amount of the fund or share to which the estate of such deceased person is entitled, the judge may direct that such fund or share shall be paid, transferred, or delivered to the person, who, being a widower, widow, child, father, mother, brother or sister of the deceased, would be entitled to take out administration to the estate of such deceased person. (R. S. C., Order XXII. r. 18A.) Payment of sum due to deceased intestate, not exceeding 100*l.* to person entitled to take out administration.

ORDER XXXVIII.

THE COUNTY COURTS ACT, 1888, SECTIONS 67 AND 70. THE SETTLED LAND ACTS, 1882 TO 1890. THE TRUSTEE ACT, 1893.

Rule 1.

Proceedings by petition.

51 & 52 Vict. c. 43, s. 67 (5), (6).

56 & 57 Vict. c. 63.

45 & 46 Vict. c. 38.

1. Proceedings under the fifth and sixth sub-sections of section sixty-seven of the Act, or the Trustee Act, 1893 (other than proceedings under section forty-two of the last-mentioned Act), or under the Settled Land Acts, 1882 to 1890, shall be commenced by filing a petition, intituled in the matter of the Act under which the proceeding is taken, and of the trust or settlement, with as many copies of the petition as there are respondents to be served.

The petition must be filed with the registrar (Order II. r. 3).

Every petition for dealing with money or securities in court chargeable with any duty payable to the revenue, or with the dividends on any such securities, must contain a statement whether the duty has or has not been paid (Order XXXVIII. r. 31).

Statement of persons to be served with petition.

2. At the foot of every petition presented to the court, and of every copy thereof, a statement shall be made of the persons, if any, intended to be served therewith; and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof. (R. S. C., Order LII. r. 16.)

Registrar to issue notices of day of hearing of petition.

Form 341.

3. Upon the filing of a petition, the registrar shall issue the copies under the seal of the court to the bailiff for service upon the respective persons to be served, together with a notice, signed by the registrar himself and under the seal of the court, stating the day and hour on which the petition will be heard, and that if they do not attend, either in person or by their solicitors, such order will be made and proceedings taken as the judge may think just and expedient.

Serving of petitions and notices.

4. The bailiff shall, ten days at least before the hearing, serve all copies of such petitions and notices in accordance with the rules as to the service of ordinary summonses.

Facts to be proved by affidavit.

5. Upon the hearing of any petition or application under this order, unless the judge otherwise directs, the facts relied upon in support of or in opposition thereto shall be proved by affidavit.

Judge may direct inquiries.

6. The judge may refer any matter to the registrar to make inquiries, and to report to him the result of such inquiries.

All parties may apply.

7. In every final judgment or order made upon any petition or application under this order, liberty shall be given to all parties to apply.

O. XXXVIII. r. 8.

8. Where the judge makes an order upon a petition or application under this order, the registrar shall, as soon thereafter as conveniently may be, draw up, seal, and file such order.

Registrar to draw up order.

9. Any person desiring to pay money, transfer stock, or deposit security in trust to attend the orders of any court under subsection five of section sixty-seven or under section seventy of the Act, or section forty-two of the Trustee Act, 1893, shall file with the registrar an affidavit, intituled in the matter of the Act, and of the particular trust, and setting forth :

Payment into court under 51 & 52 Vict. c. 43, ss. 67 (5) 70. 56 & 57 Vict. c. 63, s. 42.

(*a*) His own name, address, and description :

(*b*) The place where he is to be served with any petition or summons, or any notice of any proceeding or order of the court relating to the trust fund :

(*c*) The amount of money, stock, or security which he proposes to pay, transfer, or deposit in trust to attend the orders of the court :

(*d*) A short description of the trust or of the nature and contents of the instrument creating it :

(*e*) The names, addresses, and descriptions of the persons interested in or entitled to, or claiming to be interested in or entitled to the fund, to the best of the knowledge and belief of the trustee :

(*f*) The submission of the trustee to answer all such inquiries relating to the application of the money or stock paid in or transferred or security deposited, or otherwise, as the court may think proper to make or direct.

10. The affidavit in the last preceding rule mentioned may be according to the form in the Appendix, with such variations as each particular case may require.

Affidavit. Form 333.

11. Where it is desired to retain any sum of money for costs incurred in the payment of money into court, or in any matter connected with the trust prior to such payment, a bill of costs shall be filed and such sum only shall be retained as may be allowed by the registrar on taxation.

Costs deducted on payment into court to be taxed.

12. Probate of the will, or the original instrument or document, or such evidence as the registrar may require as to the instrument creating the trust, shall be left with the registrar for such period as he may reasonably require.

Evidence of trust to be left.

13. Immediately on the receipt by the registrar of the affidavit, he shall indorse thereon a memorandum of the day on which the same was filed, and when such affidavit has been so indorsed it

Memorandum of filing to be indorsed.

O. XXXVIII. r. 13.

shall be taken for all purposes to have been duly filed on the date so indorsed thereon.

Evidence of trust to be compared with statements in affidavit.

14. The registrar shall compare the statements in the affidavit with the probate or other instrument deposited with him and shall indorse on the affidavit a memorandum that he has made such comparison, and shall add to such indorsement any memorandum as to any matters which may be omitted in the affidavit and which he may think material.

Certificate of filing may be given.

Forms 334, 335.

15. The persons filing the affidavit, or any of them, may apply to the registrar to give to them a certificate intituled in the matter of the Act and of the particular trust, and under the seal of the court, certifying that the affidavit has been filed, and such certificate may be according to one or other of the forms in the Appendix, with such variations as each particular case may require.

Money may be paid into post office savings bank.

51 & 52 Vict. c. 43, s. 70.

16. In the case of money, the persons filing the affidavit, or any of them, may, upon the receipt of the certificate in the last preceding rule mentioned, pay the money into a post office savings bank under section seventy of the Act, and obtain from the officer of the bank a receipt for the same, and shall forthwith leave the receipt with the registrar, who shall immediately indorse thereon a memorandum of the day on which the same was received by him ; and when such receipt has been so indorsed it shall be taken for all purposes to have been duly recorded on the date so indorsed thereon.

Transfer of stock.

17. In the case of stock, the persons filing the affidavit, or any of them, may, upon the receipt of the before-mentioned certificate in Rule 15 mentioned, transfer the stock into the names of the treasurer and registrar of the court mentioned in the certificate, in trust to attend the orders of the court, and shall forthwith leave the transfer ticket with the registrar, who shall immediately indorse thereon a memorandum of the day on which the same was received by him ; and when such transfer ticket has been so indorsed it shall be taken for all purposes to have been duly recorded on the date so indorsed thereon.

Deposit of security.

18. In the case of security, the person filing the affidavit may forthwith deposit the security with the registrar in the name of the treasurer and registrar, in trust to attend the orders of the court, and the registrar shall immediately indorse on the affidavit a memorandum of the day on which the security was deposited with him.

Notice of deposit of security.

19. The registrar shall, within twenty-four hours after the deposit of the security as in the last preceding rule mentioned,

send notice thereof by post to the treasurer of the court, stating therein the particulars of the deposit, which notice may be according to the form in the Appendix, with such variations as each particular case may require. O. XXXVIII. r. 19. Form 338.

20. Where there is a court in which there is not a treasurer, the transfer or deposit shall be made into the names of the registrar and the superintendent of the county court department of the Treasury for the time being. Transfer or deposit where no treasurer.

21. Immediately after the recording of the postmaster's receipt or of the transfer ticket, or of the deposit of the security, the registrar shall give to the persons paying in the money, or transferring the stock or depositing the security, an acknowledgment or certificate of such payment or transfer or deposit, and such acknowledgment or certificate may be according to the form in the Appendix, with such variations as each particular case may require. Certificate of payment, transfer, or deposit to be given. Forms 336, 337.

22. Immediately after the recording of the postmaster's receipt or of the transfer ticket, or the giving of a certificate of deposit of security, the registrar shall cause an entry to be made in the book heretofore called the Suits and Proceedings in Equity Book of the title of the particular trust, and the amount of money paid or stock transferred, or security deposited, and the names and addresses of the persons making such payment, transfer, or deposit, and the names of all persons stated in the affidavit to be or to claim to be interested in or entitled to such money, stock, or security, and their addresses and descriptions, as given in the affidavit; and the registrar shall forthwith send by post to each of such last-mentioned persons, to the address given in the affidavit, a notice of the said payment, transfer, or deposit, which notice shall be under the seal of the court, and may be according to the form in the Appendix, with such variations as each particular case may require. Entries to be made in Equity Proceedings Book. Notice to the parties interested. Form 339.

23. Any person entitled to or claiming to be interested in any funds in court, or (if need be, but not otherwise) the trustee, who desires the directions of the court as to the investment, payment out, or distribution of the whole or any part of the fund or the income thereof, may file a petition according to the form in the Appendix stating therein the substance of the order which he desires to obtain, and praying for the order and direction of the judge with respect to the fund so paid into court, and the rights of all persons thereto. The petitioner shall file with such petition a copy for every respondent to be served, and a copy for the use Petition by person interested in funds in court. Form 340.

O. XXXVIII. r. 23.

of the judge; and the registrar shall forward such last mentioned copy, with an office copy of the affidavit filed under Rule 9 of this Order (to be made at the costs of the petitioner), to the judge; and, subject to the following rules, Rules 2 to 8 of this Order shall apply to the service and proceedings on such petition.

Persons to be served.

24. Where the application relates to the capital of the fund in court, the trustee and all persons interested in such fund shall be served with a copy of the petition, unless the judge otherwise directs; and where the application relates to the income only of the trust fund, the trustee only shall be served with the petition, unless the judge otherwise directs.

When trustee may be ordered to pay costs.

25. Where a trustee avails himself of the statutory provisions referred to in Rule 9 of this Order without sufficient reason, the judge may direct such trustee to bear his own costs, and to pay the costs of any other persons, or to bear and pay any part of such respective costs, as the judge may think fit.

Where facts stated in affidavit only are relied on.

26. If the person filing the petition relies only on the facts stated in the affidavit filed by the trustee, it shall be sufficient for the person filing such petition to state on oath at the hearing that he believes such facts to be true, unless the judge requires any further evidence to be adduced.

Rights of all parties to be declared.

27. Upon the hearing the judge shall, if the application relates to the capital of the fund in court, require proof of all facts which are necessary to be ascertained in order not only to grant the specific relief prayed by the petition, but to declare and decide the rights of all parties in or to the fund in court, and he shall make a final order declaring what such rights are, and make such order as to dealing with the whole of the fund as would be made upon a final judgment in an action for administration.

Form 342.

When trustee need not appear.

28. Where on the petition the petitioner relies only on the facts stated in the affidavit of the trustee, it shall not be necessary for the trustee to appear on the hearing; and if he does so appear, his costs shall not be allowed out of the fund unless the judge certifies that it was right and necessary for him to appear.

Payment to parties found entitled, and to infants on coming of age.

29. The registrar shall pay to any person to whom money is found to be due by the final order the sum so found due upon his applying for the same and proving his identity to the satisfaction of the registrar; and where any such person is an infant at the time of the making of the final order, upon proof that he has attained the age of twenty-one years.

30. The judge at the instance of any person interested shall inquire into any prolixity, and as to any irrelevant matter in any petition or affidavit, and as to any unnecessary expense thereby incurred, and may make such order in reference thereto as the justice of the case may require. O. XXXVIII. r. 30. Where there is prolixity or irrelevant matter.

31. Every petition for dealing with money or securities in court chargeable with any duty payable to the revenue, or with the dividends on any such securities, shall contain a statement whether such duty has or has not been paid. (R. S. C., Order XXII. r. 12A.) Petition to state whether duty has been paid or not.

ORDERS XXXIX. TO XLIII.

Order XXXIX., relating to Admiralty actions, is printed in Part III. Order XL., rules under Agricultural Holdings Acts, in Part V., *post*, p. 1732. Order XLI., rules under the Friendly Societies Acts, the Building Societies Acts, &c. (under heading "Building Societies Acts"), Part V., *post*, p. 1781. Order XLIA., rules under Companies Consolidation Act, 1908, Part V., *post*, p. 1893. Order XLIB., rules under Trade Union Act, 1913, Part V., *post*, p. 2318. Order XLII., rules under the Succession Duty Act, 1853, and Finance Acts, 1894, 1896, 1909, and 1912 (under heading "Finance Acts"), Part V., *post*, p. 2027. Order XLIIA., rules under National Insurance Act, 1911, Part V., *post*, p. 2143. Order XLIII., rules relating to taxation of charges of returning officers, Part V., *post*, p. 2164. Orders 39 to 43.

ORDER XLIV.

THE EMPLOYERS' LIABILITY ACT, 1880.

Service of Summons.

1. A summons in an action brought under the Employers' Liability Act, 1880, shall in order to insure its service be delivered to the bailiff, where it is to be served in the home district thirty-five clear days at least, and where it is to be served in a foreign district thirty-eight clear days at least before the return day, and shall in either case be served thirty clear days at least before the return day thereof. Time for issue and service of summons. 43 & 44 Vict. c. 42.

2. Particulars of demand shall be filed by the plaintiff at the time of the entry of the plaint, whatever the amount claimed may be; and a copy thereof shall be forthwith sent to the judge. Particulars to be filed.

3. The particulars of demand shall state in ordinary language the cause of the injury, and the date at which it was sustained, and the amount of compensation claimed, and where the action is brought by more than one plaintiff, the amount of compensation claimed by each plaintiff, and where the injury of which the plaintiff complains is alleged to have arisen by reason of the act What particulars of demand shall state.

O. XLIV. r. 3.

or omission of any person in the service of the defendant, the particulars shall give the name and description of such person.

Where a common law action of negligence is remitted by the High Court under sect. 66 of the County Courts Act, 1888, the plaintiff may add in the county court an alternative claim under the Employers' Liability Act (*Wood* v. *Weber*, (1908) 99 L. T. 195).

Jury.

Notice of demand for jury.
Forms 142, 143, 144.

4. The notice of a demand for a jury required by Order XXII. r. 1, shall be given fifteen clear days at least before the return day.

Assessors.

Qualification of assessors.

5. Any person who shall, as hereinafter provided, be appointed by the judge to act as an assessor in any action, shall be qualified so to act.

How assessors to be applied for.
Form 136.

6. Where no demand for a jury has been made, a party who desires assessors to be appointed shall, ten clear days at least before the return-day, file an application according to the form in the Appendix stating the number of assessors he proposes to be appointed, and the names, addresses, and occupations of the persons who may have expressed their willingness in writing to act as assessors. If the applicant has obtained the consent of the other party to the persons named being appointed, he shall file such consent with his application.

Application made by one party only to be forwarded to the other party.
Form 138.

7. Where an application for the appointment of assessors is made by only one party to an action, the registrar shall forthwith cause to be served on the other party notice of the application according to the form in the Appendix, and the party so served shall as soon as may be after the receipt of the notice

(1) inform the registrar in writing whether or not he accepts the appointment of the assessors proposed in such notice, or any of them; and

(2) if he objects to any of the persons proposed, state in writing the reasons for such objection; and

(3) if he desires any other assessors to be appointed, file an application for such appointment in accordance with Rule 6 of this Order.

Where both parties propose assessors.

8. Where separate applications are filed by the parties, no objection to the persons proposed shall be made by either party, but the judge may appoint from the persons named in each application one or more assessors, provided that the same number of assessors be appointed from the names given in such applications respectively.

O. XLIV. r. 9.

9. The applications for the appointment of assessors, together with any objections made to the persons proposed, shall be forwarded by the registrar to the judge.

Application to be forwarded to judge.

10. Where the judge grants an application for the appointment of assessors, he shall appoint such of the persons proposed for assessors as he may think fit, subject to the provisions contained in this Order, and return the applications with such appointment to the registrar, and thereupon the registrar shall forthwith summon the assessors named. If the judge does not think fit that assessors shall be summoned, notice thereof shall be given by the registrar to all parties according to the form in the Appendix.

Appointment of assessors by judge.

Summoning of assessors.

Refusal to appoint.

Form 137.

11. In any action where no demand for a jury has been made, and an application for the appointment of assessors has been filed, the judge may, either before or on the return day, nominate one or more additional persons to act as assessor or assessors in the action. Where no application for assessors has been made, the judge may, if he thinks fit, appoint any one or more persons to act as assessors in the action before or on the return-day. Any persons appointed under this rule shall be summoned by the registrar.

Form 141.

Judge, whether application made or not, may appoint assessors.

Form 137.

12. If at the time and place appointed for the trial all or any of the assessors appointed do not attend, the judge may either proceed to try the action with the assistance of such of the assessors, if any, as attend, or he may adjourn the trial generally, or upon any terms which he may think fit ; or he may appoint any person who may be available and who is willing to act, and who is not objected to, or who is objected to on some insufficient ground ; or the judge may try the action without assessors if he thinks fit.

Where assessors fail to attend.

13. Every person nominated as an assessor shall receive for each day's attendance in every action the sum of two guineas, together with such further sum, if any, for his expenses as the judge may order.

Remuneration of assessors.

14. Every person applying for the appointment of assessors shall at the time of filing his application deposit with the registrar the sum of two guineas for each assessor proposed, and such payments shall be considered as costs in the action, unless otherwise ordered by the judge. Provided that where a person proposed as an assessor has in writing informed the registrar that he does not require his remuneration to be so deposited, no deposit in respect of such person shall be required. Where an action is

Deposit of remuneration on application for assessors.

Fees on adjournment.

O. XLIV. r. 14.

adjourned, the party at whose instance any assessor has been summoned shall pay such assessor's fee for the day of adjournment forthwith after the order of adjournment is made.

Remuneration of assessors not proposed by the parties but appointed by judge.

15. Where an action is tried by the judge with the assistance of any assessors in addition to or independently of any assessors proposed by the parties, the remuneration of such assessors shall be borne by the parties, or either of them, as the judge shall direct.

Allowance to assessor when services not required.

16. If after an assessor has been appointed, and before the day of trial the registrar is satisfied that the action has been settled or that the services of such assessor are not required, he shall forthwith countermand the attendance of such assessor, and pay to him one-half of the fees paid for his attendance. The other half, less the cost of telegrams and postages, shall be returned by the registrar to the person by whom the fees were paid.

Assessors to sit with judge.

17. The assessors shall sit in court with the judge, and assist him when required with their opinion and special knowledge for the purpose of ascertaining the amount of compensation, if any, which the plaintiff is entitled to recover.

Judgment where several Plaintiffs.

Where more plaintiffs than one, compensation due to each to be found separately.

18. Where two or more persons are joined as plaintiffs under Order III. Rule 1, and the negligence, act, or omission which is the cause of action is proved, the judgment shall be for all the plaintiffs, but the amount of the sum awarded for damages and the costs ordered to be paid to each plaintiff shall be found and set forth separately in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person and in such manner as the judge may think fit.

See Order III. r. 1, passed to meet *Carter* v. *Rigby* (C. A.), (1896) 2 Q. B. 113; 65 L. J. Q. B. 537.

Execution in such cases, and apportionment of sum realised.

19. If the defendant fails to pay the several amounts of compensation and the costs awarded in the action, execution against his goods may issue as in an ordinary action; and if the proceeds of the execution are insufficient, after deducting all costs, to pay the whole of the amounts awarded, such proceeds shall, after the deduction of all the costs of the action as aforesaid, be apportioned between the several plaintiffs in proportion to the amounts awarded to them respectively.

Special Costs.]—The judge may, in these actions, by special order, in

cases in which a party appears by solicitor, without counsel, allow the special items of costs mentioned in the scales, viz., items 31 and 70; and may, where there is no local bar in the court town or within twenty miles of it, and counsel is instructed, allow the additional fee to counsel mentioned in item 86. Item 86 cannot be allowed in any court within twenty-five miles of Charing Cross. Under item 93, the judge may also allow a fee to counsel for settling particulars, interrogatories, etc. (Order LIII. rr. 7, 8). O. XLIV. r. 19. Notes.

ORDER XLV.

The Inferior Courts Judgments Extension Act, 1882.

1. Where, under section three of the Inferior Courts Judgments Extension Act, 1882 (*a*), application is made for the grant of a certificate of a judgment, proof that the judgment has not been satisfied and of the amount remaining unsatisfied shall be given to the satisfaction of the registrar by affidavit, if required. Proof that judgment is not satisfied. 45 & 46 Vict. c. 31.

Note.—(*a*) See this Act, *ante*, p. 264.

2. If the judgment is for payment within a period therein mentioned or by instalments, and such period has not expired or default has not been made in payment of some instalment, the certificate shall not be granted. When certificate shall not be granted.

3. The names, businesses or occupations, and addresses of the parties to be set forth in the certificate shall be those set forth in the books of the court. Names, etc. to be set forth in certificate.

4. The registrar shall indorse on the certificate the number of the plaint and the amount remaining due on the judgment, according to the books of the court, and, after his signature, shall add to the certificate the date on which it is granted. Indorsements on certificate. Form 430.

5. Where a certificate of judgment is granted by a registrar he shall make on the minute of the judgment a memorandum of having granted such certificate, and thenceforth no further proceeding shall be taken or had upon such judgment in the same court, until the judge, or registrar, upon being satisfied that the execution issued in the court in which the certificate was registered was unproductive, shall order that the judgment may be acted on as if such certificate had not been granted. Record and effect of granting certificate.

6. There shall be allowed to a solicitor for the costs of obtaining the certificate five shillings, and where an affidavit is required, seven shillings. Costs of obtaining certificate.

7. The costs, if any, allowed, with the addition of the fee to be paid for the granting of the certificate, shall be indorsed on the certificate by the officer granting the same; which indorsement Indorsement of costs allowed on certificate.

O. XLV. r. 7.

shall be an authority for the registrar of the court in which the certificate is registered to add the said costs and fee to the amount to be recovered by execution against the goods and chattels of the person against whom the judgment has been obtained.

On presenting certificate for registration a copy to be filed.

8. The person presenting a certificate for registration shall add to his note of presentation, to be appended to the certificate, a description of the place within the district of the court in which the goods and chattels of the person against whom the judgment has been obtained are, and shall also present a copy thereof, with the indorsement thereon, written on foolscap paper.

Registration of certificate.

9. On the presentation of a certificate for registration, with a copy as aforesaid, the registrar shall, if the place within which the goods and chattels of the person against whom the judgment has been obtained are stated to be is within the district of the court of which he is the registrar, seal the certificate and register the same by pasting it into the then current minute book of the court, on or about the last page of such book, and shall seal and date the copy of the certificate and return it to the person presenting the certificate.

Cost of registration.

10. There shall be allowed to a solicitor for the cost of registering a certificate the sum of five shillings, which, with the fee for registration and the costs, if any, allowed for granting the certificate as shown by the indorsement thereon, shall be added to the amount to be recovered. The warrant of execution shall be according to the form in the Appendix.

Warrant.
Form 431.

No money to be paid out except on production of sealed copy.

11. No money shall be paid out of court without production of the sealed copy of the certificate. Provided that, in the event of such copy being lost or destroyed, another copy may be sealed and given to the proper person, upon proof by affidavit or otherwise to the satisfaction of the registrar that the person applying is the proper person, and that he is entitled to the moneys recovered on the judgment, and upon payment of the fee of one shilling.

It has been held in the High Court that where a certificate of a decreet of the Court of Session has been registered in the High Court under the Judgments Extension Act, 1888, that court has the same jurisdiction to appoint a receiver as if the judgment had been originally obtained there (*Thompson* v. *Gill* (C. A.), (1903) 88 L. T. 714).

ORDERS XLVI. TO L.

Order XLVI., rules relating to Married Women's Property Act, 1882, is printed in Part V., *post*, p. 2135. Order XLVII., rules as to the Guardianship of Infants Act, 1886, in Part V., *post*, p. 2060. Order XLVIII., rules as to Charitable Trusts, in Part V., *post*, p. 1801. Order XLIX.,

rules under the Probate Acts, 1857 and 1858, in Part V., *post*, p. 2201. Order L. (*infra*) contains miscellaneous rules relating to the following statutes:—The Inclosure Expenses Act, 1868, rr. 1, 2, 3; the Solicitors Act, 1870, r. 4; the Ballot Act, 1872, r. 5; the Local Loans Act, 1875, rr. 6, 7, 8; the Commons Act, 1876, r. 9; the Sale of Exhausted Parish Lands Act, 1876, r. 10; the Telegraph Act, 1878, r. 11; the Inebriates Acts, 1879, 1888, 1898, rr. 12, 13: the Army Act, 1881, r. 14 (new rule dated 19th May, 1915. See p. 1002); the Allotments Extension Act, 1882, r. 15; the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, r. 16; the Lunacy Act, 1890, r. 17; the Open Spaces Act, 1906, r. 18; the Brine Pumping Act, 1891, rr. 19, 20, 21; the Pilotage Act, 1913, rr. 22—29; the London Building Act, 1894, rr. 30, 31, 32; the Money Lenders Act, 1900, r. 33 (see *infra*): the Factory and Workshop Act, 1901, r. 34 (*a*); the Licensing (Consolidation) Act, 1910, rr. 37—58. (These rules will be found under the titles of the respective statutes to which they relate.)

NOTE.—(*a*) Rules 35 and 36 relate to proceedings under other Acts not mentioned in the rules, and application of existing rules to other existing or to future Acts. See these two rules, *infra*.

ORDER L.

THE MONEY-LENDERS ACT, 1900.

Proceedings under Money-lenders Act, 1900. 63 & 64 Vict. c. 51, s. 1.

33.—(1) Where proceedings are taken by a money-lender, the powers of the court under sub-section 1 of section one of the Money-lenders Act, 1900, may be exercised at any stage of the proceedings, and whether notice has or has not been given by the defendant of his intention to apply to the court to exercise such powers; subject, nevertheless, where no notice or insufficient notice of such intention has been given, to such terms as to adjournment, furnishing of particulars, costs, and otherwise, as may be just.

(2) An application to the court under sub-section 2 of section one of the said Act, at the instance of a borrower or surety or other person liable, shall be by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed in such action, stating concisely the grounds on which the application is made, and the relief which the plaintiff claims.

Proceedings under other Acts.

Proceedings under Acts not referred to in rules.

35. Where by any Act not mentioned in these rules proceedings are authorised or directed to be taken in a county court, such proceedings shall be commenced by action where the object of the proceedings is to obtain relief against any person, or to compel any person to do or abstain from doing any act. Where there is no person against whom an action can be brought, proceedings shall be taken either by petition or in accordance with the rules for the time being in force as to interlocutory applications, and

O. L. r. 35.

shall be supported by affidavit; but in any case in which an interlocutory application is made the judge may, if he thinks fit, direct a petition to be filed.

Application of general practice prescribed by rules.

36. The general practice of the court prescribed by these rules shall apply to all proceedings whatsoever authorised by any existing or future Act to be commenced or taken in any county court, except in so far as such practice may be inconsistent with the provisions of any such Act, or of any particular rules made as to the procedure under any such Act.

ORDER LI.

Order LI., County Courts (Stannaries Jurisdiction) Rules. See Part V., *post*, p. 2268.

ORDER LII.

FINES. NEGLECT OR MISCONDUCT OF OFFICERS. COMMITTAL FOR CONTEMPT. ENFORCEMENT OF FINES. THE COUNTY COURTS ACT, 1888, SECTIONS 48, 49, 50, 102, 112, 162, AND 167. THE SUMMARY JURISDICTION ACTS.

Issue and service of summons on complaint of assault or rescue under 51 & 52 Vict. c. 43, s. 48.

Form 355.

1. On complaint made to the court that any person has assaulted an officer or bailiff of the court while in the execution of his duty, or has rescued or attempted to rescue any goods levied under process of the court, the registrar shall issue a summons under section forty-eight of the Act, according to the form in the Appendix, directed to the alleged offender (hereinafter called the defendant), and such summons shall be served personally on the defendant two clear days before the return day.

For form of summons, see Form 355; of order, Form 356; see also Forms 357, 358, 359, and 360.

Witnesses and costs.

2. On the hearing of a summons issued under the last preceding rule, or on the summary hearing by the judge of a complaint against any person taken into custody and brought before him under section forty-eight of the Act, witnesses may be summoned and their attendance enforced in like manner as on the hearing of an action, and the judge may award costs to the complainant, or to the defendant if the complaint is dismissed, in like manner as to a plaintiff or defendant on the trial of an action. Costs so awarded shall be taxed on such scale as the judge shall order, and in default of any order they shall be taxed on the lower scale.

Order.

Form 356.

Enforcement of order.

3. An order imposing a fine for an offence under section forty-eight of the Act shall be according to the form in the Appendix; and payment of such fine and costs may be enforced, upon the order of the judge, pursuant to section one hundred and sixty-

O. LII. r. 3.

seven of the Act, and according to the forms in the Appendix, by distress and sale of the goods of the defendant under warrant of execution, or, in default or (as the case may be) in lieu of distress, by imprisonment of the defendant for any period not exceeding the period which under the Summary Jurisdiction Acts may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction, regard being had to the provisions of the Summary Jurisdiction Acts set out in Part III. of the Appendix.

51 & 52 Vict. c. 43, s. 167. Forms 357—360. 11 & 12 Vict. c. 43. 42 & 43 Vict. c. 49. Appendix, Part III.

Appeal.]—The order of the judge imposing a fine is not subject to appeal (*Lewis* v. *Owen*, (1894) 1 Q. B. 102; 63 L. J. Q. B. 233).

4. A summons against a bailiff under section forty-nine of the Act for neglect, connivance, or omission, or a summons against a bailiff or other officer of the court under section fifty of the Act for extortion or misconduct or any other offence, shall, on complaint made by the party aggrieved, be issued according to such of the forms in the Appendix as shall be applicable, and such summons shall be served personally on the party to be charged ten clear days before the return day.

Summons for neglect, etc., under sect. 49, or extortion, etc., under sect. 50. Forms 361, 363.

5. An order under section forty-nine or section fifty of the Act shall be according to such of the forms in the Appendix as shall be applicable, and in default of compliance with any such order execution or other process may issue thereon in like manner as on a judgment in an action. The costs awarded by any such order shall be taxed on such scale as the judge shall order, and in default of any order they shall be taxed on the scale which would be applicable to the amount ordered to be paid, or, if costs are awarded to the defendant, the amount claimed, if such amount were recovered or claimed in an action.

Order. Forms 362, 364.

For form of summons, see Form 363; of order, Form 364.

6. An order under section one hundred and two of the Act imposing a fine for non-attendance on a person summoned as a juror shall be according to the form in the Appendix; and payment of such fine may be enforced, upon the order of the judge, pursuant to section one hundred and sixty-seven of the Act, by warrant of execution according to the form in the Appendix.

Order fining juror, and enforcement thereof. 51 & 52 Vict. c. 43, s. 102. Forms 145, 146.

Forms 145, 146.

7. An order under section one hundred and eleven of the Act, imposing a fine for non-attendance on a person summoned as a witness, or a fine on a person present in court who refuses to be sworn or give evidence, shall be according to the form in the

Order under sect. 111, imposing fine on witness.

O. LII. r. 7.

Form 126.
Enforcement of order.
51 & 52 Vict. c. 43, s. 167.
Forms 127—129.
11 & 12 Vict. c. 43.
42 & 43 Vict. c. 49.
Appendix, Part III.

Appendix; and payment of such fine may be enforced, upon the order of the judge, pursuant to section one hundred and sixty-seven of the Act, and according to the forms in the Appendix, by distress and sale of the goods of the witness under warrant of execution, or, in default or (as the case may be) in lieu of distress, by imprisonment of such witness for any period not exceeding the period which under the Summary Jurisdiction Acts (*a*) may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction, regard being had to the provisions of the Summary Jurisdiction Acts set out in Part III. of the Appendix.

(*a*) See these Acts, *post*, p. 866.
See Forms 126, 127, 128 and 129.
Where a fine is inflicted on a judgment debtor for refusing or neglecting without reasonable cause to appear at the hearing of a judgment summons, the judge has no jurisdiction to apply the fine in reduction of the judgment debt (*R.* v. *Snagge*, (1909) 1 K. B. 644; 78 L. J. K. B. 562), though he can allow to the judgment creditor a part of it for his expenses.

Time for payment of fine on juror or witness.

7A. An order imposing a fine under section one hundred and two or section one hundred and eleven of the Act may direct payment to be made either forthwith, or within a specified time, or by instalments.

Notice to shew cause before fining juror or witness.
51 & 52 Vict. c. 43, ss. 102, 111.

7B. (1) Before imposing a fine under section one hundred and two or section one hundred and eleven of the Act, the judge may, if he thinks fit, direct the registrar to give notice by post to the person liable to such fine that if he has any cause to shew why a fine should not be imposed on him he may shew such cause in person or by affidavit or otherwise on a day to be named in the notice. The day to be so named shall be a day within fourteen days from the date of the notice on which the court will sit, or, if there is no court to be held within that time, the day fixed for the next sitting of the court.

Order where cause shewn.

(2) On the day named the judge, after considering the cause (if any) shewn, may make such order, either imposing a fine or excusing the person summoned for his non-attendance, as he shall think just in the circumstances of the case.

Committal or fine for contempt of court.
51 & 52 Vict. c. 43, s. 162.
Forms 365—367.

8. An order committing a person to prison or imposing a fine for any offence mentioned in section one hundred and sixty-two of the Act shall be according to the form in the Appendix, and such order may be enforced by proceedings according to the forms in the Appendix.

Forms, of order, 365; of warrant of commitment, 366; of warrant of commitment in default of payment of fine, 367.

O. LII. r. 9.

Report by registrar to judge if fine not paid.

9. Where a fine is not paid in accordance with the order imposing such fine, the registrar shall forthwith report the matter to the judge, and shall act on any orders given by the judge for the enforcement of such fine. If the judge orders such fine to be enforced by warrant of execution, the time when such order is received by the registrar shall be deemed to be and shall be entered as the time when application was made to the registrar to issue such warrant.

Proceedings in default of payment of fine ordered to be paid by instalments.

10. Where by an order imposing a fine a sum is directed to be paid by instalments, and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments remaining unpaid.

Notice to juror or witness to shew cause why fine should not be enforced.

51 & 52 Vict. c. 43, ss. 102, 111.

11. Where a fine is imposed under section one hundred and two or section one hundred and eleven of the Act without notice being given under Rule 7B of this Order, the following provisions shall apply, viz.:—

(*a*) the judge may, if he thinks fit, before making an order for the enforcement of the fine, direct the registrar to give notice by post to the person on whom the fine has been imposed that if he has any cause to shew why the fine should not be enforced he may shew such cause in person or by affidavit or otherwise on a day to be named in the notice, such day to be fixed in accordance with paragraph (1) of Rule 7B of this Order; and

Order where cause shewn.

(*b*) if the person on whom the fine has been imposed shews cause why it should not be enforced, either pussuant to notice given under the last preceding paragraph, or without such notice having been given, the judge, after considering the cause shewn, may make such order, either directing the fine to be enforced wholly or in part, or directing that it shall not be enforced, as he shall think just in the circumstances of the case

Repayment of fine with consent of Treasury.

12. If in any case after a fine has been paid the person on whom it was imposed shews cause which satisfies the judge that if such cause had been shewn at an earlier date he would not have imposed a fine or would have imposed a smaller fine, or would not have ordered payment or full payment to be enforced, the judge may, if he thinks fit, direct the registrar to report the matter to the Treasury: and he may, with the consent of the Treasury, order the fine or any part thereof to be repaid.

ORDER LIII.

Costs and Allowances to Witnesses.

Taxation.

Rule 1.

Taxation of costs. Scales of costs. Appendix, Part IV.

1. In every action or matter in any court all costs shall be taxed by the registrar of such court according to the scales of costs in Part IV. of the Appendix, subject to the review of such taxation by the judge.

Costs, when to be taxed. Delivery of bill.

2. Where practicable the costs of an action or matter shall be taxed on the day on which the action or matter is tried or heard; and where the costs have not been so taxed, one day's notice of taxing, together with a copy of the bill of costs if the registrar so directs, shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor.

Notice of taxation.

3. Notice of taxation may be sent by post prepaid, provided that it is posted in time to reach the party to whom it is addressed in due course of post before noon of the day preceding the day fixed for taxation.

Forms of bills of costs.

4. In every bill of costs to be taxed under column B or C the professional charges shall be entered in a separate column from the disbursements, and every column shall be cast before the bill is left for taxation. (R. S. C., Order LXV. r. 19H.)

Party dissatisfied to make objections in writing.

5. Any party who may be dissatisfied with the allowance or disallowance by the registrar on taxation in any bill of costs taxed by him of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the registrar on taxation, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items, or parts thereof, objected to, and the grounds and reasons for such objection, and may thereupon apply to the registrar to review the taxation in respect of the same.

Review of taxation upon objections.

6. Upon such application the registrar shall reconsider and review his taxation upon such objection, and he may, if he thinks fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

Allowance of Costs by Judge.

O. LIII. r. 7.

How order for particular costs to be made and obtained.

51 & 52 Vict. c. 43, s. 119.

7. The order of the judge required for the allowance of any of the following items in the scales, viz., items 3, 31, 70, 86, 91, 92, 93, 94, and 95, or for the allowance of any particular costs under any of the County Court Rules, shall be a special order made upon consideration of the facts of the particular case, and not a general order; and the application for such allowance shall be made at or immediately after the trial or hearing; and if not so made shall not afterwards be entertained, unless the judge for good cause otherwise orders, or unless the judge is satisfied that the omission to make the application in due time was due to mistake or inadvertence, in which case he may, on such terms as he may think fit, entertain an application at a later date.

Morley v. *Bevington*, (1905) 93 L. T. 768, is no longer law since the addition of the last paragraph of this rule.

Allowance of special items in certain cases.

8.—(1) The judge may, in his discretion, in any action or matter, order that any of the following items mentioned in the scale of costs shall be allowed to the party in whose favour the order is made, in addition to or in substitution for, as the case may be, the costs to which he would otherwise be entitled, viz., items 31, 70, 86, and 93.

Allowance of additional costs in certain cases.

(2) Where costs are taxed under column C., the fees allowable under items 28 and 70 to 73 may, in cases in which there is a real contest, or the judge certifies under section one hundred and nineteen of the Act, be increased, at the discretion of the registrar, subject to review by the judge, or by special order of the judge, to any sums not exceeding the following, that is to say:

Items 28 and 70 may be increased to 5*l.* 5*s.*;
Items 71 to 73 may be increased to 3*l.* 3*s.*

(3) Where costs are taxed under column C., the following further allowances may be made in cases in which there is a real contest, or the judge certifies under section one hundred and nineteen of the Act, viz.:—

(*a*) reasonable fees may be allowed to counsel in excess of those mentioned in items 85 to 94 in respect of the matters referred to in such items;

(*b*) where more counsel than one are retained, and the judge, on consideration of the facts of the case, certifies for the allowance of fees to more counsel than one, reasonable fees may be allowed to such additional counsel,

O. LIII. r. 8.

and for consultations, and to solicitors for additional briefs and attendances on counsel with the same, and for appointing and attending consultations;

(*c*) reasonable fees may also be allowed for plans, charts, or models in excess of those mentioned in item 95; and also reasonable additional allowances to expert and scientific witnesses for qualifying to give evidence and attending the court on the trial;

at the discretion, in each case mentioned in this paragraph, of the registrar, subject to review by the judge, or by special order of the judge.

Costs of proceedings not allowed for in scales.

(4) Where proceedings are taken for which no provision is made by the rules or scales of costs, and costs are taxed under column B. or column C., reasonable costs may be allowed in respect of such proceedings by the registrar, subject to review by the judge, or by special order of the judge, not exceeding those which may under the scales or these rules be allowed in respect of proceedings of a like nature.

Special Orders as to Costs.]—The judge's general order for costs although enough to entitle a party to the allowance by the registrar of most of the items in the scales applicable to the particular case is insufficient for all. There are many items in the scales, as well as allowances governed by rules, which cannot be allowed or given by the registrar without the special order of the judge; and in order to obtain the same, the party interested must make his application at or immediately after the trial or hearing; if not so made, it cannot afterwards be entertained, unless the judge for good cause orders otherwise, or unless he is satisfied that the omission to apply in due time was due to mistake or inadvertence, in which case he may entertain on terms an application at a later date. These cases are as follows:—Item 3. The allowance for drawing a petition is not to exceed a certain sum without a special order. Items 91, 92, and 94, for fees to counsel, cannot be allowed without a special order. Item 95, for preparation of plans, etc., cannot be allowed without a special order.

Special Order for Extra Costs.]—Provision is also made in the rules and scales for the allowance of extra costs in certain cases by order of the judge. In cases in which the amount recovered exceeds 2*l*., but does not exceed 10*l*., the judge may, by special order, increase the ordinary allowance to a solicitor for preparing and for attending the trial to 1*l*. (Regulation 7).

In actions under sect. 64 of the Act (where jurisdiction is conferred by agreement), under the Employers' Liability Act, the Rivers Pollution Prevention Acts, 1876 and 1893, actions or matters remitted from the High Court, or commenced in the county court under the admiralty or equity jurisdiction, actions of ejectment, or in which title to land or incorporeal hereditaments comes in question, the judge may, by special order, order that any of the following items of costs shall be allowed in addition to, or in substitution for, those to which the party would be otherwise entitled, viz.: Item 31, being an additional allowance for preparation of minutes of fact or argument when a solicitor conducts a cause without counsel. Item 70, a special allowance for the conduct of a cause without counsel instead of the ordinary allowance. Item 86, a special additional allowance for counsel's fees where there is no local bar in or within twenty miles of the court town; but not applicable to any court within a radius of twenty-five miles from Charing Cross. Item 93, a fee to counsel for settling petition,

particulars, statement of defence, interrogatories or other matters required in the course of the action or matter.

The items mentioned in the last paragraph, viz. items 31, 70, 86, and 93, may also be allowed in actions brought under the extended jurisdiction conferred by the Act of 1903. See Order XXIIa. r. 28.

The power of the judge to allow special items of costs under Order LIII. rr. 7, 8, extends to arbitration proceedings under the Workmen's Compensation Act, 1906, it being provided by Rule 61 (1) of the Workmen's Compensation Rules, 1907, that "proceedings in an arbitration shall be within" those rules, and that the word "judge" is to include a committee and an arbitrator. And the special items provided for by Order LIII. r. 8 (1), *i.e.*, items 31, 70, 86, and 93, may be allowed in actions under sect. 23 of the Highways and Locomotives (Amendment) Act, 1878, as amended by sect. 12 of the Locomotives Act, 1898, and in proceedings under the Money-lenders Act, 1900 (Order LIII. r. 8 (2)).

More than one Counsel.]—Where costs are taxed under column C. and there is a real contest, or the judge certifies under sect. 119 of the Act, the judge may certify for the allowance of fees to more counsel than one. In such cases reasonable fees may be allowed to such additional counsel, and for consultations, and to solicitors for additional briefs, and attendances on counsel with the same, and for appointing and attending consultations (Order LIII. r. 8, (3), (*b*), altering the decision in *Bates* v. *Gordon Hotels, Ltd.*, (1913) 1 K. B. 631; 82 L. J. K. B. 441).

Special Order as to Particular Scale.]—As will be seen hereafter, under Rules 11 and 17 of Order LIII., the judge has power to determine, by special order, the scale upon which costs shall in certain cases be taxed. He has also power by Rules 38, 42, and 43 of Order LIII. to make special orders as to allowances to witnesses.

Apart from the rules, the judge has, in all cases whatsoever, power to award costs to the plaintiff on any higher scale than would otherwise apply, on any amount recovered, however small, or to a defendant who successfully defends an action brought for any amount, however small, provided the judge certify in writing that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons or of general or public interest (51 & 52 Vict. c. 43, s. 119). The application must be made at or immediately after the trial, unless otherwise ordered by the judge for good cause or because he is satisfied that the omission to apply was due to mistake or inadvertence. Where the plaintiff accepts money paid into court in satisfaction of his claim, or gives notice of discontinuance, or the action is struck out for default of appearance by the plaintiff, or the defendant admits the claim or consents to judgment, an application for a certificate under sect. 119 may be made on notice in writing in accordance with the rules as to interlocutory applications; the notice must state the grounds of the application. Where a judge so certifies, the certificate must be entered at the end of the minutes of the court of the day on which it is given and must be signed by the judge; but the entry and signature may be made on a day subsequent to that on which the order for costs is made (*Badcock* v. *Hunt*, (1889) 38 W. R. 255).

The order for costs on a higher scale will be inoperative unless the judge certifies in the mode above specified. Mere entry of the order on the minutes will not suffice (*Howard* v. *Graves*, (1885) 52 L. T. 858). It is an insufficient ground for the grant of a certificate that one of the parties has committed perjury in the cause, or been accused of so doing (*R.* v. *City of Lon. Ct.* (2), (1886) 18 Q. B. D. 105; 56 L. J. Q. B. 79).

When the demand is unliquidated and the plaintiff recovers less than the amount claimed, the judge may order that the costs shall be taxed on the scale applicable to the amount claimed, or on any intermediate scale (Order LIII. r. 17).

In actions where a perpetual injunction is claimed, whether granted or

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not, actions of ejectment, actions in which title to land, etc., comes in question, actions in which title incidentally comes in question and the parties consent to the decision of the claim by the judge, and actions of replevin, the judge may order the costs to be taxed under columns A, B, or C, and if he make no order, they must be taxed under column B (Order LIII. r. 11). But where an injunction was claimed and the plaintiff had an alternative but inconsistent claim, and succeeded on the latter to the extent of four guineas damages but failed as to the injunction, it was held that the judge could not order the costs to be taxed on scale B, but that they must be taxed on the lower scale (*Clinton* v. *Bennett*, (1908) 1 K. B. 109; 77 L. J. K. B. 52). See however *Dixon* v. *Brown*, *ante*, p. 126.

In the above cases and in all cases where the allowance of costs, or of particular items of costs, is left in the discretion of the judge, each case should receive particular consideration (Order LIII. r. 7). No general rule laid down by the judge is of any validity, and merely to act in obedience to such a rule is not an exercise of discretion (*R.* v. *Marylebone C. C.*, (1890) 34 S. J. 459; *The Cashmere*, (1890) 15 P. D. 121; 59 L. J., P. 57).

Scale of Costs applicable.]—In the absence of a special order by the judge, when the costs of a plaintiff are being taxed, the scale to be allowed depends on the amount recovered by him; and the costs of a defendant upon the amount claimed by the plaintiff (Order LIII. r. 18). It will be seen from the scales, that they are divided into lower and higher scales, and that the higher scale is subdivided in columns A, B, and C. The lower scale applies in the manner therein mentioned to cases where the amount recovered exceeds 2*l.*, but does not exceed 10*l.* The higher scale applies when the subject-matter or the sum recovered exceeds 10*l.*: column A when it does not exceed 20*l.*; column B where it exceeds 20*l.* but does not exceed 50*l.*; column C where it exceeds 50*l.*

Jurisdiction by Consent.]—Where the parties give jurisdiction under sect. 64 of the County Courts Act, 1888, the costs must be taxed under column C, unless the judge otherwise orders (Order LIII. r. 14).

Counter-claims.]—The scales applicable when counter-claims are raised will be found in Order LIII. r. 16.

Recovery of Possession.]—The scales applicable to actions for recovery of possession under sects. 138 and 139 of the County Courts Act, 1888, will be found in Order LIII. r. 13.

Interpleader.]—The scales applicable in interpleader proceedings will be found in Order LIII. r. 15.

Interlocutory Orders.]—The scales applicable to orders for costs on interlocutory applications will be found in Order XII. r. 11.

Extended Jurisdiction.]—In actions under the extended jurisdiction conferred on the courts by the County Courts Act, 1903 (3 Edw. VII., c. 42), there were formerly special provisions as to costs contained in Order XXIIA. r. 27.

This special rule was repealed by the Rules of 1914, and in its place Order XXIIA. r. 28, provides generally that "the costs of actions brought under the extended jurisdiction conferred by the County Courts Act, 1903, shall be allowed and taxed according to the rules and scales of costs for the time being in force in the county courts, and applicable to the subject-matter of such actions." They are thus governed generally by Order LIII. For special allowances see Part II., "Costs."

General Principles.]—The registrar, in making allowances which are discretionary, must exercise care and act in accordance with the directions in the scales and rules. He must take into consideration other fees and allowances to solicitors and counsel, if any, in respect of the work to which an allowance applies, the nature and importance of the action or matter, the amount involved, the interest of the parties, the fund or per-

sons to bear the cost, the general conduct and costs of the proceedings, and all other circumstances (Order LIII. rr. 21, 23).

Thus the insolvency of an estate is one of "the other circumstances" which the registrar upon the taxation of an administrator's bill in an administration action is entitled to take into consideration (*Pain* v. *Bowden*, (1896) 2 Q. B. 301; 65 L. J. Q. B. 530).

No costs will be allowed as between party and party which do not appear to have been necessary or proper for the attainment of justice, or defending the rights of the party, or which appear to have been incurred through over caution, negligence, or mistake, or merely at the desire of the party (Order LIII. r. 22). In particular, where a solicitor is employed who does not reside or carry on business in or near the district of the court, no costs for his locomotion or maintenance will be allowed unless the court is satisfied that there was reasonable cause for employing him (Order LIII. r. 22).

Where there is no trial, costs of discovery or of interrogatories will be allowed only if the registrar thinks that they were reasonably asked for (Order XVI. r. 22). If, in any case whatsoever, in his opinion interrogatories were exhibited unreasonably, vexatiously, or at improper length, the costs of them and the answers must be paid by the party in fault (Order XVI. r. 4).

Joint Defendants.]—Where there is more than one defendant, and judgment is given against each separately, with costs, the costs must be divided in proportion to the amount of each judgment, unless the judge otherwise orders (Order LIII. r. 24).

Trustees, etc.]—If a party suing or sued in a fiduciary or representative character incurs costs not allowed under any scale, the registrar must apply to the judge, who may allow a sum out of any funds in court applicable for the purpose (Order LIII. r. 29).

Costs out of Estate.]—Costs occasioned by an unsuccessful claim or unsuccessful resistance to a claim to any property are not to be paid out of the estate, unless the judge otherwise orders (Order LIII. r. 30).

Particular Shares.]—Costs of inquiries to ascertain the persons entitled to any legacy, money, or share, or otherwise incurred in relation thereto, are to be paid out of the legacy, money, or share, unless otherwise directed by the judge (Order LIII. r. 31). Distribution may be made to those persons whose title has been ascertained without reserving any part of their shares to answer the subsequent costs of ascertaining the persons entitled to the other shares (Order LIII. r. 32).

Unnecessary Matter.]—Costs of improper, vexatious, or unnecessary matter in any affidavit, evidence, notice or other proceeding, may be disallowed by the judge at the hearing or upon any application or proceeding, or the judge may refer the matter to the registrar with a direction to disallow such costs; and the party whose costs are so disallowed must pay the costs occasioned thereby to the other parties. If the question has not been raised before and dealt with by the judge, it is the registrar's duty to look into it and to make the disallowance without any special direction (Order LIII. r. 33).

Set-off of Costs.]—Whenever a party entitled to receive costs is liable to pay costs to any other party, the registrar upon taxation of the latter costs may adjust them by way of deduction or set-off, or he may delay the allowance of such costs until the party has paid or tendered the costs he is liable to pay, or he may allow or certify the costs to be paid and direct payment thereof, and they may then be recovered in the same manner as costs ordered to be paid may be recovered (Order LIII. r. 34). It has been held in the High Court that the provisions of R. S. C., Order LXV. r. 27, sub-r. 21, which is identical in its terms with Order LIII. r. 34, of the County Court Rules, are confined to cases in which the judgments for costs sought to be set off against each other are in the same action or proceeding, and do not extend to cases in which the judgments for costs are in distinct and indepen-

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dent litigations (*David* v. *Rees*, (1904) 2 K. B. 435; 73 L. J. K. B. 729; but see now *Reid* v. *Cupper*, (1915) 2 K. B. 147; 84 L. J. K. B. 573), and *Puddephatt* v. *Leith*, (1916) 2 Ch. 168; 85 L. J. Ch. 543, which cases establish that the court has discretion to set-off costs between the same parties though arising in different actions, and that if such a set-off between the parties is otherwise fair and equitable it should not be refused owing to the existence of a solicitor's lien for costs.

Where a bill of costs is payable out of a fund or estate (real or personal), or out of the assets of a company in liquidation and on taxation the amount of professional charges and disbursements is reduced by a sixth, no costs of drawing or copying it, nor of attending the taxation will be allowed to the solicitor leaving it for taxation (Order LIII. r. 35).

Costs out of Fund.]—Where a bill of costs is ordered to be taxed for the purpose of being paid or raised out of a fund or property, the court may require the solicitor to deliver free of charge to all or any of his clients a copy of the bill or any part of it previously to completion of the taxation, and the taxation may be suspended for a reasonable time (Order LIII. r. 36).

Court Fees.]—The costs which a successful plaintiff incurs necessarily include court fees, which are always in the first instance payable by the party on whose behalf any proceeding is taken, except in interpleaders, or where fees are payable in respect of keeping possession, appraising, or selling goods seized (51 & 52 Vict. c. 43, s. 166). In all cases in which costs abide the event (*i.e.*, in default of an order by the judge), or where the judge makes an order for costs generally, a successful plaintiff will be entitled to recover from the defendant, as part of his costs, the court fees which he has paid, subject, however, to this proviso, that if the plaintiff or defendant recovers less than the amount of his claim or counterclaim, so as to reduce the amount of court fees recoverable by him, he will have to pay the difference himself (Order LIII. r. 19).

Allowance to Witnesses.]—When costs are awarded, in the absence of express order by the judge, they include the costs of witnesses. And in the absence of such order, the registrar, on taxation, may, in his discretion, allow the costs of witnesses who have not been summoned, or who have been summoned but not examined. The allowance for attendance must not exceed the highest rate of the allowances mentioned in the scales (Order LIII. rr. 37, 41).

Travelling Expenses.]—There may be also allowed to all witnesses, including plaintiffs and defendants, if personally attending the court, for travelling expenses, the sum actually and reasonably paid by them (Order LIII. r. 39).

Plaintiffs.]—A plaintiff is not entitled, as a rule, to an allowance, except for travelling expenses under the above rule, unless he is a domestic or menial servant, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour; but the judge may otherwise order in any case (Order LIII. r. 36).

Attendance in several Causes.]—If witnesses attend in more than one action or matter their allowances must not exceed one allowance, and it must be apportioned between the actions or matters (Order LIII. r. 40).

Seamen.]—Seamen necessarily detained on shore for the purpose of an action or matter will be allowed such remuneration as the judge may order, or in the absence of an order, as the registrar may think reasonable compensation for their loss of time (Order LIII. r. 42).

Scientific Witnesses.]—The judge may, in any action or matter in which a party is entitled, as of right, or by order of the judge, to tax his costs under columns B or C, order that any expert or scientific witness may be allowed for qualifying and for their attendance at the trial, sums (in addition to travelling expenses to attend the trial) as the registrar on taxation may think fit, not exceeding the maximum allowances mentioned in the scale of allowances to "expert and scientific witnesses." He may in the same case

also order the allowance of the costs of preparing and proving plans, drawings and models, etc. (Order LIII. rr. 7, 43).

Where the judge makes the orders mentioned in the last paragraph, the registrar may allow such sums as he may think reasonable for qualification and attendance (in addition to travelling expenses), so long as the same do not exceed the maximum allowances in the scale (Order LIII. r. 43). He may also allow for preparation of plans, etc., and tracings and copies, the sum reasonably paid, but not exceeding the sums mentioned in item 95 of the scale of costs. He may also allow for the attendance of persons who have prepared the plans, etc., and who are called merely to prove them, an allowance on the scale applicable to ordinary witnesses (Order LIII. r. 44).

Counsel's Fees.]—The fees which may be allowed will be ascertained on reference to the scales, items 85 to 94. The special certificate or order of the judge is required for the allowance to counsel of a fee which may not exceed 1*l.* 3*s.* 6*d.* in actions or matters in which the amount recovered exceeds 2*l.*, but does not exceed 10*l.* (Regulation 8). So certificates are required for the allowance under item 91 of the higher scale for brief on interlocutory motions or applications; under item 92 for brief on reference, or on an inquiry before the registrar; under item 94 for advising on evidence.

In actions under sect. 64 of the Act (jurisdiction conferred by agreement), the Employers' Liability Act, actions or matters remitted from the High Court, proceedings commenced under the admiralty or equity jurisdiction of the court, actions of ejectment or in which title to land comes in question, the judge may by special order allow, but once only in the same case (*Atkinson* v. *Mayor of Carlisle*, (1896) 1 Q. B. 393; 65 L. J. Q. B. 331; and see now item 86), under item 86 a special additional fee to counsel if there is no local bar in the court town or within twenty miles, if the judge thinks that the ordinary fee under item 85 is insufficient. This item is, however, inapplicable to any court within a radius of twenty-five miles from Charing Cross. In the actions or matters above mentioned, under item 93, the judge may by special order allow a fee to counsel for settling petition, particulars, statement of defence, interrogatories or other matters required in the course of any action or matter (Order LIII. rr. 7, 8).

Special allowances to counsel may also be made in proceedings under the Workmen's Compensation Act, 1906 (W. C. Rule 61), under sect. 23 of the Highways and Locomotives Act, 1878, as amended by sect. 12 of the Locomotives Act, 1898 (Order LIII. r. 8 (2)), the Money-lenders Act, 1900 (Order LIII. r. 8 (2)), under the extended jurisdiction conferred by the County Courts Act, 1903 (Order XXIIA. r. 27), and the Rivers Pollution Prevention Acts, 1876 and 1893 (Order LIII. r. 45).

Conference.]—A fee for conference is allowable in the registrar's discretion, but only if it was marked on the brief when delivered (see item 87).

Signature of Counsel.]—No fees will be allowed on taxation unless the payment be vouched by the signature of counsel (see direction in Scales).

Taxation of Costs.]—All costs and charges between party and party must be taxed by the registrar of the court in which they were incurred, but his taxation may be reviewed by the judge on the application of either party; and no costs or charges may be allowed on taxation which are not sanctioned by the scales (51 & 52 Vict. c. 43, s. 118; Order LIII. rr. 1, 20); though the solicitor may sue for his bill of costs after twelve months if no taxation has been applied for (*Cubison* v. *Mayo*, (1896) 1 Q. B. 246; 65 L. J. Q. B. 267), and apparently before the expiration of twelve months (*Bell* v. *Girdlestone*, (1913) 82 L. J. K. B. 696). Where the registrar is a successful defendant in an action in his own court, he must of necessity tax his own costs (*Tolputt & Co.* v. *Mole* (C. A.), (1911) 1 K. B. 836; 80 L. J. K. B. 686). Taxation of costs under this section (sect. 118) is a condition precedent to their apportionment between the parties by the judge under sect. 113; the judge cannot therefore award a lump sum for costs before taxation (*Golding* v. *Smith*, (1910) 1 K. B. 462; 79 L. J. K. B. 375). No costs

O. LIII. r. 8. Notes.

can be allowed for searches for payments into court, nor for proceedings to enforce payment under a judgment or order by way of execution against goods, or by commitment under the Debtors Act, except as provided by Order XXV. rr. 53, 54 (Order LIII. r. 20).

Where practicable, costs must be taxed on the day on which the action or matter is tried or heard. Otherwise the party should deliver his bill to the registrar and apply for an appointment to tax. He must then give one day's notice of taxation to the opposite party or his solicitor: and if the registrar so directs, must serve a copy of his bill also (Order LIII. r. 2). The notice may be sent by post, if posted in time to be delivered in due course before noon of the day preceding that fixed for taxation (Order LIII. r. 3). In bills of costs to be taxed under column B or C, the professional charges must be entered in a separate column from the disbursements, and every column must be cast before the bill is left for taxation (Order LIII. r. 4).

A solicitor appearing in person as plaintiff or defendant is entitled on taxation to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting directly renders unnecessary (Order LIII. r. 25).

Where counsel is employed, but the costs of employing him are not allowed, the solicitor's costs may be allowed on the scale applicable to a solicitor appearing for his client without counsel (Order LIII. r. 26).

Taxation between Solicitor and Client.]—Costs between solicitor and client may also in the same cases, on the application either of the solicitor or client, but not otherwise (*Cubison* v. *Mayo* (C. A.), (1896) 1 Q. B. 246; 65 L. J. Q. B. 267), be taxed by the registrar of the court in which they were incurred, but his taxation may be reviewed by the judge on the application of either party. They are to be taxed on the scale then in force in the county courts, in accordance with sect. 118 of the County Courts Act, 1888 (*Tory* v. *Dorchester Corporation*, (1907) 1 K. B. 393; 76 L. J. K. B. 273). Costs may not be allowed which are not sanctioned by the scale, unless the registrar is satisfied that the client has agreed in writing to pay them; and no solicitor can recover from his client any such costs unless they have been allowed on taxation (51 & 52 Vict. c. 43, s. 118. The last words of 19 & 20 Vict. c. 108, s. 35, are not re-enacted, and it would seem that *In re Worth*, (1881) 18 Ch. D. 521; 50 L. J. Ch. 262, in which it was held that there was a right to tax in the High Court, is no longer law); but this provision does not apply where no taxation has been asked for and the time for taxation has expired. The application is made in writing to the registrar, and must state on whose behalf it is made; the registrar sends to the parties by post three clear days' notice at least of the day fixed for the taxation (Order LIII. r. 46 (1)(2)). Rules 5 and 6 of Order LIII. as to objections to, and review of, taxation apply. The costs of the taxation are dealt with by the registrar in accordance with the Solicitors Act, 1843, and are added to or deducted from the amount certified to be due (Order LIII. r. 46 (4)).

If an action is commenced in the High Court, and is afterwards by order sent to the county court under sect. 65 of the County Courts Act, 1888, and if after the order, the plaintiff changes his solicitor before he has acted in the county court, the solicitor may sue for his costs without first obtaining a taxation pursuant to this section (*Boydell* v. *Millar*, (1891) 60 L. J. Q. B. 251; approved C. A. in *Cubison* v. *Mayo*, *supra*).

A solicitor retained to bring or defend an action cannot recover any costs incurred after retainer which are not allowed by the scales (*Ex parte Lamond*, (1888) 21 Q. B. D. 242; 57 L. J. Q. B. 503); but this is not the case if the client is plaintiff, and he represents to the solicitor that a debt of a certain amount is due to him and a less sum is recovered. The registrar may then, in his discretion, tax on the scale applicable to the claim (*Re Langlois* (C. A.), (1891) 1 Q. B. 349; 60 L. J. Q. B. 123).

The provisions above referred to have no application to actions in the High Court (*Re Copp* (C. A.), (1881) 6 Q. B. D. 607; 50 L. J. Q. B. 233).

O. LIII. r. 8. Notes.

Reviewing the Taxation.]—The taxation may be reviewed by the judge on the application of either party (51 & 52 Vict. c. 43, s. 118). Where the judge makes a mistake of law in reviewing or refusing to review a taxation of costs, there is now a right of appeal from the judge to the High Court in those actions or matters in which for error of law there is a right of appeal (*Carr* v. *Stringer*, (1858) E. B. & E. 123; 113 R. R. 570, is overruled by the Act of 1888). But there is no appeal if the matter complained of is the wrongful exercise of his discretion, nor can the High Court, by order in the nature of a mandamus, compel the judge to review, if he hears the application and refuses to review (*Clifton* v. *Furley*, (1861) 7 H. & N. 783; 31 L. J. Ex. 170; 126 R. R. 703).

Procedure before Registrar.]—Any party dissatisfied with the allowance or disallowance by the registrar on taxation, in any bill of costs taxed by him, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the registrar on taxation, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items, or parts thereof objected to, and the grounds and reasons for such objection, and may thereupon apply to the registrar to review the taxation in respect of the same (Order LIII. r. 5).

In practice the registrar signs the bill of costs after taxation, and it then serves as a certificate or allocatur. If no objection were taken before signature, the right to review would thus apparently be lost. A party dissatisfied should, therefore, at once indicate the items, and request the registrar not to sign the bill of costs until he has had time to consider the propriety of the allowances or disallowances; and it is believed that the registrar could not by refusing prevent the party from exercising his right to review.

After delivering objections the applicant will be entitled to an appointment to review. The registrar will then reconsider and review his taxation upon such objections, and he may, if he think fit, receive further evidence in respect thereof, and, if so required by either party, he must state either in his certificate of taxation or allocatur, or by reference to such objections, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto (Order LIII. r. 6).

On Appeal to Judge.]—The application to the judge to review a taxation is made on notice in writing in accordance with the rules for the time being in force as to interlocutory applications, as to which see Order XII. r. 11; it will be heard and determined upon the evidence before the registrar, and no further evidence can be received, unless the judge otherwise directs (Order LIII. r. 47). The application should be prompt.

The right of appeal to the judge is expressly conferred by statute (51 & 52 Vict. c. 43, s. 118), and so long as the dissatisfied party uses due diligence, and does not neglect the prescribed regulations, it is submitted that the registrar cannot lawfully prevent his prosecuting his appeal by issuing a warrant of execution to the high bailiff. In places where the court sits only one day in a month, this might involve a stay of execution for several days. Still, the objecting party would be entitled to it, though it is not improbable that the registrar would be held to have jurisdiction to order the amount to be paid into court to abide the event of the appeal. If he made no such order as this, but persisted in disregarding the objections to his taxation and issued his warrant of execution, a prohibition would, if applied for immediately, probably lie to him, the high bailiff, and the person on whose behalf execution was to be levied, but the court would hardly grant it, if satisfied that the taxation was just.

Judge's certificate for costs. 51 & 52 Vict. c. 43, s. 119.

9.—(1) An application for a certificate under section one hundred and nineteen of the Act shall be made at or immediately

O. LIII. r. 9. after the trial or hearing; and Rule 7 of this Order shall apply to any such application.

(2) Where the plaintiff accepts money paid into court in satisfaction of his claim, or where the plaintiff gives notice of discontinuance, or an action is struck out on default of appearance by the plaintiff, or the defendant admits the claim or consents to judgment, an application for a certificate under section one hundred and nineteen of the Act may be made on notice in writing in accordance with the rules as to interlocutory applications, and shall state the grounds on which the application is made.

(3) Where the judge certifies under the said section and this rule the certificate shall be entered at the end of the minutes of the court of the day on which it is given, and shall be signed by the judge.

The entry and signature may be made on a day subsequent to that on which the order for costs is made (*Badcock* v. *Hunt*, (1889) 38 W. R. 255).

The order for costs on a higher scale will be inoperative unless the judge certifies in the mode above specified. Mere entry of the order on the minutes will not suffice (*Howard* v. *Graves*, (1885) 52 L. T. 858).

It is an insufficient ground for the grant of a certificate that one of the parties has committed perjury in the cause, or been accused of so doing (*R.* v. *City of London Court* (2), (1886) 18 Q. B. D. 105; 56 L. J. Q. B. 79).

Solicitor's costs where counsel allowed before arbitrator, etc., item 92.

10. Where the judge certifies for counsel under item 92, there may be allowed to the solicitor instructing such counsel, in addition to items 80 and 81, such items as may be allowed where the judge certifies for counsel on any interlocutory motion or application.

As to Scale.

In special actions.

51 & 52 Vict. c. 43, ss. 59—61, 133.

11. In actions in which a perpetual injunction is claimed, whether the same is granted or not, and in actions under sections fifty-nine, sixty, sixty-one, and one hundred and thirty-three of the Act, the judge may order the costs to be taxed under column A, B, or C, and in default of any such order they shall be taxed under column B.

By claiming an injunction the plaintiff will risk having to pay, if defeated, costs on the highest scale. In any event, in the absence of special directions, on scale B.

Costs in equitable proceedings where subject-matter does not exceed 20*l.*

12. In proceedings under sections sixty-seven and seventy of the Act, or under the Settled Land Acts, 1882 to 1890, or in any other proceedings under the equitable jurisdiction of the court, where the subject-matter does not exceed 20*l.*, the judge may order the costs to be taxed under column B.

Actions for recovery of possession.

51 & 52 Vict. c. 43, ss. 138, 139.

13. The costs in actions under sections one hundred and thirty-eight and one hundred and thirty-nine of the Act shall be taxed, in the case of a plaintiff, on the scale applicable to the rent or value of the premises upon which the court fees are assessed,

plus the amount of any rent and mesne profits recovered; and in the case of a defendant on that applicable to the said rent or value, plus the amount of the rent and mesne profits claimed. O. LIII. r. 13.

14. Costs in actions under section sixty-four of the Act shall be taxed under column C, unless the judge otherwise orders. Jurisdiction by consent. 51 & 52 Vict. c. 43, s. 64.

15. The "subject matter" in an interpleader proceeding shall mean (1) in the case of a claimant the amount of the value of the goods his claim to which is allowed (*a*), plus the amount of the damage (if any) adjudged, (2) in the case of an execution creditor the amount of the value of the goods seized, plus the amount of the damages (if any) claimed, and (3) in the case of a high bailiff the amount of the damages claimed. Interpleader proceedings.

NOTE.—(*a*) Not necessarily the sum of money which may have been ordered to be paid into Court as representing the goods (*Tarry* v. *Witt* (1915), 84 L. J. K. B. 950).

The value of the goods is the value as found by the judge, not the amount of deposit made to avoid a sale (*Studham* v. *Stanbridge*, (1895) 1 Q. B. 870; 64 L. J. Q. B. 473).

16. Where a counter-claim is raised and tried, the scale upon which the costs of the parties are to be taxed shall, unless the judge otherwise orders, be determined as follows:— Costs where counter-claim raised and tried.

(1) If the plaintiff is successful on both claim and counter-claim, by the amount which he recovers on his claim, unless the amount of the defendant's claim is the larger, in which case the costs incurred subsequently to the delivery of the counter-claim shall be determined by the amount of such counter-claim.

(2) If the defendant is successful on both claim and counter-claim, by the amount which he recovers on his counter-claim, or the amount of the plaintiff's claim, whichever may be the larger.

(3) If both parties are successful, by the amounts which they recover on their respective claims; and if both claims fail, by the amount claimed by the opposite party.

(4) Provided, that in cases falling within paragraph (1) or paragraph (2) of this rule, if the subject-matter of the counter-claim is entirely unconnected with that of the claim, items of costs, fees to counsel, and allowances to witnesses reasonably incurred or paid in respect of the counter-claim or claim (as the case may be) in addition to those incurred or paid in respect of the claim or counter-claim, may be allowed by the judge, or where no special directions as to costs are given by the judge, at the discretion of the registrar, subject to review by the judge. Where subject-matter of counter-claim is distinct from that of claim.

O. LIII. r. 17.

Where plaintiff recovers less than claim.

17. Where the demand is unliquidated, and the plaintiff recovers less than the amount claimed, the judge may, if he thinks fit, order that his costs be taxed on the scale applicable to the amount claimed, or any intermediate scale, and that the court fees recoverable by the plaintiff shall be calculated on the amount claimed or on any smaller amount.

Defendant's costs.

18. Where the costs of a defendant are being taxed, the word "recovered," wherever it occurs in the scale, shall be deemed to be "claimed."

Taxation of costs ordered to be paid by or to third party.

18A. Where an order is made for payment of costs by or to a third party, any costs, fees to counsel and allowances to witnesses reasonably incurred or paid in addition to the costs of the original action by reason of such third party having been brought in, in respect of the trial of the question of the liability of the third party, or in preparing for such trial, may be allowed, and such costs shall be taxed as if the third party were a defendant, and the party to or by whom such costs are ordered to be paid were a plaintiff, and as if the notice to the third party were a summons with particulars annexed.

Fees where party recovers less than he claims.

19. Subject to the provisions of Rule 17 of this Order, where the plaintiff or defendant recovers less than the amount of his claim or counter-claim, so as to reduce the amount of court fees recoverable by him, he shall pay the difference.

General Directions.

No costs allowed if not sanctioned by scales.

20. Costs not sanctioned by the scale are not to be allowed, except in cases expressly provided for by these rules, and costs are not to be allowed as between the parties to an action in respect of searching for payments into court nor in respect of any proceedings to enforce payment of a judgment or order by way of execution against the goods or commitment under the Debtors Act, 1869, save as provided in Order XXV. Rules 53 and 54.

Discretion of registrars.

21. When under the scales or rules a discretion as to the allowances to be made is vested in registrars, they are required to exercise such discretion with care and discrimination, and strictly in accordance with the particular directions set forth in the scales and rules.

When costs unnecessarily incurred.

22. No costs which are to be paid or borne by another party shall be allowed which do not appear to the registrar on taxation to have been necessary or proper for the attainment of justice or for defending the rights of the party incurring the same, or which appear to such registrar to have been incurred through over-

caution, negligence, or mistake, or merely at the desire of such party. O. LIII. r. 22.

In particular, where a party employs a solicitor who does not reside or carry on business in or near the district of the court, no costs for locomotion or maintenance of such solicitor shall be allowed unless the court is satisfied that there was reasonable cause for employing such solicitor. Where solicitor from a distance employed.

23. All fees or allowances which are discretionary shall, unless otherwise provided, be allowed at the discretion of the registrar on taxation, who, in the exercise of such discretion, shall take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the action or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances. Discretionary fees and allowances.

The insolvency of an estate is one of the "other circumstances" which the registrar, upon the taxation of an administrator's bill in an administration action, is entitled to take into consideration (*Pain* v. *Bowden*, (1896) 2 Q. B. 301; 65 L. J. Q. B. 530).

24. Where two or more defendants are joined and judgment is given separately against each with costs, the costs shall, unless the judge otherwise orders, be apportioned according to the respective amounts of each judgment. Where separate judgments against defendants.

25. Where a solicitor who is a plaintiff or defendant appears in person and is allowed costs he shall be entitled on taxation to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting directly renders unnecessary. Costs of solicitor appearing in person as plaintiff or defendant.

(See *London Scottish Benefit Society* v. *Chorley* (1884), 12 Q. B. D. 452; 53 L. J. Q. B. 272; 13 Q. B. D. 872; 53 L. J. Q. B. 551.)

26. Where a party appearing by counsel is allowed costs, but the costs of employing counsel are not allowed, the costs of the solicitor instructing counsel may be allowed on the scale which would have been applicable if the solicitor had appeared for his client without counsel. Costs of solicitor where counsel employed but not allowed.

27. A folio shall comprise seventy-two words, every figure comprised in a column or authorised to be used counting as one word. Folio.

28. When any real property is directed to be sold, the ordinary conveyancing charges shall be allowed. Sale of real property.

29. Where in the course of an action or matter a party suing or sued in a fiduciary or representative character necessarily incurs costs not allowable upon taxation under any scale, the registrar shall apply to the judge, who may, by an order to be filed with Costs of person in fiduciary, etc., position.

O. LIII. r. 29. the proceedings, allow such a sum as he may think fit for such costs to be paid out of any funds in court applicable to the purpose.

Costs out of estate.

30. The costs occasioned by any unsuccessful claim or unsuccessful resistance to any claim to any property shall not be paid out of the estate unless the judge otherwise directs. (R. S. C., Order LXV. r. 14A.)

Costs as regards particular shares.

31. The costs of inquiries to ascertain the persons entitled to any legacy, money, or share, or otherwise incurred in relation thereto, shall be paid out of such legacy, money, or share, unless the judge otherwise directs. (R. S. C., Order LXV. r. 14B.)

Distribution not to be delayed by difficulties as to some shares.

32. Where some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares, the judge may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares; and in all such cases such order may be made for ascertaining and payment of the costs incurred down to and including such payment as the judge may think reasonable. (R. S. C., Order LXV. r. 14C.)

Disallowance of costs of improper, vexatious, or unnecessary matter in documents or proceedings.

33. The judge may, at the hearing of any action or matter, or upon any application or proceeding in any action or matter, and whether the same is objected to or not, direct the costs of any affidavit, evidence, notice, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or is caused by misconduct or negligence, to be disallowed, or may direct the registrar to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, or vexatious, or to contain unnecessary matter, or to be of unnecessary length, or to have been caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question has not been raised before and dealt with by the judge, it shall be the duty of the registrar to look into the same for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so. (R. S. C., Order LXV. r. 27 (20).)

Set-off of costs.

34. In any case in which, under the last preceding rule, or any other rule, or by the order or direction of the judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the registrar may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off,

or may, if he thinks fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such registrar may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered. (R. S. C., Order LXV. r. 27 (21).)

See *Puddephatt* v. *Leith*, (1916) 2 Ch. 168; 85 L. J. Ch. 543.

Disallowances where bill of costs payable out of a fund reduced by a sixth.

35. If on the taxation of a bill of costs payable out of a fund or estate (real or personal) or out of the assets of a company in liquidation the amount of the professional charges and disbursements contained in the bill is reduced by a sixth part, no costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, nor for attending the taxation.

Delivery of bill to client where costs to be paid out of a fund.

36. Where in any action or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the court may, if it considers that there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill or any part thereof, previously to the registrar completing the taxation thereof, accompanied by any statement the court may direct, and by a letter informing such client that the bill of costs has been referred to the registrar for taxation, and will be proceeded with at the time the registrar has appointed for this purpose, and the court may suspend the taxation for such time as it may consider reasonable. (R. S. C., Order LXV. r. 56.)

Witnesses.

Allowances to witnesses for attendance.

37. Subject to the following rules, allowances may be made to witnesses for their attendance at court according to the scales in Part IV. of the Appendix.

Allowances to accountants.

37A. Allowances may be made to accountants being members of any recognised society of accountants on the scale applicable to merchants and professional men, instead of on that applicable to tradesmen.

Rule 37A, *supra*, added by Rules of 1917, dated February 19th, 1917.

Appendix, Part IV.

Plaintiff not entitled except in certain cases.

38. Where a witness is a plaintiff in the action or matter he shall not be entitled to any allowance, except for travelling, unless he is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, or unless the judge in any particular case otherwise orders.

O. LIII. r. 39.

Travelling expenses.

39. There may be also allowed to all witnesses, and to plaintiffs and defendants if personally attending the court, for travelling expenses, the sums actually and reasonably paid by them.

A witness can also recover from the person on whose behalf he is summoned, or from any other person by agreement, an allowance for loss of time according to the scale of allowances to witnesses on taxing costs (*Chamberlain* v. *Stoneham*, (1890) 24 Q. B. D. 113; 59 L. J. Q. B. 95).

When attending in more than one case.

40. If witnesses attend in more than one action or matter they shall be allowed a proportionate part only of their allowances in each action or matter.

Costs of witnesses not summoned.

41. The costs of witnesses, whether they have been examined or not, may, unless otherwise ordered, be allowed, though they have not been summoned.

Compensation to seamen.

42. Seamen necessarily detained on shore for the purpose of an action or matter shall be allowed such remuneration as the judge may order, or, in the absence of an order, as the registrar may think reasonable compensation for their loss of time.

Allowances to expert or scientific witnesses.

43.—(1) In any action or matter in which a party is entitled as of right, or by order of the judge, to tax his costs under column B or column C, the registrar may on taxation, subject to review by the judge, allow for the attendance in court of any expert or scientific witnesses, or any member of the medical profession, such sums, not exceeding the maximum allowances mentioned in the scale for expert and scientific witnesses in the Appendix, as he may think fit, in addition to travelling expenses; and the judge may order in addition thereto that any expert or scientific witnesses, or any member of the medical profession, may be allowed for qualifying to give evidence such sums, not exceeding the maximum allowances specified in the said scale, as the registrar on taxation may think fit, subject to review by the judge; and in like cases the judge may, subject to the provisions of the next rule, order that the expense of preparing and proving plans, drawings, models, &c., may be allowed.

Allowance where costs taxed under column A.

(2) Where costs are taxed under column A, the registrar may on taxation, subject to review by the judge, allow for attendance in court, and the judge may by special order made in accordance with Rule 7 of this Order allow for qualifying to give evidence the whole or part of such sums as may be allowed for attendance in court and qualifying to give evidence respectively under the last preceding paragraph where costs are taxed under column B.

Allowances for proof and costs of plans, etc.

44. Persons who prepare plans, drawings, models, &c., for the purpose of illustration, and who if called at the trial prove the correctness of such plans, drawings, models, &c. only, shall not be entitled to allowances as expert and scientific witnesses, but

shall be allowed for their attendance upon the scale applicable to ordinary witnesses; and there may be also allowed for the preparation of such plans, drawings, models, &c. and of all tracings and copies thereof, the sum reasonably paid for the same, so long as it does not exceed the sums mentioned in item 95 of the scale of costs. O. LIII. r. 44.

Rule 45 as to the "Rivers Pollution Prevention Acts, 1876 and 1893" (see Part V.), is annulled by Rule 23 of 1913 (now Rule 260 of 1914).

Taxation as between Solicitor and Client.

46.—(1) An application to the registrar under section one hundred and eighteen of the Act for the taxation of any costs and charges as between solicitor and client shall be made in writing, and shall state on whose behalf the application is made. Taxation as between solicitor and client. 51 & 52 Vict. c. 43, s. 118.

(2) On receipt of such application the registrar shall fix a time and place for proceeding with such taxation, and shall give or send by post to the applicant and the other party notice in writing of the time and place so fixed three clear days at least before the day so fixed.

(3) Rules 5 and 6 of this Order shall apply to any such taxation.

(4) The costs of such taxation shall be dealt with by the registrar in accordance with the provisions of the Solicitors Act, 1843, and shall be added to or deducted from the amount certified to be due. 6 & 7 Vict. c. 73, s. 37.

If an action is commenced in the High Court, and is afterwards by order sent to the county court under sect. 65 of the County Courts Act, 1888, and if after the order the plaintiff changes his solicitor before he has acted in the county court, the solicitor may sue for his costs without first obtaining a taxation pursuant to sect. 118 (*Boydell* v. *Millar*, (1891) 60 L. J. Q. B. 251; approved by C. A. in *Cubison* v. *Mayo*, (1896) 1 Q. B. 246; 65 L. J. Q. B. 267).

A solicitor retained to bring or defend an action cannot recover any costs incurred after retainer which are not allowed by the scales (*Ex parte Lamond*, (1888) 21 Q. B. D. 242; 57 L. J. Q. B. 503); but this is not the case if the client is plaintiff, and he represents to the solicitor that a debt of a certain amount is due to him and a less sum is recovered. The registrar may then, in his discretion, tax on the scale applicable to the claim (*In re Langlois* (C. A.), (1891) 1 Q. B. 349; 60 L. J. Q. B. 123).

Review of Taxation by Judge.

47. An application to the judge to review any taxation of costs shall be made on notice in writing in accordance with the rules for the time being in force as to interlocutory applications. Such application shall be heard and determined upon the evidence which has been brought in before the registrar, and no further evidence shall be received on the hearing thereof unless the judge otherwise directs. (R. S. C., Order LXV. rr. 41, 42.) Application for review of taxation by judge.

ORDER LIV.

General Provisions.

Rule 1.

Party may act by solicitor or agent.

1. Where by these rules any act may be done by any party, such act may be done either in person or by his solicitor, or by an agent, where it can be legally done by an agent.

Where the plaintiff sues by his solicitor, the particulars must be signed by the latter in his own name or that of his firm, and he must state upon them his place of business, and where he will accept service of proceedings in the action on behalf of the plaintiff. A clerk duly authorised may sign the particulars in the name and on behalf of the solicitor. Solicitors' costs of entry of plaint will not be allowed without the order of the court if the particulars are insufficient (Order VI. r. 9). A lithographed signature will not suffice (*R.* v. *Cowper* (C. A.), (1890) 24 Q. B. D. 533; 59 L. J. Q. B. 265).

Service of notices, etc., where no mode of service prescribed.

2. Any notice, proceeding, or document required by these rules to be served on any party, and as to which no mode of service is prescribed by these rules, may be so served by delivering the same to the person on whom it is to be served, or by delivering the same at the residence or place of business of such person, or by sending the same by post addressed to such person at his last-known residence or place of business; and any such notice, proceeding, or document, if served by post, shall, unless the contrary be proved, be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice, proceeding, or document, it shall be sufficient to prove that the same was properly addressed and posted: Provided that for the purposes of this rule a place of business shall not be deemed to be the place of business of the person to be served unless he is the master or one of the masters thereof.

Service by or upon solicitor acting for party.

3. Where a party acts by a solicitor, any document, notice, or proceeding required to be served by or upon such party may be served by or upon such solicitor, except in cases where by these rules personal service upon a party is required; and any notices or orders required by these rules to be sent by the registrar or high bailiff to such party may be sent to his solicitor; and service of any such document, notice, or proceeding upon such solicitor, or delivery of the same at his office, or sending the same to him by post prepaid, shall be deemed to be good service upon the party for whom such solicitor acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered. Provided that the provisions of this rule shall not extend to any default or judgment summons,

nor, except as provided by Order VII. Rule 12, to any ordinary summons. O. LIV. r. 3.

Where an action is sent from the High Court to the county court, service may be made on the solicitor who acts in the county court, not on his London agent (*Malley* v. *Shepley*, (1893) 62 L. J. Q. B. 31).

Service of a notice of appeal on the solicitor of a party who acts by solicitor suffices, but service on the London agent of a country solicitor does not (*Powell* v. *Thomas*, (1891) 1 Q. B. 97; *Jackson* v. *Margrett*, (1893) 41 W. R. 267; 68 L. T. 91).

Solicitor may give notice that he is acting.

Service by or on such solicitor.

4. A solicitor acting for a party in any action or matter may give notice in writing by post or otherwise to the registrar and to the other party, or his solicitor, that he is so acting, whereupon service of any document, notice, or proceeding whatsoever authorised by these rules to be served by or upon a solicitor so acting shall be served by or upon such solicitor accordingly, and he shall be deemed to be the solicitor acting for the party on whose behalf he has given such notice, until notice of change of solicitor has been duly given. Provided that where the plaint is entered by a solicitor acting for the plaintiff, and the particulars have been duly signed by him or on his behalf as provided by Order VI. Rule 9, or where a notice of defence, set off, or counterclaim is signed by or on behalf of a solicitor acting for a defendant, no further notice need be given under this rule.

In the cases included in the proviso, the solicitor need not give notice under this rule that he is acting for the party.

Practice on service by solicitor.

5. Where a solicitor undertakes the service of any process, he shall make the necessary copies of each process, and the registrar shall seal the same and return them to the solicitor for service.

Service not to be effected by person under sixteen years of age.

5A. Service of process shall not be effected by a person under the age of sixteen years, and an affidavit of service shall state that the person serving the process is over that age.

Change of solicitor.

51 & 52 Vict. c. 43, s. 72.

Notice. Form 352.

6.—(1) Subject to the provisions of section seventy-two of the Act prohibiting the retainer of a solicitor as an advocate by the solicitor acting generally in an action or matter for any party, any party who acts by solicitor may before or after judgment change his solicitor without any order for that purpose. When any such change is made forty-eight hours' notice in writing of such change shall be given to the registrar and to the other parties to the action or matter, or to the solicitors, if any, acting for them, and of the name or firm and place of business of the new solicitor, according to the form in the Appendix, and the registrar shall file the notice given to him; but until such notice is filed and a copy thereof served the former solicitor shall be deemed to be the solicitor of the party.

O. LIV. r. 6.

Taxation of costs in case of change of solicitors.

(2) Where any party has changed his solicitor and given notice of such change in accordance with this rule, the costs allowed to such party shall, unless any solicitor previously employed claims to have his costs taxed separately, be included in one bill and taxed by the solicitor last employed by such party; and money paid into court in respect of such costs shall be paid out in accordance with Order IX., Rules 21 and 22.

(3) If any solicitor previously employed claims to have his costs taxed separately, he shall bring in a separate bill, which shall be taxed with the bill of costs brought in by the solicitor last employed, and in any such case the cost of drawing the bills and attending taxation, and the fees on taxation, shall be allowed and charged as if the whole amount of costs had been included in one bill, and shall be apportioned between the several bills as the registrar shall direct; and money paid into court in respect of costs shall, if any question arises as to the application thereof, be paid out to such persons and in such proportions as the court, on application made by any party interested on notice to the other parties interested, shall direct.

Solicitors to sign a roll.

7. No solicitor shall be allowed to appear for any person in a court until he has signed a roll or book to be kept for that purpose by the registrar, but no fees shall be payable for that purpose; and any solicitor appearing in any court shall, once in every year, if required by the registrar, produce his certificate for the year to the registrar, who shall note the fact of such production on the roll or book.

No notice of employment of counsel or solicitor required.

8. It shall not be necessary for any party to give notice to any other, or to the court, of his intention to employ a barrister or solicitor to act as his advocate at the trial, and the allowance of costs for such barrister or solicitor shall not be affected by such want of notice.

Who may appear on proceedings in chambers.

8A. In matters which, if the same related to actions or proceedings pending in the High Court, might be dealt with in chambers, the parties may be represented by any person who would be allowed to appear in chambers in the High Court.

Newspaper advertisements.

9. The court shall order in what newspapers any advertisements which may from time to time be ordered in any action or matter shall be inserted; and the expense of such advertisements shall be paid to the registrar by the party requiring the same before they are inserted.

Advertisements for *London Gazette*.

10. All advertisements to be inserted in the *London Gazette*, except as to proceedings under Orders XXXIX. or XLI. Rule 12,

shall be transmitted by the registrar for insertion to the registrar of county courts judgments in London. O. LIV. r. 10.

11. The judge, or in his absence the registrar, may order which party shall have the conduct of proceedings in any action or matter. Conduct of action.

12. Parties may by consent enlarge or abridge any of the times fixed by these rules or by statute for taking any step or filing any document, or giving any notice, in any action or matter. Where such consent cannot be obtained, either party may apply to the court, on notice to the non-consenting party, for an order to effect the object sought to have been obtained with the consent of the other party, and such order may be made although the application for the order is not made until after the expiration of the time allowed or appointed, and on such terms, as to costs and otherwise, as the court may direct. Enlargement or abridgment of time.

13. Subject to the provisions of these rules as to the filing of particulars, where any documents are directed to be filed they shall be filed with the registrar, together with as many copies as there are parties to be served, with the names and addresses and occupations or descriptions of such parties, and, where so required by any of these rules, an additional copy for the use of the judge. Filing of documents and copies for service.

14. Before any summons, notice, or other document, or any copy thereof, is issued by the registrar, the same shall be sealed with the seal of the court. Sealing of documents.

15. All notices required by these rules shall be in writing, unless expressly authorised by the court to be given orally. (R. S. C., Order LXVI. r. 1.) Notices to be in writing.

16. Where by these rules any party is required to give notice according to a form mentioned in the Appendix, it shall be sufficient if the notice given complies substantially with such form. Form of notices.

17. Where anything is required by these rules to be done within a period not exceeding forty-eight hours, no part of any Sunday or day on which the offices of the court need not be open under these rules or under any order of the Lord Chancellor, shall be included in the computation of such period. Computation of periods not exceeding forty-eight hours.

See *Brammall* v. *Mutual Industrial Corporation*, *post*, p. 660.

For days on which the offices of the court are to be kept open, see Order I. r. 3.

O. LIV. r. 18. When time for doing any act expires on day when offices are closed.

18. Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices of the court are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open; provided that such day shall be counted in the computation of time required by these rules in respect of service.

When process may not be served and need not be issued.

19. No summons, warrant, or other process (except a summons *in rem* or a warrant of arrest in an admiralty action) shall be served or executed on Sunday, Christmas Day, Good Friday, or on any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving; nor need any summons, warrant, or other process be served or granted on any day on which the offices of the courts need not be open under these rules or under any order of the Lord Chancellor; but such days shall be counted in the computation of time required by these rules in respect of service.

Computation of time for service.

Transmission or filing of notices and documents.

19A. Subject to the provisions of these rules as to the transmission of documents to the registrar for the purposes of

(*a*) the entry of plaints;

(*b*) entering up judgment on default summonses; or

(*c*) the issue of summonses to witnesses, executions, judgment summonses, and orders of commitment,

any notice or document required by these rules to be given or sent to or filed with the registrar may be so given or sent or filed by delivering the same at the office of the registrar, or by sending the same, with all copies required by these rules, by prepaid post addressed to the registrar at his office.

Transmission of notices, etc., by post.

20. All letters, notices, documents or process sent by post by or to the officers of the courts, or by or to parties in any action or matter, shall be prepaid, and shall not be sent by book post.

Time for delivery of notices, etc., by post.

21. All notices and documents which may be sent by post to the office of a registrar shall be taken to have been duly delivered on the day on which they should have been delivered, if they are delivered at the office of the registrar before the opening thereof on the following day.

Provided that where under these rules the registrar on receiving a notice or document from one party to an action is required to forward a copy of such notice or document to the opposite party, the notice or document given or sent to or filed with the registrar

shall, if sent by post, be sent so as to be delivered within office hours on the same day on which it would under these rules be required to be delivered if given or sent by hand. O. LIV. r. 21.

22. All proceedings and documents shall be in forms similar to the forms in the Appendix, where the same are applicable; and in cases where such forms are not applicable, or where no forms are provided, parties shall frame the proceedings or documents, using as guides the forms contained in the Appendix. Use of forms in Appendix. Where no forms prescribed.

22A. The registrar of any court may apply to the Treasury for any of the forms required to be used in proceedings in court, notwithstanding that such forms are marked in the Appendix as "not to be printed," and if such application is granted may obtain such forms and supply the same without charge for the use of parties to such proceedings. Supply of forms.

22B. The words "the hearing fee must be paid before the case is called on" shall be printed or written on the following forms in the Appendix, viz.:—Forms 38, 40, 207, 208, 210, 281, 283, 285, 375, and 416. Notice as to hearing fee to be printed or written on Forms 38, 40, 207, 208, 210, 281, 283, 285, 375, 416.

23. No practice shall prevail in any court which shall be inconsistent with these rules, nor shall any matter be added to or taken from any form in the Appendix, whereby any obligation shall be imposed upon any suitor or any officer of the court to which he is not liable under statute or these rules, or otherwise by law. Rules and forms to be adhered to.

In many cases the rules leave the determination of particular matters in the discretion of the judge, and he is not permitted to prescribe for his own guidance, or that of the officers of the court, general rules to be applied to cases as they arise instead of exercising his discretion in the particular case. Thus, where a judge made a general rule that solicitors' costs should not be allowed in certain cases, and refused them in a particular case in obedience to his general rule, it was held that he had not exercised his discretion, and he was ordered to hear and determine the application (*R.* v. *Marylebone C. C.*, (1890) 34 S. J. 459; see also *The Cashmere*, (1890) 15 P. D. 121; 59 L. J. P. 57).

24. Non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the court shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or may be amended or otherwise dealt with in such manner and upon such terms as the court may think fit. Non-compliance with rules not to render proceedings void.

25. Applications to set aside proceedings for irregularity may be made to the court on notice in manner prescribed by Order XII. Rule 11. No application to set aside any proceeding for irregularity shall be allowed unless made within a reasonable time, nor if the party applying has taken any fresh step after Application to set aside proceedings for irregularity.

O. LIV. r. 25. knowledge of the irregularity. Where any such application is made, the several objections intended to be insisted upon shall be stated in the notice. (R. S. C., Order LXX. r. 3.)

Duplicate of warrant, etc., lost or destroyed.

26. In the event of any warrant, order, or other document issued by the court being lost or destroyed, a duplicate thereof may be issued from time to time upon proof, by affidavit or otherwise, to the satisfaction of the registrar, of such loss or destruction.

ORDER LV.

Interpretation of Terms.

Interpretation.

In the construction of these rules, words importing the singular number include the plural, and words importing the plural number include the singular, and words importing the masculine gender include females, and, unless there is anything in the subject or context repugnant thereto, words have the same meaning as in the Act, and the several words hereinafter mentioned or referred to have or include the meanings following :—

"The Act" means the County Courts Act, 1888 ;

"Clear days" means that in all cases in which any particular number of days is prescribed for the doing of any act, or for any other purpose, the same is to be reckoned exclusive both of the first and of the last day ;

When notice may be given by post, Erle, C.J., expressed an opinion "that the notice must be put into the post in such time that by the ordinary course of post the party to whom it is addressed shall receive it within the time" (*Evans* v. *Matthews*, (1857) 26 L. J. Q. B. 166) in which the notice may be validly given ; so, if a notice has to be given five clear days before the trial, it appears that, if sent by post, it ought to be sent so that five clear days might elapse after receipt of the notice, irrespective of the day on which, in the ordinary course of post, it would be received.

Where the days are not "clear days," it seems that the time should be computed exclusively of the day on which the notice or document is served, or, if sent by post, received, but inclusively of the last day (*Liffin* v. *Pitcher*, (1842) 1 Dowl. N. S. 767 ; R. S. C., Order LXIV. r. 12). The same rule applies if an act has to be done within a certain number of days from another act (*Young* v. *Higgon* (1840) 6 M. & W. 49, 53 ; 9 L. J. M. C. 29, *per* Parke, B.).

In computing "two clear days" Sunday is probably not to be reckoned. So held as to notice of motion in the High Court under Order LII. r. 4 (*Brammall* v. *Mutual Industrial Corporation* (1915), 84 L. J. Ch. 474).

"Court" includes a judge or registrar exercising the powers of the court in chambers as well as in open court ;

"Default summons" means a summons which is issued on the entry of a plaint, and is required by statute or rule to be served personally ;

"Foreign court" means the court of a district into which process is issued from another court ;

"High bailiff" means if there be more than one high bailiff to a court, either of such high bailiffs;

"Home court" means the court from which process is originally issued; "Home district" means the district of the home court; and "foreign district" means the district of the foreign court;

"Judgment" means the final decision of the court in any action;

"Metropolitan court" means any court referred to in section eighty-four of the Act, and includes also the Bow County Court of Middlesex;

Bow is not hereby added to the courts mentioned in sect. 84, nor the leave to sue required by sect. 74 affected.

"Month" means calendar month;

But in the registrar's minute of the order upon a judgment summons it means a lunar month (*Saunders* v. *Swansea Finance Co.*, (1905) 21 T. L. R. 317).

"Oath and affidavit," in the case of persons for the time being allowed by law to attest upon honour, affirm, or declare, instead of swearing, include attestation upon honour, affirmation, and declaration, and "swear" in the like case includes attest upon honour, affirm, and declare;

"Order" means the final decision of the court in any matter, and also any decision of the court other than a final decision in any action or matter, and also the decision of the judge or registrar on any interlocutory application;

"Ordinary summons" means a summons which is issued on the entry of a plaint, and is not required by statute to be served personally;

"Treasurer" includes any person appointed by the Treasury to perform the functions of treasurer;

"Trial" means the hearing of any action or matter in court;

"Vessel" includes every description of vessel used in navigation not propelled by oars only.

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448B. Notice of day on which appeal under the National Insurance Act, 1911, and the Acts amending the same, will be heard... 2149

449. National Insurance Act, 1911.—Application for cancellation or modification of certificate granted for the purpose of sect. 68 of the National Insurance Act, 1911 2150

450. Order on application for cancellation or modification of certificate granted for the purpose of sect. 68 of the National Insurance Act, 1911 2150

451. Application for settlement of dispute as to sufficiency of security to be given pursuant to demand under sect. 68 of the National Insurance Act, 1911 2151

452. Order on application for settlement of dispute as to sufficiency of security to be given pursuant to demand under sect. 68 of the National Insurance Act, 1911 2151

453. Notice of application for certificate under the Army Act, 1881 (44 & 45 Vict. c. 58), s. 115, and the Acts amending the same 1003

COUNTY COURT.

FORMS. (a)

1914—1917.

NOTE.—*In all forms to be printed for the future the number of plaint and number of warrant should be put, and the seal impressed on the right hand corner of the form, instead of the left hand corner, so as to facilitate reference where papers are joined together.*

Summonses, affidavits, notices, judgments, orders, warrants, and other proceedings taken under the Acts to which Orders XXXV., XXXVIII., XXXIX., XL., XLI., XLII., XLIII., XLIV., XLV., XLVI., XLVII., XLVIII., XLIX., L., and LI. relate, should be entitled with the Acts respectively referred to in those Orders (b).

1.

General Form of Heading and Conclusion of all Notices and Admissions.

No. of Plaint.

In the county court of , holden at .

[Where sent or issued by court. *Seal.*]

Between A. B., plaintiff,
and
C. D., defendant.

* * * * * *

Dated this day of 19 .

Registrar [*or* person sending notice or making admission].

To [*the person to whom notice is sent*].

2.

General Form of Heading and Conclusion of Judgments, Orders, and Warrants.

No. of Plaint.

In the county court of , holden at .

(*Seal.*)

Between A. B., plaintiff,
and
C. D., defendant.

The day of 19 .

* * * * * *

By the court,
Registrar.

(*a*) The reference given to High Court forms signifies that the form to which such reference is appended is framed on the High Court form.

(*b*) The following forms, it is believed, are complete to date. The new forms provided in or amended by the County Court Rules, 1917, have been incorporated.

3.

General Form of Heading and Conclusion of Affidavits.

(*Except where otherwise hereafter given.*)

No. of Plaint.

In the county court of , holden at .
Between A. B., plaintiff,
and
C. D., defendant.

* * * * *

Sworn at in the county of
this day of
One thousand nine hundred and , before me

4.

Mem. to be made on any Order or other Document Signed by one Judge acting for another.

This [*as the case may be*] was made [*or granted*] and signed by judge Z, acting in the matter for judge A., under the provisions of sect. 19 of "The County Courts Act, 1888." *Order 2, Rule 15*

5.

Mem. to be placed at foot of every Summons, Notice, Judgment, Order, Warrant, or other Process of the Court.

Hours of attendance at the office of the registrar [*place of office*] from ten till four o'clock, except on [*here insert the day on which the office will be closed*] when the office will be closed at one o'clock.

---

6 instead of 6.

Præcipe for Ordinary Summons.

In the county court of holden at .
To be served by No. of Plaint. *Order 5, Rules 4-7-12.*
If the claim exceeds £2 two copies of the plaintiff's accounts or particulars of claim are required before a summons can be issued, and if there are two or more defendants to be served, two additional copies for each additional defendant.

Plaintiff's Names in full, Residence or Place of Business, with No. of House.

Occupation or Description.

If Plaintiff is an Infant required to sue by a next friend, state that fact, and Names in full, Residence or Place of Business, and Occupation or description of Next Friend.

If Plaintiff is Assignee, state that fact, and Name, Address, and description of Assignor.

If the plaintiffs are co-partners suing in the name of their Firm, add. (Suing as a Firm).

Defendant's Surname and (where known) his Names in Full, his Residence or Place of Business, and (where known) Name of Street and No. of House.	
Whether male or female, and, if known, whether of full age or not, and, if female, whether married, single, or a widow.	
General Occupation or Description. If the Defendants are sued as Co-partners in the Name of their Firm, or a Person carrying on Business in a Name or Style other than his Firm Name is sued in such Name or Style, add.	(Sued as a Firm).
If a Company registered under the Companies (Consolidation) Act, 1908, is Defendant, give address for service, and describe it as "being the registered office of the Company."	

Amount claimed ...	£	s.	d.	Solicitor's Costs ...	£	s.	d.

What the claim is for—

Solicitor's Name and Address.

---

7 instead of 7.

Præcipe for Default Summons.

Order 5, Rules 4-6, 12.

In the county court of ....., holden at .....

No. of Plaint.

To be served by

Two copies of the Plaintiff's particulars of claim are required before a Summons can be issued, and if there are two or more defendants to be served, two additional copies for each additional defendant.

Plaintiff's Names in full, Residence or Place of Business, with No. of House.	
Occupation or Description.	
If Plaintiff is an Infant required to sue by a next friend, state that fact, and Names in full, Residence or Place of Business, and Occupation or Description of Next Friend.	
If the Plaintiffs are Co-partners suing in the Name of their Firm, add	(Suing as a Firm).

Defendant's Surname, and (where known) his Names in full, his Residence or Place of Business, and (where known) Name of Street and No. of House.	
Whether male or female, and, if known, whether of full age or not, and, if female, whether married, single, or a widow.	
Occupation or Description.	
If the Defendants are sued as Co-partners in the name of their Firm, or a Person carrying on Business in a Name or Style other than his own Name is sued in such Name or Style, add	(Sued as a Firm).
If a Company registered under the Companies (Consolidation) Act, 1908, is Defendant, give address for service, and describe it as "being the registered office of the Company."	

	£	*s.*	*d.*		£	*s.*	*d.*
Amount claimed ...				Solicitor's Costs ...			

What the claim is for—

Solicitor's Name and Address.

7A.

Notice to be posted in Registrar's office as to actions against partners or persons carrying on business in names other than their own.

Actions against partners or persons carrying on business in names other than their own.

NOTICE.—Where a person intends to issue process against persons carrying on business as partners, or against a person carrying on business in a name other than his own, he should so inform the Court officials at the time of applying for the process to issue, in order that the proceedings may be issued in the proper form.

---

8 (1) instead of 8 (1).

Affidavit for Leave to issue Ordinary Summons against Defendant out of the District.

I, [*name, residence, and occupation of deponent*], make oath and say as follows :— 51 & 52 Vict. c. 43, s. 74.

[*Where the demand is for a debt or liquidated claim.*] *Order* 5, *Rule* 13 (2).

1. That [*the like of proposed defendant*] is justly and truly indebted to me [*or to (the like of proposed plaintiff)*] in the sum of £ for the price of goods sold [*or* for money lent, *or as the case may be*].

[*Or where the claim is unliquidated.*]

1. That I [*or* (*the like of proposed plaintiff*)] claim [*or* claims] to be entitled to recover from (*the like of proposed defendant*) the sum of £ for damages for breach of contract [*or as the case may be*].

[*Where residence, &c., within six months relied on.*]

2. That the proposed defendant within six months from the date hereof dwelt [*or* carried on business] within the district of this court, that is to say, at in the county of .

[*Or where cause of action or part relied on.*]

2. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at in the county of , within the district of this court.

That the facts relied on as constituting the alleged cause of action or a part thereof are, that the order for the goods for the price of which [*or* for non-acceptance of which, *or as the case may be*] an action is proposed to be brought was given at in the county of , within the district of this court [*if given by post, add,* by an order [*or* a letter] addressed to me [*or* to the proposed plaintiff] and purporting to be signed by the proposed defendant [*or* on behalf of the proposed defendant by a member of his household] [*or* a person in his employ] [*or* that the proposed defendant assaulted me [*or* the proposed plaintiff] at in the county of within the district of this court, *or as the case may be*]].

[*Where an assignee of a debt applies for leave, add paragraph according to Form* 8 (2).]

To be added where proposed plaintiff does not make the affidavit.

3. And I further say that I am a person in the employ of the proposed plaintiff [*or as the case may be*], and that the facts herein deposed to are within my own knowledge, and that I am duly authorised by the proposed plaintiff to make this affidavit.

Order to be placed at the foot.

I do order that the above-named be at liberty to enter a plaint in this court against the above-named .

Registrar.

---

8 (2) instead of 8 (2).

Order 5, Rule 13 (3).

Paragraph to be added where the Proposed Plaintiff is Assignee of a Debt.

2A. That the debt for which an action is proposed to be brought was originally contracted by the proposed defendant with G. H. of , [*name, residence, and occupation*] and was absolutely assigned to me [*or* to the proposed plaintiff], by an assignment dated the day of , and made between the said G. H. [*or* the trustee in the Bankruptcy of the said G. H., *or as the case may be*] of the one part, and me this deponent [*or* the proposed plaintiff], of the other part, and on or about the day of express notice in writing of such assignment was given to the proposed defendant.

8A instead of 8B and 8C.

Affidavit for Leave to issue Ordinary Summons out of the District against Defendant, who is a Domestic or Menial Servant, a Labourer, a Servant in Husbandry, a Journeyman, an Artificer, a Handicraftsman, a Miner, or a Person engaged in Manual Labour.

I, (*) make oath and say as follows :— 51 & 52 Vict. c. 43, s. 74.

[*Where the demand is for a debt or liquidated claim.*]

1. That (†) is justly and truly indebted to me [*or* to (‡)] in the sum of £ for the price of goods sold [*or* for money lent, *or as the case may be*]. *Order* 5, *Rule* 13 (10).

[*Or where the claim is unliquidated.*]

1. That I, [*or* (‡)] claim [*or* claims] to be entitled to recover from (†) the sum of £ for damages for breach of contract [*or as the case may be*].

* Name, residence and occupation of deponent.

† The like of proposed defendant.

‡ The like of proposed plaintiff.

[*Where an assignee of a debt applies for leave, add paragraph according to Form* 8 (2).]

[(A.) *Where residence in the district relied on as ground for granting leave.*]

2A. That the proposed defendant within six months from the date hereof dwelt within the district of this court, that is to say, at in the county of , and was dwelling within the district of this court, that is to say at in the county of , when the debt or part thereof was contracted [or the cause of action wholly or in part arose].

[*Or*, (B.) *Where personal presence in the district relied on.*]

2B. That the proposed defendant was personally present in the district of this court and there contracted the debt or part thereof in respect of which an action is proposed to be brought [*or* and there entered into the contract for breach of which an action is proposed to be brought].

[*or* That the wife [*or* agent] of the proposed defendant was personally present in the district of this court, and there contracted on his behalf the debt or a part thereof in respect of which an action is proposed to be brought [*or* and there entered on his behalf into the contract for breach of which an action is proposed to be brought].]

[*Or, in case of tort.*]

2B. That the proposed defendant [*or* a servant [*or* agent] of the proposed defendant for whose acts or defaults he is alleged to be responsible] was personally present in the district of this court and there committed the alleged wrongful act [or was guilty of the alleged negligence] in respect of which an action is proposed to be brought.

[*Or*, (C.) *Where cause of action or part relied on.*]

2C. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at in the county of within the district of this court.

That the facts relied on as constituting the alleged cause of action or a part thereof are that the order for the goods for the price of which [*or* for the non-acceptance of which, *or, as the case may be*] an action is proposed to be brought was received at in the county of within the district of this court by an order [*or* a letter] addressed to me

[*or* to the proposed plaintiff] and purporting to be signed by the proposed defendant [*or* on behalf of the proposed defendant by a member of his household [*or* a person in his employ] [*or as the case may be*] and the proposed place of trial will not be less convenient to the proposed defendant than the county court of holden at , in which he might be sued without leave].

[*Or*, (D.) *Where facts stated in Order V. Rule* 13, *paragraph* 10 (*d*) *relied on.*]

2D. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at in the county of , within the district of this court.

That the facts relied on as constituting the alleged cause of action or a part thereof are that the order for the goods for the price of which [*or* for the non-acceptance of which, *or as the case may be*,] an action is proposed to be brought was given at in the county of within the district of this court by an order [*or* a letter] addressed to me [*or* to the proposed plaintiff] and purporting to be signed by the proposed defendant [*or* on behalf of the proposed defendant by a member of his household] [*or* a person in his employ] [*or as the case may be*].

That I [*or* the proposed plaintiff] have [*or* has] reason to believe that the proposed defendant admits the claim, and on the day of I [*or* the proposed plaintiff] gave [*or* caused to be given] to the proposed defendant notice in writing of my [*or* his] intention to apply for leave to sue the proposed defendant in this court, and by such notice required the proposed defendant to state whether he disputed the claim, and the proposed defendant has admitted the claim [*or* has failed to give notice that he disputes the claim].

To be added where proposed plaintiff does not make the affidavit.

3. And I further say that I am a person in the employ of the proposed plaintiff [*or as the case may be*], and that the facts herein deposed to are within my own knowledge, and that I am duly authorised by the proposed plaintiff to make this affidavit.

Order to be placed at the foot.

Having duly considered the facts above disclosed [*add, where paragraph* 2C. *is used*, and being satisfied that this court will not be less convenient to the proposed defendant than the county court of holden at] I do order that the above-named be at liberty to enter a plaint in this court against the above-named .

Registrar.

---

9 instead of 9.

Affidavit for leave to issue Default Summons against Defendant out of the District, where the amount claimed exceeds £5.

I, [*name, residence, and occupation of deponent*], make oath and say as follows :—

51 & 52 Vict. c. 43, ss. 74, 86.

1. That [*the like of proposed defendant*] is justly and truly indebted to me [*or* to (*the like of proposed plaintiff*)] in the sum of £ for the price of goods sold [*or* for money lent, *or as the case may be*].

Order 5, Rule 13 (4).

[*Where residence, &c., within six months relied on.*]

2. That the proposed defendant within six months from the date hereof dwelt [*or* carried on business] within the district of this court, that is to say, at in the county of

[*Or where cause of action or part relied on.*]

2. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at in the county of , within the district of this court.

That the facts relied on as constituting the alleged cause of action or a part thereof are, that the order for the goods for the price of which [*or as the case may be*] an action is proposed to be brought was given at in the county of , within the district of this court [*if given by post, add*, by an order [*or* a letter] addressed to me [*or* to the proposed plaintiff] and purporting to be signed by the proposed defendant [*or* on behalf of the proposed defendant by a member of his household] [*or* a person in his employ] [*or as the case may be*]].

3. And I further say that I am a person in the employ of the proposed plaintiff [*or as the case may be*], and that the facts herein deposed to are within my own knowledge, and that I am duly authorised by the proposed plaintiff to make this affidavit.

To be added where proposed plaintiff does not make the affidavit.

Order to be placed at the foot.

I do order that the above-named be at liberty to enter a plaint and issue a default summons in this court against the above-named .

Registrar.

---

10 instead of 10.

Affidavit for Leave to issue Default Summons against Defendant out of the District, where the amount claimed does not exceed £5.

I, [*name, residence, and occupation of deponent*], make oath and say as follows :— 51 & 52 Vict. c. 43, ss. 74, 86.

1. That [*the like of proposed defendant*] is justly and truly indebted to me [*or* to (*the like of proposed plaintiff*)] in the sum of £ for the price of goods sold [*or* for money lent, *or as the case may be*]. *Order* 5, *Rule* 13 (4).

[*Where residence &c. within six months relied on.*]

2. That the proposed defendant within six months from the date hereof dwelt [*or* carried on business] within the district of this court, that is to say, at in the county of .

[*Or where cause of action or part relied on.*]

2. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at in the county of , within the district of this court.

That the facts relied on as constituting the alleged cause of action or a part thereof are, that the order for the goods for the price of which [*or as the case may be*] an action is proposed to be brought was given at in the county of , within the district of this court [*if given by post, add* by an order [*or* a letter] addressed to me [*or* to the proposed plaintiff] and purporting to be signed by the proposed defendant [*or* on behalf of the proposed defendant by a member of his household] [*or* a person in his employ] [*or as the case may be*]].

3. And I further say that my [*or* the proposed plaintiff's] claim is for the price [*or* value *or* hire] of goods which, or some part of which, were sold and delivered [*or* let on hire] to the proposed defendant to be used or dealt with in the way of his trade [*or* profession *or* calling] of a [*state trade, profession, or calling*].

[*Or, if the preceding paragraph is not applicable, add in lieu thereof*

3. And I further say that the proposed defendant is not a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or a person engaged in manual labour.]

To be added where proposed plaintiff does not make the affidavit.

4. And I further say that I am a person in the employ of the proposed plaintiff [*or as the case may be*], and that the facts herein deposed to are within my own knowledge, and that I am duly authorised by the proposed plaintiff to make this affidavit.

Order to be placed at the foot.

I do order that the above-named be at liberty to enter a plaint and issue a default summons in this court against the above-named .

Registrar.

10A instead of 10B and 10C.

Affidavit for Leave to issue Default Summons out of the District against Defendant, who is a Domestic or Menial Servant, a Labourer, a Servant in Husbandry, a Journeyman, an Artificer, a Handicraftsman, a Miner, or a Person engaged in Manual Labour.

51 & 52 Vict. c. 43, ss. 74, 86.

Order 5, *Rule* 13 (10, 11).

I, (*) make oath and say as follows :—

1. That (†) is justly and truly indebted to me [*or* to (‡)] in the sum of £ for the price of goods sold [*or* for money lent, *or as the case may be*].

[(A.) *Where residence in the district relied on as ground for granting leave.*]

2A. That the proposed defendant within six months from the date hereof dwelt within the district of this court, that is to say, at in the county of , and was dwelling within the district of this court, that is to say at in the county of when the debt or part thereof was contracted.

* Name, residence and occupation of deponent.

† The like of proposed defendant.

‡ The like of proposed plaintiff.

[*Or*, (B.) *Where personal presence in the district relied on.*]

2B. That the proposed defendant was personally present in the district of this court, and there contracted the debt or a part thereof in respect of which an action is proposed to be brought.

[Or that the wife [*or* agent] of the proposed defendant was personally present in the district of this court, and there contracted on his behalf the debt or a part thereof in respect of which an action is proposed to be brought.]

[*Or*, (C.) *Where cause of action or part relied on.*]

2C. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at in the county of within the district of this court.

That the facts relied on as constituting the alleged cause of action or a part thereof are, that the order for the goods for the price of which [*or as the case may be*] an action is proposed to be brought was given at in the county of , within the district of this court by an order [*or* a letter] addressed to me [*or* to the proposed plaintiff] and purporting to be signed by the proposed defendant [*or* on behalf of the proposed defendant by a member of his household] [*or* a person in his employ] [*or as the case may be*].

And the proposed place of trial will not be less convenient to the proposed defendant than the county court of holden at in which he might be sued without leave.

[*Or*, (D.) *Where facts stated in Order V. Rule* 13, *paragraph* 10 (*d*) *relied on.*]

2D. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at in the county of within the district of this court.

That the facts relied on as constituting the alleged cause of action or a part thereof are that the order for the goods for the price of which [*or as the case may be*] an action is proposed to be brought was given at in the county of , within the district of this court by an order [*or* a letter] addressed to me [*or* to the proposed plaintiff] and purporting to be signed by the proposed defendant [*or* on behalf of the proposed defendant by a member of his household] [*or* a person in his employ] [*or as the case may be*].

That I [*or* the proposed plaintiff] have [*or* has] reason to believe that the proposed defendant admits the claim, and on the day of I [*or* the proposed plaintiff] gave [*or* caused to be given] to the proposed defendant notice in writing of my [*or* his] intention to apply for leave to sue the proposed defendant in this court, and by such notice required the proposed defendant to state whether he disputed the claim, and the proposed defendant has admitted the claim [*or* has failed to give notice that he disputes the claim].

[*Where the amount claimed does not exceed 5l. add* :—]

3. And I further say that my [*or* the proposed plaintiff's] claim is for the price [*or* value *or* hire] of goods which, or some part of which, were sold and delivered [*or* let on hire] to the proposed defendant to be used or dealt with in the way of his trade [*or* calling] of a (*)

* State trade or calling.

4. And I further say that I am a person in the employ of the proposed plaintiff [*or as the case may be*], and that the facts herein deposed to are within my own knowledge, and that I am duly authorised by the proposed plaintiff to make this affidavit.

To be added where proposed plaintiff does not make the affidavit.

Order to be placed at the foot.

Having duly considered the facts above disclosed [*add*, *where paragraph* (2C.) *is used*, and being satisfied that this court will not be less convenient to the proposed defendant than the county court of holden at] I do order that the above-named be at liberty to enter a plaint and issue a default summons in this court against the above-named .

Registrar.

11.

Affidavit of Debt for issue of Default Summons against Defendant within the District, where the amount claimed exceeds £5.

I, [*name, residence, and occupation of deponent*], make oath and say as follows :—

51 & 52 Vict. c. 43, s. 86.

1. That [*the like of the proposed defendant*] is justly and truly indebted to me [*or* to (*the like of proposed plaintiff*)] in the sum of £ for the price of goods sold [*or* for money lent, *or as the case may be*].

Order 5, *Rule* 14.

2. That I am a person in the employ of the proposed plaintiff [*or as the case may be*], and that the facts herein deposed to are within my own knowledge, and that I am duly authorised by the proposed plaintiff to make this affidavit.

To be added where proposed plaintiff does not make the affidavit.

12.

Affidavit of Debt for issue of Default Summons against Defendant within the District, where the amount claimed does not exceed £5.

51 & 52 Vict. c. 43, s. 86.

I, [*name, residence, and occupation of deponent*], make oath and say as follows :—

Order 5, *Rules* 14, 15.

1. That [*the like of proposed defendant*] is justly and truly indebted to me [*or* to (*the like of proposed plaintiff*)] in the sum of £ for the price of goods sold [*or* for money lent, *or as the case may be*].

2. That my [*or* the proposed plaintiff's] claim is for the price [*or* value *or* hire] of goods which, or some part of which, were sold or delivered [*or* let on hire] to the proposed defendant to be used or dealt with in the way of his trade [*or* profession *or* calling] of a [*state trade, profession, or calling*].

[*Or, if the preceding paragraph is not applicable, add in lieu thereof*

2. That the proposed defendant is not a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or a person engaged in manual labour.]

To be added where proposed plaintiff does not make the affidavit.

3. That I am a person in the employ of the proposed plaintiff [*or as the case may be*], and that the facts herein deposed to are within my own knowledge, and that I am duly authorised by the proposed plaintiff to make this affidavit.

13.

Agreement to give Jurisdiction to a County Court.

[*Not to be printed.*]

51 & 52 Vict. c. 43, s. 64.

Order 5, *Rule* 2.

We, [the respective solicitors of] A. B. of, &c., and C. D. of &c., do hereby agree that the county court of holden at shall have power to try an action to be brought by A. B. against C. D. for under the provisions of sect. 64 of the County Courts Act, 1888.

Witness our hands this day of 19 .

A. B. [*or* E. F., Solicitor for A. B.].
C. D. [*or* G. H., Solicitor for C. D.].

14.

Agreement not to Appeal.

[*Not to be printed.*]

51 & 52 Vict. c. 43, s. 123.

We, [the respective solicitors of] the above-named plaintiff and defendant, do hereby, under the provisions of sect. 123 of the County Courts Act, 1888, agree that the decision of his honour the judge of this court in this action shall be final.

Witness our hands this day of 19 .

Plaintiff [*or* 's solicitor].
Defendant [*or* 's solicitor].

15.

Undertaking by Next Friend of Infant to be responsible for Defendant's Costs.

Order 5, *Rule* 16.

I, the undersigned E. F. , of , being the next friend of A. B. , who is an infant, and who is desirous of entering a plaint in this court against C. D. , of, &c. , hereby undertake to be responsible for the costs of the defendant in such action, in the manner following : namely, if the said A. B. fail to pay to the defendant,

when and in such manner as the court shall order, all such costs of such action as the court shall direct him to pay to the defendant, I will forthwith pay the same to the registrar of the court.

Dated this day of 19 .

E. F.

16.

Bond for Costs where Plaintiff out of England.

[*Not to be printed.*]

Order 5, Rule 10.

Know all men by these presents that we, A. B., of , C. D., of , and E. F., of , are held and firmly bound to G. H., of , in the sum of £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns. For which payment to be well and truly made, we bind ourselves jointly and severally, and our and each of our heirs, executors, and administrators, firmly, by these presents.

This bond requires a stamp.

Sealed with our seals and dated this day of 19 .

Whereas a plaint was upon the day of entered by the above-named A. B., against the above-named G. H., in the county court of holden at :

I approve of this bond.
J. K.,
Registrar
(L.S.).

And whereas it appeared upon the entry of such plaint that the said A. B. did not reside in England or Wales: And whereas it is directed by r. 10 of Ord. V. of the County Court Rules, that in such case the summons shall not be issued until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the registrar:

And whereas the said A. B. and the above-bounden C. D. and E. F., as sureties for the said A. B., have agreed to give such security by entering into the above-written bond or obligation with the condition hereunder written, and the security has been approved of by the registrar of the said county court, as appears by his allowance in the margin hereof:

Now the condition of the above-written bond is such, that if the said A. B., the plaintiff, or any plaintiff substituted in his stead, shall discontinue, or become nonsuit in the said action, or in case the said action is referred to arbitration, and an award is made against the said A. B., or any substituted plaintiff therein, showing that he is not entitled to recover therein, or if the said G. H., the defendant, or any substituted defendant, obtain a judgment or verdict or any other judgment therein, then or in either of the said cases if the above-bounden A. B., C. D., and E. F., or either of them, their or either of their heirs, executors, or administrators, do pay or cause to be paid to the said G. H., or any substituted defendant, his executors, administrators, or assigns, his or their costs to be taxed in the said action, then this obligation shall be void and of no effect, otherwise the same shall be and remain in full force and virtue.

17.

Undertaking by Solicitor to be responsible for Costs.

[*Not to be printed.*]

[*Title of Action.*]

Order 5, Rule 10.

As solicitor for the above-named plaintiff, I hereby undertake to be personally responsible for any costs which the said plaintiff may be ordered to pay to the defendant in this action.

Dated this day of 19 .

Solicitor for the plaintiff.

---

18 instead of 18.

Memorandum to be put on all Plaint-Notes (*a*).

Order 7, Rule 1.

Bring this note when you come to the court or to the office for any purpose connected with this action. On the day of trial bring all books, &c., necessary to prove your case.

Money will be paid out of court ONLY *on production of this note, and upon your or your agent's* PERSONAL ATTENDANCE *if you reside within the district.*

If the defendant will sign a statement at the office of the registrar confessing that he owes you the money, or if you and he will sign an agreement at the registrar's office as to the amount due, and will consent to a judgment, you will only have to pay half the hearing fee.

If the debt or claim exceed five pounds you may have the action tried by a jury, on giving notice in writing at the registrar's office ten clear days (or, in actions under the Employers' Liability Act, 1880, *fifteen clear days) before the day of trial, and on payment of eight shillings for the fees of such jury.*

Summonses for witnesses and for the production of documents by them may be obtained at the office, upon payment of the proper fee.

19.

Plaint-Note (Ordinary Summons).

Order 7, Rule 1.

In the county court of , holden at

(*Seal.*)

No. of Plaint.

Between A. B., plaintiff
and
C. D., defendant.

Fees paid.

£	s.	d.

The above action was entered this day, and will be tried at on the day of at o'clock in the noon.

Dated this day of 19 .

Registrar.

The hearing fee must be paid before the action is called on.

N.B.—IF YOU OBTAIN A JUDGMENT AGAINST THE DEFENDANT, ALL MONEYS ORDERED TO BE PAID THEREUNDER MUST BE PAID INTO COURT, AND MUST NOT BE RECEIVED BY YOU. (*See sect.* 105 *of the County Courts Act*, 1888.)

(*a*) Amended, 1914.

20.

Plaint-Note (Default Summons) under sect. 86 of the County Courts Act, 1888.

In the county court of , holden at . *Order* 7, *Rule* 1.

No. of Plaint.

Between A. B., plaintiff,
and
C. D., defendant.

(*Seal.*)

Fees paid.

£	s.	d.

The above action was entered this day, under sect. 86 of the County Courts Act, 1888, and you will be entitled to judgment at the expiration of eight days from the date of the personal service of the summons, inclusive of the day of such service, unless the defendant gives notice of his intention to defend the action. Should such notice be given you will be informed by post thereof, and of the day and hour when the action will be tried.

Dated this day of 19 .

Registrar.

N.B.—If notice of defence be not given, judgment must be entered within two months from the day of service of the summons, after which period the action will be struck out. *Order* 7, *Rule* 36.

21.

Plaint-Note (Default Summons) under the Summary Procedure on Bills of Exchange Act, 1855. 18 & 19 Vict. c. 67.

In the county court of holden at .

No. of Plaint. *Order* 7, *Rule* 1.

(*Seal.*)

Between A. B., plaintiff,
and
C. D., defendant.

Fees paid.

£	s.	d.

The above action was entered this day, under the Summary Procedure on Bills of Exchange Act, 1855, and you will be entitled to judgment at the expiration of twelve days from the personal service of the summons, inclusive of the day of such service, unless the defendant obtains leave

to defend the action. Should such leave be obtained you will be informed by post thereof, and of the day and hour when the action will be tried.

Dated this day of 19 .

Registrar.

Order 7, Rule 36. *N.B.*—If leave to defend has not been obtained, judgment must be entered within two months from the day of service of the summons, after which period the action will be struck out.

[N.B.—*Plaint-notes* 19, 20, *and* 21 *to be printed on paper* 9½ *by* 8 *inches.*]

22 instead of 22.

Ordinary Summons (*a*).

(*To be used in cases for which other forms are not specially provided.*)

Order 7, Rule 2. In the county court of holden at .

No. of Plaint.
(*Seal.*)

Between A. B., plaintiff,
[*Address, description,*]
and
C. D., Defendant,
[*Address, description.*]

(*a*) [Issued by leave of the judge [or registrar].]

a.) Insert this when necessary.

Order 7, Rule 2. *Order 6, Rule 1.* You are hereby summoned to appear at a county court to be holden at on the day of 19 , at the hour of in the noon, to answer the plaintiff to a claim, the particulars of which are hereunto annexed. [*Where the amount of the claim does not exceed forty shillings, after* "claim" *strike out the words* "the particulars of which are hereunto annexed," *and state shortly the substance of the claim.*]

Registrar.

	£	*s.*	*d.*
Debt or claim			
Costs of plaint			
Solicitor's costs			
Total amount . . . . . £			

Dated this day of 19 .
To the defendant.

[*N.B.*—IF YOU OWE THE MONEY, AND WILL CONSENT TO A JUDGMENT, YOU WILL SAVE HALF THE HEARING FEE.]

See BACK.

[*To be indorsed on the summons.*]

If you confess the plaintiff's claim,—by doing which you will save half the hearing fee,—you should sign a confession, printed forms for which may be obtained at any office, before the registrar of any court, and forward it to the registrar of this court five clear days [*or*, if the claim exceeds £50, ten clear days] before the return-day, that is the day of trial. The confession, if not signed before a registrar, must be signed before a solicitor; but

(*a*) Amended, 1914.

you may deliver your confession to the registrar of this court at any time before the action is called on, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you and the plaintiff can agree as to the amount due and the mode of payment, and will before the action is called on for trial sign a memorandum of such agreement at the registrar's office of this court or before a solicitor, you will save half the hearing fee.

If you pay the debt and costs, as stated in the summons, into the registrar's office, five clear days [*or*, if the claim exceeds £50, ten clear days] before the day of trial, you will avoid further costs, *unless the Court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment;* but you may pay the same at any time before the action is called on for trial, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you admit a part only of the claim, you may, by paying into the registrar's office the amount so admitted, five clear days [*or*, if the claim exceeds £50, ten clear days] before the day of trial, together with costs proportionate to such amount, avoid further costs, unless the plaintiff proves at the trial an amount exceeding your payment *or the Court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.*

If you intend to dispute the plaintiff's claim on any of the following grounds,—

1. That the plaintiff owes you a debt which you claim should be set off against it;
2. That you were under twenty-one when the debt claimed was contracted;
3. That you were then, or are now, a married woman;
4. That the debt claimed is more than six years old;
5. That you have been discharged from the plaintiff's claim under a Bankrupt or Insolvent Act;
6. That you have already tendered to the plaintiff what is due;
7. That you have a statutory or equitable defence;
8. That you intend to rely on fraud or misrepresentation.

You must give notice thereof to the registrar five clear days [*or*, if the claim exceeds £50, ten clear days] before the day of trial; and such notice must contain the particulars prescribed by the County Court Rules; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the court. If your DEFENCE be a SET-OFF, you must, with the notice thereof, also deliver to the registrar a statement of the particulars thereof. If your DEFENCE be a TENDER, you must pay into court the amount tendered.

If the debt or claim exceeds five pounds you may have the action tried by a jury, on giving notice in writing at the registrar's office ten clear days [*or* in actions under the Employers' Liability Act, 1880, fifteen clear days] before the day of trial, and on payment of eight shillings for the fees of such jury.

Summonses for witnesses and for the production of documents by them will be issued upon application at the office of the registrar of this court, upon payment of the proper fee.

NOTE.—*An ordinary summons is to be printed in pica type, leaded, on a half sheet of cream wove foolscap, fourteen pounds or thereabouts.*

23 instead of 23.

51 & 52 Vict. c. 43, s. 86.

Default Summons under Sect. 86 of the County Courts Act, 1888 (*a*).

[*Heading and conclusion as in ordinary summons, No.* 22.]

Order 7, Rule 2.

Take notice, that unless within eight days after the personal service of this summons on you, inclusive of the day of such service, you return to the Registrar of this Court at [*place of office*] the notice given below, dated and signed by yourself or your solicitor, you will not afterwards be allowed to make any defence to the claim which the plaintiff makes on you, as per margin, the particulars of which are hereunto annexed; but the plaintiff may, without giving any further proof in support of such claim than the affidavit filed in court herein, proceed to judgment and execution. If you return such notice to the registrar within the time specified, the registrar will send you by post notice of the day upon which the action will be tried.

	£	*s.*	*d.*
Claim	..	..	..
Fee for plaint . .	..	..	..
Solicitor's costs . .	..	..	..
Total amount of debt and costs	..	..	..

See below.

[N.B.—This summons must be served personally on the defendant within a period of twelve months from the date thereof, or within such extended period as may be allowed.]

Notice of Intention to Defend.

[*To be at foot of summons.*]

No. of Plaint.

In the county court of * holden at .

A. B. *v.* C. D.

I intend to defend this action.

Dated this day of 19 .

———(*a*) Defendant.

(*a*) *Here must be signed the name of defendant or of his solicitor, and in the latter case the words "solicitor for," together with his address, must be prefixed.*

Address to which notice of trial is to be sent.

*(*To be filled in by registrar previous to issue of summons.*)

See BACK.

[*To be indorsed on the summons.*]

If you pay the debt and costs, as per margin on the other side, into the registrar's office, before the expiration of eight days from the date of service of this summons, inclusive of the day of such service, and without returning the notice of intention to defend, you will avoid further costs, *unless the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.*

If you do not return the notice of intention to defend, but allow judgment against you by default, you will *save half the hearing fee*, and the order upon such judgment will be to pay the debt and costs forthwith [*or* by instalments (*to be specified as in plaintiff's written consent*)].

If you admit a part only of the claim, you must return the notice of intention to defend within the time specified on the summons; and you may, by paying into the registrar's office at the same time the amount so admitted, together with costs proportionate to such amount, avoid further costs, unless the plaintiff proves at the trial an amount exceeding your payment, *or the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.*

[If you return the notice of intention to defend, you may pay the debt

(*a*) Amended, 1914.

art only of the claim, the amount so admitted,
ate to such amount, into the registrar's office
is called on for trial, and by so doing you may
plaintiff proves at the trial an amount exceed-
t orders you to pay any further costs properly
receiving notice of such payment.]
he plaintiff's claim on any of the following

ou a debt which you claim should be set off

y-one when the debt claimed was contracted ;
now, a married woman ;
ore than six years old ;
harged from the plaintiff's claim under a
cy Act ;
ndered to the plaintiff what is due ;
or equitable defence ;
n fraud or misrepresentation.
o the registrar five clear days [*or*, if the claim
before the day fixed for the trial ; and such
culars required by the County Court Rules;
registrar as many copies of such notice as
ditional copy for the use of the court. If your
t, with the notice thereof, also deliver to the
ticulars thereof. If your defence be a tender,
nount tendered.
s five pounds you may have the action tried
riting at the registrar's office ten (*a*) clear days
al, and on payment of eight shillings for the

id for the production of documents by them
at the office of the registrar of this court,
e.
be printed on a half sheet of salmon-tinted
reabouts), *with the "Notice of Intention to*
ated line, so that it may be torn off for trans-

24.

of Consent to accept Instalments.

ed to a Default Summons.)

the amount sued for herein will be accepted *nt of instalment*] payable on the [*state the ents will be accepted.*]
19 .

[*Plaintiff*] or
[*Plaintiff's solicitor*].

nt or defendants.]

Order 5, Rule 19.

(*a*) In actions under the Employers' Liability Act, 1880, fifteen clear days.

25 instead of 25A.

18 & 19 Vict. c. 67.

Default Summons under the Summary Procedure on Bills of Exchange Act, 1855.

[*Heading and conclusion as in ordinary summons, No.* 22.]

Order 7, *Rule* 2. *Order* 35, *Rule* 1.

Take notice, that unless within twelve days after the service of this summons on you inclusive of the day of such service you obtain leave from the judge or registrar of this court to defend this action, the plaintiff may proceed to judgment and execution.

The plaintiff's claim is for £ on a bill of exchange [*or* promissory note] the particulars whereof are hereunto annexed, and the sum of for court fees [and for solicitor's costs herein]: And if the amount thereof be paid to the registrar of this court within four days from the service hereof, no further proceedings will be taken.

Leave to defend may be obtained upon application at the office of the registrar of this court, supported by affidavit, showing that there is a defence to the action on the merits, or disclosing facts showing that it is reasonable that the defendant should be allowed to defend the action.

[N.B.—This summons must be served personally on the defendant within a period of twelve months from the date thereof, or within such extended period as may be allowed.]

NOTE.—*This summons to be printed in pica type, leaded, on a half sheet of salmon-tinted foolscap paper,* 14 *lbs. or thereabouts.*

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26 instead of 26.

Particulars in Action under the Summary Procedure on Bills of Exchange Act, 1855.

[*Heading and conclusion as in Form* 1.]

Order 6, *Rule* 1. *Order* 35 *Rule* 1.

The plaintiff claims £ for principal and interest [*or* balance of principal and interest] due to him as the payee [*or* indorsee] of a bill of exchange [*or* promissory note] of which the following is a copy.

[*Here copy bill of exchange or promissory note and all indorsements upon it.*]

And also shillings for noting and bank expenses [*if paid*].

The said bill of exchange [*or* promissory note] became due and payable within six months before the commencement of this action, that is to say, on the day of .

27.

Letter to be sent with Summons out of District.

Order 2, *Rule* 5.

No. of Plaint.

In the county court of holden at .

Sir,

I hereby request that you will serve the accompanying summons immediately, and return the enclosed copy of the same to me, properly indorsed, showing the fact, place, and mode of service. The defendant [*or* witness] is stated to reside at [*here insert the full address given in the summons*].

Your obedient servant,

Registrar.

To the high bailiff of the county court of holden at .

28.

Letter to be sent with Default Summons out of District.

In the county court of holden at .

Sir,

I hereby request that you will have the accompanying summons personally served, and return the enclosed copy of the same to me, properly indorsed, showing the fact, place, and mode of service. The defendant is stated to reside at . *Order 2, Rule 5.*

On presentation of this letter to the treasurer of your court, he is to pay you the fee of shillings.

Your obedient servant,

To the high bailiff of the county court of , holden at Registrar.

29.

Indorsement on Copy of Ordinary Summons after Service.

Served the summons of which this is a true copy [*add, if so,* with copy of affidavit annexed] on the day of 19 , at by delivering the same to the defendant personally [*or* by delivering the same at the house [*or* place of dwelling *or* place of business] of the defendant, to apparently not less than 16 years old, [*add the statement made, as* who promised to give the same to the defendant the same day, *or as the case may be*]]. *Order 2, Rule 23. Order 7, Rule 10.*

Bailiff of the county court.

[*If the summons has been served in any other manner, pursuant to the provisions of* Order VII., *the mode of service must be stated in the indorsement.*]

29A.

Indorsement on Copy of Ordinary Summons after Service in Action against Firm.

Served the summons of which this is a true copy [*add, if so,* with copy of the affidavit annexed] on the day of , *Order 7, Rules 15, 16, 16a (2).*

(*a*) by delivering the same at [*state place of service*] to C. D., , a partner in [*or* who stated that he was a partner in] the defendant firm [*or* who carries on business [*or* who stated that he carried on business] in the name or style of]:

[*or* (*b*) by delivering the same at [*state place of service*] to a person who did not give his name, but stated that he was a partner in the defendant firm [*or* that he carried on business in the name or style of]]:

[*or* (*c*) by delivering the same at , being the principal place of business of the defendant firm within the district of this court, to E. F., , the person [*or if the name is not known* to a person] who had or appeared to have the control or management of the business there].

Bailiff of the county court.

NOTE.—Added by Rules of 1917, dated February 19th, 1917.

30.

Notice of Non-Service of Ordinary or Judgment Summons.

Take notice that the summons [*or* judgment summons] in this action ha not been served, for the following reason :— *Order 2, Rules 5, 24*

Dated this day of 19 .

To the

[Plaintiff.]

31.

Notice of Doubtful Service of Ordinary Summons.

Order 2, Rules 6, 25. Take notice, that the summons in this action was left at the address given by you, and [*here insert the bailiff's return of service, as indorsed on the copy of the summons*]. You must therefore be prepared, if the defendant does not appear at the hearing, to satisfy the court that the summons has come to the knowledge of the defendant before the return day.

To the plaintiff.

---

32 instead of 32.

Indorsement on Copy of Summons served or to be served on Company registered under the Companies (Consolidation) Act, 1908.

8 Edw. 7, c. 69, s. 116. (1.) *Where bailiff ascertains that the registered office of the company is situate at the address given on the summons, or at some other address within the district.*

Order 2, Rules 23, 26 (2, 3). Served the summons of which this is a true copy [*add, if so,* with copy of affidavit annexed] on the defendant company on the day of , 19 , by leaving the same [*or* by sending the same through the post in a prepaid letter addressed to the company] at [*state address*], I having ascertained by seeing the words "Registered Office" painted or affixed to the outside of the premises [*or* by inquiry at the premises] that the registered office of the company is situate at such address.

Order 2, Rule 26 (4). (2.) *Where bailiff is unable to ascertain whether the registered office of the company is situate at the address given on the summons.*

Served the summons of which this is a true copy [*add, if so,* with copy of affidavit annexed] on the day of 19 , by leaving the same [*or* by sending the same through the post in a prepaid letter addressed to the defendant company] at the address given on the summons: but I have been unable to ascertain whether the registered office of the company is situate at such address.

Order 2, Rule 26 (5). (3.) *Where bailiff ascertains that the registered office is not situate at the address given on the summons and does not ascertain that it is situate at some other address within the district.*

Not served, I having ascertained that the registered office of the defendant company is not situate at the address given on the summons, and not having ascertained that it is situate at any other address within the district.

---

33 instead of 33.

Notice of doubtful Service of Summons on Company registered under the Companies (Consolidation) Act, 1908.

Order 2, Rule 26 (4). Take notice that the summons in this action was served at the address given by you: but the bailiff has been unable to ascertain whether the registered office of the defendant company is situate at such address.

You must therefore be prepared, if the defendant company does not appear at the hearing, to satisfy the court that the registered office of the defendant company is situate at such address.

To the plaintiff.

34.

Indorsement on Copy of Default or Judgment Summons after Service.

Order 2, Rule 23. The summons of which this is a true copy [*add, if so,* with copy of affidavit annexed] was served by personally on [*the defendant* or *the defendants*] at on the day of 19 [*add, if travelling expenses paid or tendered with judgment summons,* and the sum of was paid [*or* tendered] to the said for his expenses].

Bailiff of the county court.

34A.

Indorsement on Copy of Default Summons after Service in Action against Firm.

The summons of which this is a true copy [*add, if so,* with copy of affidavit annexed] was served by me personally on the day of at (*a*) on C. D., , a partner in [*or* who stated that he was a partner in] the defendant firm [*or* who carries on business [*or* who stated that he carried on business] in the name or style of]: [*or* (*b*) on a person who did not give his name, but stated that he was a partner in the defendant firm [*or* that he carried on business in the name or style of]]. *Order* 7, *Rules* 31, 31*a*, 31*b*.

Bailiff of the county court.

NOTE.—Added by Rules of 1917, dated February 19th, 1917.

35.

Notice of Service of Default Summons.

You are hereby informed that the defendant was on the day of 19 , served with the summons issued in this action. *Order* 2, *Rule* 31.

High bailiff.

To the plaintiff.

36.

Notice of Non-Service of Default Summons.

Take notice, that the summons in this action has not been served, for the following reason :— *Order* 2, *Rule* 31.

High bailiff.

To the plaintiff.

37.

Affidavit of Service of Default Summons.

I, A. B., of *Order* 5, *Rule* 13 (9).
[*or* G. H., a clerk [*or* servant] in the permanent and exclusive employ of] *Order* 7, *Rule* 34.
[*or* L. M., of ; the solicitor for] *Order* 40 *Rule* 4 (11).
[*or* R. S., of , solicitor, agent for L. M., of ; the solicitor for] *Order* 50, *Rule* 11 (10).
[*or* X. Y., a clerk in the employ of [R. S., of solicitor, agent for] L. M., of , solicitor for]
the above-named plaintiff make oath and say :

That I [am a clerk [*or* servant] in the permanent and exclusive employ of]
[*or* am a clerk in the employ of [R. S., of , solicitor, agent for] L. M., of , solicitor for] the above-named plaintiff, and that I am over sixteen years of age.

That I did on the day of 19 , duly serve E. F., the above-named defendant [*or* one of the above-named defendants] with a summons, a true copy whereof is hereunto annexed, marked "A.," [*add, if so,* with copy of affidavit annexed] by delivering the same personally to the said defendant at [*here insert place where service was made*].

(*Indorse the copy summons or other process thus :*—This paper, marked "A.," is the paper referred to in the annexed affidavit.)

37A.

Præcipe for Entry of Judgment on Default Summons.

Order 7, Rule 34A.

In the county court of , holden at
No. of Plaint.
Between A. B., plaintiff,
and
C. D., defendant.

I hereby request you to enter judgment by default against the defendant, payable forthwith [*or* by instalments of £ : : for every twenty-eight days, the first instalment to be paid on the day of , 19].

	£	s.	d.
Amount of claim as stated on summons			
Amount (if any) since received by plaintiff			
Balance of claim for which judgment to be entered ...			
Court fees and solicitor's costs (if any) entered on summons			
Court fees on entering judgment			
Solicitor's costs (if any) on entering judgment			
Total			

Add, if so

The defendant is a married woman [a widow], and judgment is to be entered against her in respect of a contract before coverture [during coverture *or* since the determination of the coverture].

Dated this day of 19 .

Signature.
Plaintiff [*or* plaintiff's solicitor].

To the registrar of the court.

---

37 (2).

Affidavit of Service of Summons in Action against a Firm.

Order 7, Rules 15, 16, 16a, 31, 31a, 31b.

That I did, on the day of , duly serve the summons, a true copy whereof is hereunto annexed, marked "A." [*add, if so*, with copy of affidavit annexed],

(*a*) by delivering the same personally at [*state place of service*] to C. D., , a partner in [*or* who stated that he was a partner in] the defendant firm [*or* who carries on business [*or* who stated that he carried on business] in the name or style of]:

[*or* (*b*) by delivering the same personally at [*state place of service*] to a person who did not give his name, but stated that he was a partner in the defendant firm [*or* that he carried on business in the name or style of]]:

[*or, in the case of an ordinary summons served on a person having or appearing to have the control or management of the business,*

(*c*) by delivering the same at , being the principal place of business of the defendant firm within the district of this court, to E. F., , the person [*or if the name is not known*, to a person] who had or appeared to have the control or management of the business there].

[*Indorse the copy summons thus*—This paper marked "A." is the paper referred to in the annexed affidavit.]

NOTE.—Added by Rules of 1917, dated February 19th, 1917.

38.

Notice of Day of Trial where Notice of Defence given.

Take notice, that the defendant has given notice of his intention to defend this action, and that the same will be tried at a court to be held at [*insert court-house*], on the day of 19 , at o'clock in the noon. 51 & 52 Vict. c. 43, s. 86.

The hearing fee must be paid before the case is called on.

Registrar.

To the plaintiff.

39.

Notice to Defendant of Day of Trial.

You having given notice of your intention to defend this action, take notice that the same will be tried at a court to be held at [*insert court-house*] on the day of 19 , at o'clock in the noon. 51 & 52 Vict. c. 43, s. 86.

Registrar.

To the defendant.

40.

Notice of Leave given to Defend.

The Summary Procedure on Bills of Exchange Act, 1855. 18 & 19 Vict. c. 67.

Take notice, that the defendant has obtained leave to defend this action at a court to be held at on the day of 19 , at o'clock in the noon. *Order* 35, *Rule* 3.

The defendant has obtained such leave on the ground set forth in an affidavit, a copy of which is hereunto annexed [and has paid to me the sum claimed by you, to abide the decision of the court], [*or* has given security for the amount claimed by you, and the costs of this action].

The hearing fee must be paid before the case is called on.

Registrar.

To the plaintiff.

41.

Notice to Defendant of Day on which Action is to be tried upon Leave being given to Defend.

The Summary Procedure on Bills of Exchange Act, 1855. 18 & 19 Vict. c. 67.

You having obtained leave to defend this action, take notice that the same will be tried at on the day of 19 , at o'clock in the noon. *Order* 35 *Rule*

Registrar.

To the defendant.

41A.

Letter to be sent where Action commenced in one Court is to be tried in another under Order in Council made under Section 5 of the County Courts Act, 1903.

(1.)

Ordinary Summons.

Order 22A, *Rules* 21, 22.

In the county court of holden at .

Sir,

I beg to inform you that a præcipe has been filed in this court for the commencement of an action between

A. B., plaintiff,
and
C. D., defendant,

which action will, under Order in Council made under section 5 of the County Courts Act, 1903, be tried in your court.

I have therefore to request you to fix a day for the trial, and to inform me of the day so fixed.

Your obedient servant,
Registrar.

To the registrar of the county court
of holden at .

(2.)

Default Summons.

In the county court of holden at .

Sir,

I beg to inform you that a default summons has been issued in this court in an action between

A. B., plaintiff,
and
C. D., defendant,

and that the defendant has given notice of his intention to defend the action [*or* has been let in to defend the action] which will, under Order in Council made under section 5 of the County Courts Act, 1903, be tried in your court.

I have therefore to request you to fix a day for the trial, and to inform me of the day so fixed.

Your obedient servant,
Registrar.

To the registrar of the county court
of holden at .

41B.

Notice of Day of Trial, where Action commenced in one Court is to be tried in another.

Order 22A, *Rules* 21, 22.

In the county court of holden at

Sir,

I beg to acknowledge the receipt of your letter of and to inform you that the action of *v.* will be tried at a court to be held at (*insert court-house*) on the day of 19 , at o'clock in the noon.

Your obedient servant,
Registrar.

To the registrar of the county court of holden at .

41c.

Notice to be annexed to Plaint-Note and Summons, or to Notice of Trial of Default Summons, where an Action commenced in one Court is to be tried in Another.

Take notice, that this action will be tried in the county court of holden at , and the same will be tried at a court to be held at (*insert court-house*) on the day of 19 , at o'clock in the noon. *Order 22A, Rules 21, 22.*

And further take notice, that all proceedings in this action previous to the trial are to be taken in, and payment into court before trial must be made into, the county court of holden at , and that the office of the registrar of such last-mentioned court is situate at (*state where office situate*).

Dated this day of 19 .

Registrar.

42.

Bond under the Summary Procedure on Bills of Exchange Act, 1855. 18 & 19 Vict. c. 67.

[*Not to be printed.*]

Know all men by these presents, that we, A. B., of, &c., and C. D., of, &c., and E. F., of, &c., are jointly and severally held and firmly bound to G. H., of, &c., in the sum of £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns. For which payment to be well and truly made we bind ourselves jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this day of one thousand nine hundred and .

Whereas an action has been brought in the county court of holden at , wherein the above-named G. H. is plaintiff, and the above-bounden A. B. is defendant, on a certain bill of exchange [*or* promissory note] under the Summary Procedure on Bills of Exchange Act, 1855 :

And whereas leave has been duly given, according to the provisions of the said Act, to the said A. B. to defend the said action upon his giving security to be approved by the registrar of the court aforesaid, for the amount claimed in the said action and the costs of the trial thereof :

I approve this bond. *I.K.*, Registrar (L.S.).

And whereas the said A. B. and the above-bounden C. D. and E. F., as sureties for the said A. B., have agreed to give such security by entering into the above-written bond or obligation with the condition hereunder written and the security intended to be hereby given has been approved of by the registrar of the said county court, as appears by his allowance in the margin hereof : Now the condition of the above-written bond is such, that if the above-bounden A. B., C. D., and E. F., any or either of them, shall pay unto the said G. H., his executors, administrators, or assigns, the amount for which judgment may be given in the said action, and all costs which may be awarded to the plaintiff, then this obligation shall be void and of no effect, otherwise the same shall remain in full force and virtue.

This bond requires a stamp.

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of

NOTE.—*If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.*

43.

[*Not to be printed.*]

Affidavit in support of Application for substituted Service.

Order 7, Rule 40. I, J. S. [*address and description*] make oath and say as follows :—

State facts shewing either that the summons has come to the knowledge of defendant, or that he wilfully evades service of the same. Or, that upon inquiry at his usual place of abode, or at any other place where prior to the time when the plaint was entered he might probably have been met with, he could not be found so as to be served, and that in either case there is just ground to believe that he has gone out of the realm or otherwise absconded to avoid being served.

Then state deponent's means of knowledge of the facts deposed to.

Sworn, &c.

44.

Order for substituted Service.

[*Not to be printed.*]

Order 7, Rule 40. Upon reading an affidavit of of , in the county of , sworn the day of 19 :

Order 39, Rules 14, 17. It is ordered that the delivery of a sealed copy of the summons issued in this action, together with a sealed copy of this order, to some adult inmate at the usual [*or* last known] place of residence [*or* business] of the above-named defendant C. D., situate and being at in the county of [*or* that delivery of a sealed copy of the summons issued in this action, together with a sealed copy of this order, by registered post addressed to the defendant C. D. at in the county of , being the usual [*or* last known] place of residence [*or* business] of the said defendant], shall be deemed to be good and sufficient service of the said summons on the said defendant on the day of such delivery.

[*Or*, that notice of the entry of the above-named plaint be published in the , and that the publication of such notice shall be deemed to be good and sufficient service of the summons upon the defendant C. D.]

Dated this day of 19 .

Registrar.

45.

Substituted Service.—Notice in Papers.

[*Not to be printed.*]

Order 7, Rule 40. In the county court of holden at .

To C. D. of .

Order 39, Rules 14, 17. Take notice, that a plaint has been entered and a summons issued against you in the above county court by A. B., of , for the sum of £ for goods sold and delivered [*or as the case may be*] and an order has been made that the publication of a notice of the entry of such plaint in the shall be deemed to be good and sufficient service of the summons upon you.

The summons will be heard at on the day of 19 , at o'clock in the noon, on which day you are required to appear ; and if you do not appear either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of 19 .

Registrar.

46.

51 & 52 Vict. c. 43, s. 86. 18 & 19 Vict. c. 67. **Order for leave to Proceed as if Service had been effected of Default Summons.**

[*Not to be printed.*]

Order 7, Rules 34, 39. On the application of , and on reading the affidavit of I do

order that on (*state terms of order*) the plaintiff be at liberty to proceed as if the above defendant had been personally served with the summons in this action.

Judge [*or* Registrar].

47.

Order for Service on Defendant out of England and Wales.

[*Not to be printed.*]

Upon hearing , and upon reading the affidavit of , sworn the day of , 19 . *Order 7, Rule 45.*

It is ordered that [*the intended plaintiff*] be at liberty to issue a summons against [*the intended defendant*].

And it is further ordered that the plaintiff be at liberty to serve [*if a foreigner in a foreign country insert* notice of] the said summons at [*here insert country or place within the limits of which the service is to be effected*] or elsewhere in the , and that the hearing of the said summons shall be proceeded with on the day of 19 , at in the noon.

Dated this day of 19 .

Registrar.

48.

Notice to accompany Summons to be served on Defendant out of England and Wales.

Take notice, that by leave of the judge a plaint has been entered and a summons issued against you in the above-named county court by A. B. of , a copy of which summons is hereto annexed. *Order 7, Rule 46.*

The summons will be heard at on the day of 19 , on which day you are required to appear; and if you do not appear either in person or by your solicitor at the time and place above-mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of 19 .

Registrar.

To the defendant [*naming him*].

49.

Notice of Summons in lieu of Service of Summons to Defendant out of England and Wales.

Take notice, that by leave of the judge a plaint has been entered and a summons issued against you in the above-named county court by A. B. of for [*copy in the full particulars annexed to the summons*]. *Order 7, Rule 47.*

The summons will be heard at on the day of 19 , on which day you are required to appear; and if you do not appear either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of 19 .

To the defendant [*naming him*]. Registrar.

50.

Affidavit on Application on behalf of Infant or Person of Unsound Mind for Appointment of Guardian ad litem.

[*Not to be printed.*]

I, , make oath and say as follows:— *Order 7, Rule 50 (1).*

1. The summons in this action [*or* matter] was served on the defendant, C. D., on the day of 19 .

2. The defendant is an infant [*or* a person of unsound mind not so found by inquisition].

3. E. F., of , is a fit and proper person to act as guardian *ad litem* of the above-named defendant, and has no interest in the matters in question in this action [*or* matter] adverse to that of the defendant, and the consent of the said E. F. to act as such guardian is hereto annexed.

Sworn, &c.

Form of Consent to be annexed to Affidavit.

I, E. F., of , consent to act as guardian *ad litem* of C. D. an infant [*or* a person of unsound mind not so found by inquisition], a defendant in this action [*or* matter], [and I authorise Mr. to defend this action [*or* matter]].

Signature of guardian.

51.

Order appointing Guardian ad litem.

Order 7, Rule 50 (1). On the application of , and on reading the affidavit of , filed on the day of , and the consent thereto annexed, It is ordered that E. F., of be appointed to act as guardian *ad litem* of the defendant C. D. an infant [*or* a person of unsound mind not so found by inquisition].

Dated this day of 19 .

Registrar.

52.

Notice to Plaintiff of Appointment of Guardian ad litem.

Order 7, Rule 50 (2). Take notice, that the summons in this action [*or* matter] was served on the day of , on the defendant C. D. , who is an infant [*or* a person of unsound mind not so found by inquisition] and that E. F., of , has been appointed to act as guardian *ad litem* of the said defendant.

Dated this day of 19 .

Registrar.

53.

Notice to Plaintiff where no Application made on behalf of Infant or Person of Unsound Mind for Appointment of Guardian ad litem.

Order 7, Rule 50 (3). Take notice, that the summons in this action [*or* matter] was served on the day of , on the defendant C. D., who is an infant [*or* a person of unsound mind not so found by inquisition], and that no application has been made on behalf of the said defendant for the appointment of a person to act as guardian *ad litem*.

And further take notice, that before proceeding further with this action [*or* matter] against the said defendant you must apply to the judge for an order that some proper person be assigned as guardian of the said defendant, by whom he may appear and defend.

Dated this day of 19 .

Registrar.

To the plaintiff and Mr. ,
his solicitor.

54.

Application by Plaintiff for Appointment of Guardian ad litem to Defendant who is an Infant or a Person of Unsound Mind.

[*Not to be printed.*]

Take notice, that I intend to apply to the judge at , on the day of at the hour of in the noon, for an order appointing G. H., of or some other proper person, guardian *ad litem* of the defendant C. D., , who is an infant [*or* a person of unsound mind not so found by inquisition], and that I shall apply, if necessary, for the postponement of the trial. *Order 7, Rule 50 (5).*

And further take notice, that an affidavit of , filed this day (a copy of which accompanies this notice) will be read in support of such application.

Dated this day of 19 .

Plaintiff,
[*or* Solicitor for the plaintiff].

To the defendant C. D.,
and to the father
[*or* guardian] of the said C. D.,
and to the registrar of the court.

55.

Affidavit in support of Application by Plaintiff for Appointment of Guardian ad litem to Defendant.

[*Not to be printed.*]

I, , of , make oath and say as follows :—

1. I am informed by the registrar that the summons in this action [*or* matter] was on the day of , served on the defendant C. D., who is an infant [*or* a person of unsound mind not so found by inquisition], and that no application has been made to the court on behalf of the said defendant for the appointment of a guardian *ad litem.* *Order 7, Rule 50 (5).*

2. G. H., of , is a fit and proper person to act as guardian *ad litem* of the above-named defendant and has no interest in the matters in question in this action [*or* matter] adverse to that of the said defendant.

3. The consent of the said G. H., to act as such guardian is hereto annexed.

Sworn, &c.

Form of Consent to be annexed to Affidavit.

I, G. H., of , consent to act as guardian *ad litem* of C. D., an infant [*or* a person of unsound mind not so found by inquisition], a defendant in this action [*or* matter], [and I authorise Mr. to defend this action [*or* matter]].

Signature of guardian.

56.

Order appointing Guardian ad litem on Application of Plaintiff.

Upon the application of the plaintiff for the appointment of G. H., of , or some other proper person, guardian *ad litem* of the defendant C. D., who is an infant [*or* a person of unsound mind not so found by inquisition], and upon reading the affidavit of filed on the day of , and the consent thereto annexed, *Rule 50 (6).*

And upon hearing Mr. , on behalf of the said defendant,

I do order that G. H., of , be appointed to act as guardian *ad*

litem of the said defendant , [*or, if the person proposed by the plaintiff is not appointed,*

And it appearing to me that the said G. H., is not a proper person to be appointed such guardian, and that J. L., of , is a proper person to be appointed such guardian, and is willing to act as such guardian,

I do order that the said J. L., be appointed to act as guardian *ad litem* of the said defendant] [*or, in default of any other person being willing to act,*

And it appearing to me that the said G. H., is not a proper person to be appointed such guardian, and that there is no other proper person willing to act as such guardian,

I do order that the registrar of this court be appointed to act as guardian *ad litem* of the said defendant.]

[And I do further order that the hearing of this action [*or* matter] be postponed till the day of , at o'clock in the noon.]

Dated this day of 19 .

Judge.

57.

Order appointing Guardian ad litem named by Infant Defendant appearing at the Trial.

Order 7, Rule 51 (1). Whereas now at the trial of this action [*or* matter] the defendant C. D. being an infant, appears here in court and names E. F. of , to act as his guardian, who now assents to act as such guardian;

It is ordered that the said E. F. be, and he is hereby appointed to be, guardian of the said defendant, to act on his behalf in this action [*or* matter].

58.

Order appointing Guardian ad litem of Infant Defendant appearing at the Trial and not naming a Guardian.

Order 7, Rule 51 (1). Whereas now at the trial of this action [*or* matter] the defendant C. D., being an infant, appears here in court and does not name a guardian:

It is ordered that G. H., of , [*or* the registrar of this court] be, and he is hereby appointed to be, guardian of the said defendant, to act on his behalf in this action [*or* matter].

59.

Order for Consolidation.

[*Not to be printed.*]

Order 8, Rules 1, 4 In the county court of , holden at .

Plaint No. .

Between A. B., plaintiff,
and
C. D., defendant,
and

Plaint No. .

Between A. B., plaintiff,
and
C. D., defendant.

[*Add the plaint numbers and titles of all the actions to be consolidated.*]

Whereas the above-mentioned A. B. has commenced the [two] actions above mentioned against the above-mentioned C. D. for or in respect of different causes of action which might have been joined in one action: And whereas the aggregate amount of the debts and damages claimed [*or* the

aggregate claims] in the said action does [*or* do] not exceed the jurisdiction of this court:

I do therefore order that the said actions be consolidated and tried together as one action [*add any special terms*].

[And I do further order that the plaintiff do pay and bear in any event all costs thrown away by reason of the bringing of [two] actions instead of one, and that the costs of and incident to this application and the order consequent thereon be the defendant's costs in any event.] *Order 8, Rule 4.*

And I do further order that this order shall be drawn up and served on the said A. B.

Dated this day of 19 .

Judge.

60.

Undertaking by Defendant applying for Stay of Proceedings.

[*Not to be printed.*]

In the county court of , holden at . *Order 8, Rule 2.*

Plaint No. .

Between A. B., plaintiff,
and
C. D., defendant,
and

Plaint No. .

Between E. F., plaintiff,
and
C. D., defendant.

Whereas the above-mentioned actions have been brought in this court by the said A. B. and E. F. against me, and whereas the causes of action in the said actions arise out of the same alleged breach of contract [*or* wrong *or* breach of duty].

Now, therefore, I undertake to be bound, so far as my liability in the said actions is concerned, by the judgment of the court, in either of the said actions which may be selected by the judge.

C. D.,
Defendant.

61.

Order to Stay Proceedings.

[*Not to be printed.*]

[*Heading as in Form* 60.]

Whereas the above actions have been commenced in this court against the said C. D. for or in respect of causes of action arising out of the same alleged breach of contract [*or* wrong *or* breach of duty]. *Order 8, Rules 2, 4.*

And whereas the said C. D. has filed an undertaking to be bound, so far as his liability to the plaintiffs, A. B. and E. F., in the said actions is concerned, by the decision of the court in one of such actions.

I do therefore order that all proceedings in the second-mentioned action be stayed until judgment shall have been given in the first-mentioned action.

[And I do further order that the costs of this application and of the order consequent thereon be costs in the first-mentioned action and abide the event thereof.]

And I do further order that this order shall be drawn up and served on the said A. B. and E. F.

Dated this day of 19 .

Judge.

62.

Notice to other Plaintiffs of Judgment in Selected Action.

[*Heading as in Form* 60.]

Order 8, *Rules* 5, 6. Whereas by order dated the day of it was ordered that all proceedings in the above-mentioned action of E. F. *v.* C. D. should be stayed until judgment should have been given in the above-mentioned action of A. B. *v.* C. D. :

Now I hereby give you notice that on the day of judgment was given in the said action of A. B. *v.* C. D. in favour of the defendant.

And I further give you notice that the said defendant will be entitled to his costs of the above-mentioned action of E. F. *v.* C. D. up to the date of the said order of the day of unless you, the said E. F. shall on or before the day of [*one month from date of judgment in selected action*] give to me or send to my office written notice to set down your action of E. F. *v.* C. D. for hearing.

[*Or, if judgment in selected action was given for plaintiff, proceed as follows:—*

Now I hereby give you notice that on the day of judgment was given in the said action of A. B. *v.* C. D. in favour of the plaintiff.

And I further give you notice that you will be at liberty to proceed with your action of E. F. *v.* C. D. for the purpose of ascertaining and recovering your debt [*or* damages] and costs, and that if you desire so to proceed you must, on or before the day of [*one month from date of judgment in selected action*], give to me or send to my office written notice to set down your action of E. F. *v.* C. D. for hearing.]

Dated this day of 19 .

Registrar.

To the above-named plaintiff, E. F.

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63 instead of 63.

[*Not to be printed.*]

Notice of Discontinuance of Action or Withdrawal of Part of Claim.

Order 9, *Rule* 1. Take notice that I shall not proceed further in this action, and that I hereby withdraw from the same [*add, if so,* as against the defendant C. D.]. [*or* Take Notice, that I hereby withdraw so much of my claim in this action as relates to [*specify the claim which is withdrawn, and add, if so,* as against the defendant C. D.].]

Dated this day of .

Plaintiff.

To the registrar, and to the defendant (*naming him*).

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64 instead of 64.

Judgment for Costs against Plaintiff on Discontinuance of Action or Withdrawal of Part of Claim.

Order 9, *Rule* 1. The plaintiff having by a notice in writing dated the day of wholly discontinued this action [*or* withdrawn his claim in this action for—*or* withdrawn so much of his claim in this action as relates to—*or as the case may be*] [*add, if so,* as against the defendant, C. D.], It is this day adjudged that the defendant [*or* the said defendant C. D.] do recover against the plaintiff the sum of £ for costs :

And it is ordered that the plaintiff do pay the said sum of £ to the registrar of this court forthwith [*or* on the day of] [*or* by instalments of for every days, the first instalment to be paid on the day of 19

Dated this day of .

Registrar.

65.

Admission of Claim or Part of Claim under Sect. 98 of the County Courts Act, 1888. 51 & 52 Vict. c. 43, s. 98.

I, the defendant, do hereby confess and admit that the sum of £ the amount claimed [*or* the sum of £ , being part of the amount claimed] by the plaintiff in this action is due to him from me [and that I will pay the same by instalments of].

Order 9, Rule 2.

Dated this day of 19 .

Signed in the presence of .

This paper marked A. is the statement referred to in the annexed affidavit.

66.

Affidavit of Signature to Admission under Sect. 98 of the County Courts Act, 1888. 51 & 52 Vict. c. 43, s. 98.

[*Not to be printed.*]

I, of , gentleman, solicitor of His Majesty's Supreme Court of Judicature, make oath and say, that I was present on the day of one thousand nine hundred and , and did see the above-named defendant sign the statement hereunto annexed, marked with the letter A., and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as that of the witness attesting the same is in my handwriting.

Order 9, Rule 9.

67.

Notice to Plaintiff of Admission of Claim under Sect. 98 of the County Courts Act, 1888. 51 & 52 Vict. c. 43, s. 98.

I hereby give you notice, that the defendant has filed a statement confessing and admitting the amount claimed by you [and proposing to pay the same by instalments of], and that it will not be necessary for you to attend on the day of hearing [unless you object to receive the same by instalments as proposed], but judgment will not be entered unless you pay to the registrar on or before such day the sum of being the fee for the judgment or remit the said sum to the registrar by post office order or otherwise.

68.

Notice to Plaintiff of Admission of Part of Claim under Sect. 98 of the County Courts Act, 1888. 51 & 52 Vict. c. 43, s. 98.

I hereby give you notice, that the defendant has filed a statement confessing and admitting £ , part of the amount claimed by you [and proposing to pay the same by instalments of].

If you consent to accept the amount so admitted [and consent to the mode of payment by instalments as proposed], it will not be necessary for you to attend on the day of hearing; but judgment will not be entered unless you pay to the registrar on or before such day the sum of being the fee for the judgment, or remit the said sum to the registrar by post office order, or otherwise.

If, however, you do not consent to accept the sum so admitted in satisfaction of your claim, you must be prepared to prove the same.

69.

51 & 52 Vict. c. 43, s. 99.

Consent under Sect. 99 of the County Courts Act, 1888.

Order 9, Rule 4.

We, the plaintiff and defendant, hereby agree that the amount of the debt or demand due from the defendant to the plaintiff is £ and that the same, with £ for the plaintiff's costs, and £ the court fees, amounting together to the sum of £ , shall be paid to the registrar of the court at his office, in manner following, viz.:

Dated this day of 19 .

Signatures of plaintiff and defendant.

Signed in the presence of .

This paper marked A. is the statement referred to in the annexed affidavit.

70.

51 & 52 Vict. c. 43, s. 99.

Affidavit of Signature to Consent under Sect. 99 of the County Courts Act, 1888.

[*Not to be printed.*]

Order 9, Rule 9.

I, of , gentleman, solicitor of His Majesty's Supreme Court of Judicature, make oath and say, that I was present on the day of one thousand nine hundred and , and did see the plaintiff and defendant respectively sign the statement hereunto annexed, marked with the letter A., and that the name set to the said statement is in the handwriting of the plaintiff, and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as that of the witness attesting the same is in my handwriting.

71.

Defendant's Admission.

[*Not to be printed.*]

Order 9, Rule 5.

I, the undersigned defendant, admit the truth of the allegations in the plaint, and hereby submit to the judgment of the court thereon.

(Signed) C. D., defendant.

Signed in the presence of .

This paper marked A. is the statement referred to in the annexed affidavit.

72.

Affidavit of Signature to Defendant's Admission.

[*Not to be printed.*]

Order 9, Rules 5, 9.

I, of , gentleman, a solicitor of His Majesty's Supreme Court of Judicature, make oath and say, that I was present on the day of one thousand nine hundred and , and did see the above-named defendant sign the statement hereunto annexed, marked with the letter A., and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as that of the witness attesting the same is in my handwriting.

73.

Notice of Payment into Court of whole Claim.

Take notice, that the defendant [*or* garnishee] has paid into court the full amount of your demand in this action, together with your costs therein. *Order 9, Rule 12 (2).*

[N.B.—*Upon your applying for the above amount, it will be necessary that you should produce the plaint-note given to you on the entry of the plaint.*] *Order 26, Rule 5 (2).*

74.

Notice of Payment into Court of Part of Claim.

Take notice, that the defendant [*or* garnishee] has this day paid into court the sum of £ in respect of your demand in this action [and the sum of £ in respect of fees and costs [*or* on tender]]. If you elect to accept the same in full satisfaction of the sum claimed, and the costs you have incurred, and send to the registrar of this court and to the defendant a written notice forthwith, by post, or by leaving the same at the registrar's office and at the defendant's place of abode or business, the action will be discontinued, and you will be liable to no further costs. In default of such notice [the said sum will be retained and (*a*)] the action will be proceeded with. If you do not appear at the hearing, you will be liable to pay to the defendant such costs as he may incur for appearing at the hearing, or such other sum of money as the judge may order, for expenses subsequent to the payment into court. *Order 9, Rule 12 (2).* *Order 26, Rule 5 (2).*

Dated this day of 19 .

Registrar.

To the plaintiff.

(*a*) *These words must be inserted only where the defendant denies liability or relies on the defence of tender.*

[N.B.—*Upon your applying for the above amount it will be necessary that you should produce the plaint-note given to you on the entry of the plaint.*]

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75 instead of 75.

Notice of Payment into Court with Denial of Liability.

[*Not to be printed.*]

Take notice, that the above-named defendant [*or* C. D., one of the above-named defendants] has paid into court the sum of £ in satisfaction of the whole of the plaintiff's claim herein [*or* of so much of the plaintiff's claim as relates to (*here describe the part of the claim or cause of action in respect of which the payment is made*)] and the sum of £ in respect of fees and costs [*or* on tender].

Order 9, Rule 12 (1).

And further take notice that notwithstanding such payment the defendant denies his liability.

And further take notice that the address of the said defendant is as follows (*state the address*).

Dated &c.

C. D.
the above-named defendant [*or* E. F., solicitor for the above-named defendant].

To the registrar of the court and to
A. B., the above-named plaintiff.

NOTE.—*A sealed copy of this notice must be sent to the plaintiff with Form 74 when the defendant denies liability.*

76 instead of 76.

Notice of Acceptance of Sum paid into Court or to Plaintiff.

[*Not to be printed.*]

Order 9, *Rules* 13 (1, 4), 20 (1, 4).

Take notice, that the plaintiff accepts the sum of £ paid by the defendant [*or* garnishee] into court [*or* to the plaintiff] in satisfaction of the claim in respect of which it is paid in.

Order 26, *Rule* 5 (3).

To be added where plaintiff intends to apply for costs.

But the plaintiff will apply to the judge on the day of at o'clock in the noon for an order directing the defendant [*or* garnishee] to pay the fees and costs (beyond the fees and costs paid into court) properly incurred by the plaintiff before the receipt of notice of payment into court [*or* before the receipt of the said sum of £], and in attending the court to obtain such order.

Dated this day of 19 .

Plaintiff.

To the registrar of the court
and
To the defendant [*or* garnishee].

77.

Order against Defendant or Garnishee Paying Money into Court or to Plaintiff for Payment of further Costs.

Order 9, *Rules* 13 (3), 20 (3).

Order 26, *Rule* 5 (5).

On the application of the plaintiff, it is ordered that the plaintiff do recover against the defendant [*or* garnishee] the sum of £ for costs incurred by the plaintiff for work done before the receipt of notice of payment into court herein [*or* before payment of the plaintiff's demand herein by the defendant to the plaintiff] and for the costs of attending the court to obtain this order.

And it is ordered, that the defendant [*or* garnishee] do pay the same to the registrar of this court on the day of 19 .

[*To be altered as required, if order made for payment of costs to be taxed.*]

78.

Notice of Objection to Trial of Counter-claim, under the Supreme Court of Judicature Act, 1884, Sect. 18.

[*Not to be printed.*]

47 & 48 Vict. c. 61, s. 18.

Order 10, *Rule* 3.

Take notice, that the plaintiff objects to the court giving any relief upon the counter-claim raised in this action exceeding that which the court would have jurisdiction to give independently of section eighteen of the Supreme Court of Judicature Act, 1884.

And further take notice that the plaintiff will, on the day appointed for the trial of this action, apply to the judge to adjudicate upon the original claim herein.

Plaintiff.

To the registrar of the court
and
To the defendant.

79.

Notice of Objection to Trial of Action under Sect. 62 of the County Courts Act, 1888.

[*Not to be printed.*]

51 & 52 Vict. c. 43, s. 62.

Order 10, *Rule* 6.

Take notice, that under the provisions of section 62 of the County Courts Act, 1888, I object to this action being tried in the county court; and I

propose as my sureties [*here state the full names and additions of the sureties whether householders or freeholders, and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any*] [*or*, and I propose to deposit a sum of money in lieu of giving security].

Defendant.

To the registrar of the court.

80.

Affidavit to obtain Certificate of Judge under Sect. 62 of the County Courts Act, 1888. 51 & 52 Vict. c. 43, s. 62.

[*Not to be printed.*]

I, C. D., of [*or* E. F., of , solicitor for the above-named defendant] the above-named defendant make oath and say : *Order* 10, *Rule* 6.

1. This action is brought for [*here state the cause of action*].
2. In my opinion important questions of law [*or* fact, *or* law and fact] will arise in this action.
3. The important questions are the following : [*here state the important questions*].
4. The facts which are likely to raise the questions of law above mentioned are as follows : [*here state the facts relied on*]. Add when a question of law will arise.

81.

Notice to Plaintiff of Grant of Certificate by Judge.

Take notice, that the judge has granted his certificate that important questions of law [*or* fact, *or* law and fact] are likely to arise in this action, and that, pursuant to section 62 of the County Courts Act, 1888, all proceedings in this court in this action are stayed. *Order* 10, *Rule* 6. 51 & 52 Vict. c. 43, s. 62.

Dated this day of 19 .

Registrar.

To the plaintiff.

82.

Bond where Notice of Objection to Trial given under Sect. 62 of the County Courts Act, 1888.

[*Not to be printed.*]

Know all men by these presents, that we, A. B., of, &c., and C. D., of, &c., and E. F., of, &c., are jointly and severally held and firmly bound to G. H., of, &c., in the sum of £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns. For which payment to be well and truly made we bind ourselves jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. *Order* 10, *Rule* 6. A sum sufficient to cover the amount claimed, and costs of trial in High Court, not exceeding in the whole 150*l*.

Sealed with our seals and dated this day of one thousand nine hundred and .

Whereas an action has been brought in the county court of holden at wherein the above-mentioned G. H. is plaintiff, and the above-bounden A. B. is defendant :

And whereas the said A. B. has given due notice to the said G. H. of his, the said A. B.'s, objection to the said action being tried in the said court, as provided by section 62 of the County Courts Act, 1888 : *For notice of sureties and affidavit of justification, see forms* 235 *and* 236.

And whereas it is by the same section of the said Act provided that the party who shall object shall give security, to be approved by the registrar of the court aforesaid, for the amount claimed, and the costs of trial in the High Court of Justice:

I approve of this bond. *I.K.*, (L.S.) Registrar.

And whereas the said A. B. and the above-bounden C. D. and E. F., as sureties for the said A. B., have agreed to give such security by entering into the above-written bond obligation, and the security intended to be hereby given has been approved of by the registrar of the said county court, as appears by his allowance in the margin hereof: Now the condition of the above-written bond is such that if the above-bounden A. B., C. D., and E. F., any or either of them, shall pay unto the said G. H., his executors, administrators, or assigns, the amount for which judgment may be given against the said A. B. in the High Court of Justice, and all costs which he may be ordered by that court to pay, then this obligation shall be void and of no effect, otherwise the same shall remain in full force and virtue.

This bond requires a stamp.

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of .

NOTE.—*If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.*

83.

Defendant's Statement.

[*Not to be printed.*]

Order 10. *Rule* 9.

I, the undersigned defendant C. D., disclaim all interest under the will of E. F., deceased, named in the plaintiff's particulars [*or* as heir-at-law of, *or* as next of kin, *or* one of the next of kin of E. F., deceased, named in the plaintiff's particulars].

Or, I, the undersigned defendant, state that I admit [*or* deny] [*here repeat in the language of the particulars the statements admitted or denied.*]

Or, I, the undersigned defendant, submit that upon the facts stated in the plaintiff's particulars it does not appear that there is any agreement which can be legally enforced [*or* that it appears upon the plaintiff's particulars that I am jointly liable with one E. F. who is not a party to this action, and not severally liable as by the particulars appear, *or* that it appears by the plaintiff's particulars that G. H. should have been a joint plaintiff with the said A. B. in this action, *or as the case may be*].

Or, that the plaintiff has conveyed [*or* assigned] his interest in the mortgage [*or* equity of redemption] mentioned in the plaintiff's particulars to one I. J., *or* that I have conveyed or assigned to H. L., by way of further charge for securing the sum of £ , the equity of redemption in the property sought by this action to be foreclosed.

Or, that since the dissolution of the partnership mentioned in the plaintiff's particulars the plaintiff has executed a deed under seal, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership trading [*or as the case may be*].

(Signed) C. D., defendant.

Where filed by solicitor, add—

This statement was filed by , of , solicitor for the defendant.

84.

Notice of Set-off or Counter-Claim.

Take notice, that the defendant intends at the hearing of this action to claim a set-off [*or* to set up a counter-claim] against the plaintiff's demand, the particulars of which are annexed hereto. 51 & 52 Vict. c. 43, s. 82. *Order* 10, *Rules* 10, 11.

Dated this day of 19 .

The defendant [*or* 's solicitor].

To the registrar of the court,
and to the plaintiff.

(*The registrar is to annex to this notice the particulars of set-off or counter-claim, as furnished by defendant, sealed with the seal of the court.*)

85.

Notice of Special Defence.

Take notice, that the defendant intends at the hearing of this action to give in evidence and rely upon the following ground of defence. 51 & 52 Vict. c. 43, s. 82.

Dated this day of 19 .

The defendant [*or* 's solicitor].

To the registrar of the court,
and to the plaintiff.

[*These paragraphs not to be printed.*]

That the defendant was an infant, within the age of twenty-one years when the supposed claim arose, [*or* the supposed contract or agreement was made,] and that he was born as he believes at in the county of on the day of . Infancy. *Order* 10, *Rule* 12.

That the defendant is now, [*or* was, at the time when the supposed claim arose, *or* the supposed contract or agreement was made,] the wife of of ; and that she was married to him at in the county of on the day of , and that he resides at in the county of . Coverture. *Order* 10, *Rule* 13.

That the claim for which the defendant is summoned is barred by a Statute of Limitations. [95A, April, 1895.] Statute of Limitations. *Order* 10, *Rule* 14.

That the defendant is a discharged bankrupt, and obtained his order of discharge from the [*here state court*] on the day of . Bankruptcy. *Order* 10, *Rule* 15.

That the libel [*or* slander] complained of is true in substance and in fact. Libel or slander. *Order* 10, *Rule* 16.

That section four of the Sale of Goods Act, 1893, has not been complied with. Statutory defence. *Order* 10, *Rule* 18.

Take notice, that the defendant intends at the hearing of this action to rely as a matter of defence on the statement hereunto annexed. Equitable defence. *Order* 10, *Rule* 19.

Statement.

The facts constituting the equitable defence to this action are as follows :

[*Here set out the facts as concisely as possible, and number the paragraphs as in an affidavit.*]

Tender.
Order 10, *Rule* 20.

That the defendant before action brought tendered to the plaintiff the sum of £ , and now brings the same into court.

NOTE.—*Notices of special defence, in cases commenced in the High Court and sent to the county court for trial under sections* 65 *or* 66 *of the County Courts Act*, 1888, *must have, in addition to the usual headings, the special headings provided for those cases.*

86.

Notice to be given by Defendant under the Libel Act, 1843, 6 & 7 Vict. c. 96, s. 1, in an Action for Libel or Slander remitted for Trial in a County Court.

[*Not to be printed.*]

51 & 52 Vict. c. 43, s. 66.
Order 10, *Rule* 17.
Order 33, *Rule* 4.

Being an action for libel [*or* slander] commenced in the High Court of Justice, and remitted by order of a judge [*or* master *or* district registrar] thereof under section 66 of The County Courts Act, 1888, to be tried before this court.

Take notice, that the defendant on the trial of this action will give in evidence in mitigation of damages that he made [*or* offered] an apology to the plaintiff for the libel [*or* slander] complained of before the commencement of the action [*or* as soon after the commencement of the action as he had an opportunity of so doing].

To the registrar of the court
and to the plaintiff.

87.

Notice to be given by Defendant under the Libel Act, 1843, 6 & 7 Vict. c. 96, s. 2, in an Action for Libel remitted for Trial in a County Court.

[*Not to be printed.*]

51 & 52 Vict. c. 43, s. 66.
Order 9, *Rule* 14.
Order 10, *Rule* 17.
Order 33, *Rule* 4.

Being an action for libel commenced in the High Court of Justice, and remitted by order of a judge [*or* master *or* district registrar] thereof under section 66 of The County Courts Act, 1888, to be tried before this court.

Take notice, that the defendant on the trial of this action will give in evidence and rely upon the following ground of defence ; (that is to say,)

That the libel was inserted in the newspaper called or known by the name of without actual malice and without gross negligence, and that before the commencement of the action [*or* as soon after the commencement of the action as he had an opportunity of doing so] the defendant inserted in the said newspaper [*or* offered to publish in any newspaper or periodical publication to be selected by the plaintiff] a full apology for the said libel, and that the defendant has paid into court £ by way of amends for the injury sustained by the plaintiff by the publication of the said libel.

Dated this day of 19 .

C. D., defendant.
or
E. F., defendant's solicitor.

To the registrar of the court
and to the plaintiff.

[*N.B.—If the libel was published in any periodical publication other than a newspaper, alter the notice accordingly.*]

88.

Notice by Defendant to Third Party.

[*Not to be printed.*]

To X. Y., of [*address and description*].

Take notice, that this action has been brought by the plaintiff against the defendant [*as surety for* M. N., *upon a bond conditioned for payment of* 20*l.* *and interest to the plaintiff.* *Order* 11, *Rule* 1.

The defendant claims to be entitled to contribution from you to the extent of one half of any sum which the plaintiff may recover against him, on the ground that you are his co-surety under the said bond [or, *also surety for the said* M. N., *in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of* 19].]

[Or, *as acceptor of a bill of exchange for* 50*l.*, *dated the day of* 19 , *drawn by you upon and accepted by the defendant, and payable three months after date.*

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

[Or, *to recover damages for a breach of a contract for the sale and delivery to the plaintiff of* 100 *tons of coal.*

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that if you wish to dispute the plaintiff's claim in this action as against the defendant, or your liability to the defendant, you must appear at this court on the return day of the summons in this action, a copy of which summons [*where the original action is commenced by default summons, add* with a copy of the notice of the day on which the action will be tried] is hereunto annexed.

In default of your so appearing you will be deemed to admit the validity of any judgment obtained against the defendant in this action, whether obtained by consent or otherwise, and your own liability to contribute or indemnify to the extent herein claimed.

(Signed) C. D.
Or, Defendant.
L. M.,
Solicitor for the defendant.

C. D.

89.

Notice to Defendant of non-sufficiency of Affidavit under Order XII. Rule 9.

Take notice, that the affidavit filed by you does not disclose a good defence to this action on the merits thereof, and you must therefore attend the court in pursuance of your summons [*or where the affidavit has accompanied the notice of defence required by a default summons*, upon the day mentioned in the notice sent herewith]. *Order* 12, *Rule* 9.

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90 instead of 90.

Notice to Plaintiff to deposit Sum in Court under Order XII. Rule 9.

Take notice, that the above-named defendant (whose residence or place of business is more than twenty miles distant from this court) having filed with me an affidavit disclosing a good defence to this action upon the merits, you are required within three clear days from the date hereof to deposit in court the sum of £ , to abide the event of this action. And also take notice, that in default of your making such deposit as directed the action will be struck out. *Order* 12, *Rule* 9.

91.

Notice to Defendant of Deposit under Order XII. Rule 9, having been made, or not having been made.

Order 12, Rule 9.

Take notice, that the plaintiff has this day deposited with me the sum of £ , to abide the event of this action.

Or, Take notice that the plaintiff has not deposited with me any sum of money to abide the event of this action. The action will be struck out, and you need not attend the court in pursuance of your summons.

92.

Order to adjourn Proceedings.

Order 12, Rules 12–15.

It is ordered that the trial of this action be adjourned until the day of 19 , at o'clock in the noon.

93.

Notice of Postponement of Trial.

Order 12, Rule 14.

I hereby give you notice that the trial of the above action is postponed until the day of , 19 , at o'clock in the noon, and that if you do not attend at the court-house at upon the day and at the hour above-mentioned, either in person or by your solicitor, such order will be made and proceedings taken as the judge may think fit.

Dated this day of , 19 .

Registrar.

To the plaintiff and defendant.

93A.

Order for Adjournment where Court is in doubt whether Service of Summons has come to knowledge of Defendant.

Order 7, Rule 11.

Whereas the Court is in doubt, on the evidence before it, whether the service of the summons in this action has come to the knowledge of the defendant:

It is ordered that this action be adjourned for further evidence until the day of 19 , at o'clock in the noon:

[*Add, if so ordered*—And it is further ordered that a copy of this order, with a copy of the summons and particulars in this action, be served on the defendant by the high bailiff by post, in accordance with the provisions of Order LIV. Rule 2, of the County Court Rules.]

Dated this day of 19 .

Registrar.

94.

Order Adding Defendant.

Order 14, Rules 2, 11.

It is ordered that E. F. of be added as a defendant in this action, and that the hearing of this action be adjourned to the day of 19 , at o'clock in the noon.

Dated this day of 19 .

Registrar.

95.

Notice to Parties whose Names are added as Defendants.

Take notice, that by an order of this court, dated the day of a copy of which order is hereunto annexed, together with a copy of the summons in the above action, you were ordered to be added as one of the defendants in the above action. *Order* 14, *Rules* 2, 11.

And further take notice, that the hearing of the above action has been adjourned to the day of at o'clock in the noon, and that if you do not attend at the court-house at upon the day and at the hour above-mentioned, either in person or by your solicitor, such order will be made and proceedings taken as the judge may think fit.

96.

Order for Defendant to defend on behalf of Others having the same Interest.

Upon reading the affidavit of , It is ordered that the defendant C. D. be at liberty to defend this action on behalf or for the benefit of the following persons, as well as on his own behalf; that is to say, *Order* 3, *Rule* 8.

[*State names, addresses, and occupations.*]

Dated this day of 19 .

Judge [*or* Registrar].

97.

Notice to Plaintiff that Defendant Defends on behalf of others.

Take notice, that the above-named defendant has obtained an order for leave to defend the above action on behalf of or for the benefit of [*state names of persons as in order*], as well as on his own behalf. You may, if you think fit, object at the trial to the defendant defending on behalf of all or any of such persons. The affidavit on which the above-mentioned order was made is filed at my office, and may be inspected by you. *Order* 3, *Rule* 8.

Dated this day of 19 .

Registrar.

To the above-named plaintiff.

98.

Notice to Persons on whose behalf Defendant has obtained Leave to Defend.

Take notice, that the above-named defendant has obtained an order, a copy whereof, with a copy of the summons in the above action, is served herewith, for leave to defend the above action on your behalf or for your benefit as well as on his own behalf. You may, if you think fit, object at the trial to the defendant defending on your behalf. The affidavit on which the above-m ntioned order was made is filed at my office, and may be inspected by you. *Order* 3, *Rule* 8.

Dated this day of 19 .

Registrar.

To , of .

99.

Notice of Application for Directions.

[*Not to be printed.*]

Order 15, *Rule* 2. Take notice, that I intend to apply to the judge [*or* registrar] of this court, on the day of 19 , for an order for [further] directions.

[*Here state all matters or proceedings previous to trial on which directions are required.*]

To Signature of Applicant.

100.

Order for Directions.

[*Not to be printed.*]

Order 15, *Rule* 1. Upon hearing the application of it is ordered as follows:—That

[*Here insert the directions ordered, and that either party may apply for further directions upon giving fresh notice.*]

101.

Notice of Day of Trial under Order XV.

Order 15, *Rule* 6. Take notice, that the trial of this action will take place on the day of 19 , at o'clock in the noon.

To

102 instead of 102.

Order for Delivery of Interrogatories.

In the county court of , holden at . No. of plaint.

Between A. B., plaintiff,

and

C. D., defendant.

Upon hearing

Order 16, *Rules* 2, 23. It is ordered that the on payment of the sum of into court [*or* without giving security] be at liberty within days from the date of this order to deliver to the interrogatories in writing, and that the said do answer the interrogatories by affidavit, and return such answer to me for filing and deliver a copy thereof to the within days from the service of this order [*add, where payment into court ordered*, and a copy of the receipt for payment into court] upon him, and that the costs of this application be .

Dated this day of 19 .

Registrar.

103.

Interrogatories.

[*Not to be printed.*]

Order 16, *Rule* 5. Interrogatories on behalf of the above-named [plaintiff, *or* defendant C. D.] for the examination of the above-named [defendants E. F. and G. H. *or* plaintiff].

1. Did not, &c.
2. Has not, &c.

&c. &c. &c.

[*The defendant E. F. is required to answer the interrogatories numbered* .]

[*The defendant G. H. is required to answer the interrogatories numbered* .]

104.

Answer to Interrogatories.

[*Not to be printed.*]

The answer of the above-named defendant E. F. to the interrogatories of his examination by the above-named plaintiff. *Order* 16, *Rule* 8.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows:—

105.

Order for Oral Examination for insufficient Answer to Interrogatories.

Upon hearing

It is ordered that the plaintiff [*or* defendant] do attend before the registrar of this court at on the day of 19 , at o'clock in the noon, to be by him orally examined as to the points mentioned in the paper-writing hereunto annexed, the plaintiff's [*or* defendant's] answers to the interrogatories delivered to him in this action being insufficient in such points. *Order* 16, *Rule* 9.

And it is further ordered that the costs of the examination, and of the proceedings herein, to be taxed by the registrar, shall be paid by [*or* shall abide the event, *or as otherwise ordered*].

Dated this day of 19 .

106 instead of 106.

Order for Affidavit as to Documents.

In the county court of holden at . No of plaint.

Between A. B., plaintiff,

and

C. D., defendant.

Upon hearing

It is ordered that on payment by the of the sum of into court [*or* without security given by the] the do within days from the service of this order [*add, where payment into court ordered*, and a copy of the receipt for payment into court] upon him, answer on affidavit stating what documents are or have been in possession or power relating to the matters in question in this action, and return such affidavit to me for filing and deliver a copy thereof to the and that the costs of this application be . *Order* 16, *Rules* 10, 23.

Dated this day of 19 .

Registrar.

107.

Affidavit as to Documents.

[*Not to be printed.*]

I, the above-named defendant, C. D., make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto. *Order* 16, *Rule* 11.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this action set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitor, or in the possession, custody, or power of any other person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

108.

Order to produce Documents for Inspection.

Order 16, *Rules* 12, 16. Upon hearing

It is ordered that the do, at all seasonable times, on reasonable notice, produce at [*insert place of inspection*], situate at the following documents, namely , and that the be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and abstracts therefrom, at expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be

Dated this day of 19 .

109.

Notice to produce Documents for Inspection.

[*Not to be printed.*]

Order 16, *Rules* 13, 14. Take notice, that the plaintiff [*or* defendant] requires you to produce for his inspection the following documents referred to in your [*particulars of claim*, or *of defence*, or *affidavit dated the day of*].

Describe documents required.

110.

Notice to Inspect Documents.

[*Not to be printed.*]

Order 16, *Rule* 15. Take notice, that you can inspect the documents mentioned in your notice of the day of [*except the deed numbered in that notice*] at [*insert place of inspection*] on next, the inst., between the hours of and o'clock.

Or, that the plaintiff [*or* defendant] objects to giving you inspection of the documents mentioned in your notice of the day of , on the ground that [*state the ground*] :—

111.

Notice to Admit and Inspect.

[*Not to be printed.*]

Take notice, that the plaintiff [*or* defendant] in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or* plaintiff], or his solicitor, at on the day of 19 , between the hours of and ; and the defendant [*or* plaintiff] is hereby required within forty-eight hours from the last-mentioned hour to admit, saving all just exceptions to the admissibility of all such documents as evidence in this action, that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies, and that such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively. *Order* 18, *Rules* 6, 7.

Dated this day of 19 .

G. H., of , Solicitor for Plaintiff [*or* Defendant].

To E. F., Solicitor for Defendant [*or* Plaintiff].

ORIGINALS.

Description of Document.	Dates.
Deed of covenant between A. B. of the first part, and C. D. of the second part	January 1, 1898.
Letter—Defendant to Plaintiff	March 1, 1901.

COPIES.

Description of Document.	Dates.	Original or Duplicate served, sent, or delivered, when, how and by whom.
Register of baptism of A. B. in the parish of X.	January 1, 1878.	———
Letter—Plaintiff to Defendant	February 1, 1901.	Sent by General Post. Feb. 1st, 1901.

112.

Notice to Produce (General Form).

[*Not to be printed.*]

Take notice, that you are hereby required to produce and show to the court on the trial of this action, all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this , and particularly [*specify them*]. *Order* 18, *Rule* 7.

Dated this day of 19 .

(Signed)
of
Solicitor for the above-named.

To the above-named.

113.

Notice to admit Facts.

[*Not to be printed.*]

Order 9, Rule 8. Take notice, that the plaintiff [*or* defendant] in this action requires the defendant [*or* plaintiff] to admit, for the purposes of this action only, the several facts respectively hereunder specified; and the defendant [*or* plaintiff] is hereby required, not later than three clear days before the return-day, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this action.

Dated, &c.

G. D., solicitor for the plaintiff [*or* defendant].

To E. F., solicitor for the defendant [*or* plaintiff].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1890.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1896.
5. That Julius Smith never was married.

114.

Admission of Facts, pursuant to Notice.

[*Not to be printed.*]

Order 9, Rule 8. The defendant [*or* plaintiff] in this action, for the purposes of this action only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this action.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [*or* plaintiff] on any other occasion, or by any one other than the plaintiff [*or* defendant *or* party requiring the admission].

Dated, &c.

E. F., solicitor for the defendant [*or* plaintiff].

To G. H., solicitor for the plaintiff [*or* defendant].

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1890.	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith is dead.	4. But not that he died on the 1st of April, 1896.
5. That Julius Smith never was married.	5.

115.

Notice to Registrar of Change in Plaintiff's Title before Judgment.

[*Not to be printed.*]

Take notice, that , the plaintiff in the above action, died upon the day of , 19 , and that his last will and testament was duly proved by me in the principal [*or* district] probate registry of the Probate, Divorce, and Admiralty Division of the High Court of Justice [*or* that letters of administration to his personal estate and effects were duly granted to me] upon the day of 19 , and that I am the executor of his said will [*or* that I am the administrator of the personal estate and effects of the said deceased]. *Order* 17, *Rule* 2. By executor or administrator.

[*Or*, that the above-named , by an assignment dated the day of , duly assigned all his interest in the subject-matter of the above action to me, the undersigned.] By assignee.

And further take notice, that I am desirous of being substituted as plaintiff in the above action against the above-named defendant in the place of the said [*or* added as a plaintiff with the said plaintiff in the above action].

Dated this day of 19 .

(*Signature*).

To the registrar of the court, and to the above-named defendant.

116.

Notice to Registrar of Change in Plaintiff's Title before Judgment, where such Change affects more Actions than one.

Take notice, that , the plaintiff in the several actions mentioned in the schedule hereto, died upon the day of , and that his last will and testament was duly proved by me in the principal [*or* district] probate registry of the Probate, Divorce and Admiralty Division of the High Court of Justice, [*or* that letters of administration to his personal estate and effects were duly granted to me] upon the day of , 19 , and that I am the executor of his said will [*or* the administrator of the personal estate and effects of the said deceased]. *Order* 17, *Rule* 2 (2).

[*Or*, that , the plaintiff in the several actions mentioned in the schedule hereto, by an assignment dated the day of , duly assigned all his interest in the subject-matter of the said several actions to me, the undersigned].

And, further take notice, that I am desirous of being substituted as plaintiff in the said actions against the several defendants in the said actions in the place of the said [*or* added as a plaintiff with the said plaintiff in the said actions].

Dated this day of 19 .

(*Signature*).

To the registrar of the court, and to the several defendants named in the schedule hereto.

The Schedule above referred to.

Letter and Number.	Plaintiff.	Defendant.

117.

Notice to Defendant of Change in Plaintiff's Title before Judgment.

Order 77, Rule 2.

Take notice, that of , as executor of the last will and testament of deceased [*or* as administrator of the personal estate and effects of deceased] [*or* as assignee under an assignment dated the day of] has this day filed an affidavit, together with a notice, a copy of which notice is hereunto annexed, stating that he is desirous of being substituted as plaintiff in the above action against you in the place of [*or* added as a plaintiff with the above-named plaintiff in the above action against you].

And further take notice, that unless you appear at the hearing of this action upon the day of 19 , at o'clock in the noon, to show cause against the same, the said will be substituted for [*or* made a joint plaintiff with] the above-named plaintiff.

Order 17, Rule 3.

[N.B.—*Similar notices upon change in defendant's title before judgment may be prepared from this and the last preceding forms.*]

118.

Order to continue Proceedings against a new Party.

[*Not to be printed.*]

Order 17, Rules 4, 5.

Upon hearing who alleged [*state circumstances rendering the order necessary*],

It is ordered that the proceedings in this action be carried on between the plaintiffs [*name the continuing plaintiffs*] and the defendants [*name the continuing defendants*] and X. Y. [*the person upon whom the interest or liability has devolved*].

And it is ordered that notice of this order be served on the said X. Y., and that the further proceedings in this action be adjourned until the day of , 19 .

Dated this day of 19 .

Judge [*or* Registrar].

119.

Notice to Party against whom Proceedings Ordered to be Continued.

Order 17, Rule 5.

I hereby give you notice, that by an order of this court dated the day of , 19 , a copy of which order is hereunto annexed, together with a copy of the summons in this action, it was ordered that the proceedings in this action should be carried on between the plaintiffs (*name the continuing plaintiffs*) and the defendants (*name the continuing defendants*) and you X. Y. as (*state the character in which the new party is added*).

And further take notice, that the further proceedings in this action have been adjourned to the day of 19 , at o'clock in the noon: and that if you do not attend at (*the court-house*) at upon the day and at the hour above mentioned, either in person or by your solicitor, such order will be made or proceedings taken as the judge may think fit.

And further take notice, that you may at or before the hearing apply to the judge or registrar to discharge the said order of the day of 19 .

Dated this day of , 19

Registrar.

120.

Order for Transfer.

It is ordered that the above action be transferred to the county court of holden at .
To the plaintiff and defendant.

51 & 52 Vict. c. 43, ss. 42, 85.
Order 8, *Rule* 9.

121.

Notice by Court, to which Action has been Transferred, of Day of Trial.

Take notice, that the above action has been transferred to this court, and that it is appointed to be tried in this court on the day of 19 at the hour of in the noon.
To the plaintiff and defendant.

51 & 52 Vict. c. 43, ss. 42, 85.
Order 8, *Rule* 9.

122.

Consent that Court shall decide in an Action where Title has incidentally come in Question.

[*Not to be printed.*]

We, [the respective solicitors of] the plaintiff and defendant, do hereby under the provisions of section 61 of the County Courts Act, 1888, consent that this action shall be decided by his honour the judge of this court.
Witness our hands, this day of 19 .
Plaintiff [*or* 's solicitor].
Defendant [*or* 's solicitor].

51 & 52 Vict. c. 43, s. 61.

---

123 instead of 123.

Summons to Witness to give Evidence.

You are hereby required to attend at [*the court-house*] on the day of 19 , at the hour of in the noon, and so from day to day, until the above action is tried, to give evidence in the above action on behalf of the [plaintiff *or* defendant, *as the case may be*].

51 & 52 Vict. c. 43, ss. 110, 111.
Order 18, *Rule* 8.

In default of your attendance you will, if at the time of the service of this summons on you payment or tender of your expenses is made on the prescribed scale of allowances, be liable to a fine of 10*l.* under section 111 of the County Courts Act, 1888, payment of which fine may, under section 167 of the Act, be enforced, upon the order of the judge, in such manner as payment of a sum adjudged to be paid on summary conviction may be enforced under the Summary Jurisdiction Acts, that is to say, by distress and sale of your goods, or, in default or in lieu of distress, by imprisonment.
Dated this day of 19 .

Registrar.

To

124 instead of 124.

Summons to Witness to produce Documents.

51 & 52 Vict. c. 43, ss. 110, 111.
Order 18, *Rule* 3.

You are hereby required to attend at [*the court-house*] on the day of 19 , at the hour of in the noon, and so from day to day, until the above action is tried, to give evidence on behalf of , and also to bring with you and produce the several documents hereunder specified [and all other books, papers, writings, and other documents relating to the above action, which may be in your custody, possession, or power].

In default of your attendance you will, if at the time of the service of this summons on you payment or tender of your expenses is made on the prescribed scale of allowances, be liable to a fine of 10*l.* under section 111 of the County Courts Act, 1888, payment of which fine may, under section 167 of the Act, be enforced, upon order of the judge, in such manner as payment of a sum adjudged to be paid on summary conviction may be enforced under the Summary Jurisdiction Acts, that is to say, by distress and sale of your goods, or, in default or in lieu of distress, by imprisonment.

Dated this day of 19 .

Registrar.

To

[*Here insert list of documents required to be produced.*]

124A.

Indorsement on Copy of Summons to Witness after Service.

Order 18, *Rule* 3.

Served the summons of which this is a true copy on the day of 19 , at , by delivering the same to the within named personally, [*or* by delivering the same at the house *or* place of dwelling *or* place of business] of the within named , to apparently not less than 16 years old [*add the statement made, as* who promisedIto give the same to the said the same day, *or as the case may be*].

£ : : paid [*or* tendered] for expenses.

Bailiff of the county court.

[*If the summons has been served in any other manner, pursuant to the provisions of Order XVIII. Rule* 4, *the mode of service must be stated in the indorsement.*]

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125 instead of 125.

Affidavit of Service of Summons on Witness.

Order 18, *Rule* 3 (5).
Order 19, *Rule* 12

I, of , the above-named plaintiff [*or* defendant] [*or* I, of , a clerk [*or* servant] in the permanent and exclusive employ of the above-named plaintiff [*or* defendant] [*or* I, of , solicitor for the above-named plaintiff [*or* defendant] [*or* a solicitor acting as agent for Mr. , of , the solicitor for the above-named plaintiff [*or* defendant], [*or* I , of , a clerk [*or* person] in the employ of Mr. , of , the solicitor for the above-named plaintiff [*or* defendant] [*or* a clerk] [*or*

person] in the employ of Mr. , of , a solicitor acting as agent for Mr. , of , the solicitor for the above-named plaintiff [*or* defendant] make oath and say as follows :—

1. [*Where service effected by a clerk or servant*] That I am a clerk [*or* servant] in the permanent and exclusive employ of the above-named plaintiff [*or* defendant] [*or* a clerk] [*or* person] in the employ of Mr. , of , the solicitor for the above-named plaintiff [*or* defendant] [*or* a clerk] [*or* person] in the employ of Mr. , of , a solicitor acting as agent for Mr. , of , the solicitor for the above-named plaintiff [*or* defendant].

2. That I am over 16 years of age.

3. That I did on the day of 19 , duly serve the witness E. F. of with a summons, a true copy of which is hereunto annexed, marked "A," by delivering the same personally to the said witness E. F., at in the county of [*or as the case may be*].

4. That I paid [*or* tendered] to the said witness at the same time and place, the sum of for his expenses.

Sworn at, &c.

(*Indorse the copy summons thus* :—This paper, marked "A," is the paper referred to in the annexed affidavit.)

126.

Order under Section 111 of the County Courts Act, 1888, fining Witness for Non-attendance, &c.

Whereas of was duly summoned to appear as a witness in this action at a court this day holden, and at the time of being so summoned payment [*or* a tender of payment] of his expenses was made according to the scale of allowances prescribed by the County Court Rules : 51 & 52 Vict. c. 43, s. 111. *Order* 52, *Rule* 7.

And whereas he has refused [*or* neglected] without sufficient cause shown, to appear at the court [*or* to produce] (*here describe what he was required by the summons and bound to produce*) [*or* has refused to be sworn *or* to give evidence] :

[* *Or*, Whereas being this day present in court, and being required by the court to give evidence in this action, refused to be sworn or to make affirmation [*or* after being duly sworn [*or* after having made affirmation] refused to give evidence [*or* to produce] (*here describe what he was required and bound to produce*)] :

It is hereby ordered that the said do forfeit and pay a fine of £ for such neglect [*or* refusal] :

And it is ordered that the said do pay the said sum of £ to the registrar of this court on this day of [*or* by instalments of for every days, the first instalment to be paid on the day of] :

And in default of payment of the said sum according to this order, payment thereof may be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said A. B. under warrant of execution, or, in default or in lieu of distress, by imprisonment of the said A. B. for any period not exceeding the period which, under the Summary Jurisdiction Acts, may be imposed in

* Where witness is present in court, commence form here.

respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction.

Given under the seal of the court this day of

By the court,

Registrar.

[*Or*, It is ordered that the said do on or before the day of , produce and leave with the registrar of this court at his office, situate at , the following (*describe what he was required and bound to produce*)].

Given under the seal of the court this day of 19 .

By the court,

Registrar.

127.

Warrant of Execution against Goods of Witness for Fine.

51 & 52 Vict. c. 43, ss. 111, 167.

Order 52, *Rule* 7.

Whereas was duly summoned to appear as a witness in this action at a court holden at on the day of 19 , and at the time of being so summoned payment [*or* a tender of payment] of his expenses was made according to the scale of allowances prescribed by the County Court Rules;

And whereas he refused [*or* neglected], without sufficient cause shown, to appear at such court [*or* to produce] [*here describe what he was required and bound to produce*] [*or* refused to be sworn *or* to give evidence]:

[*Or*, Whereas being present in court on the day of 19 and being required by the court to give evidence, refused to be sworn or to make affirmation [*or* after being duly sworn [*or* after having made affirmation] refused to give evidence [*or* to produce (*here describe what he was required and bound to produce*)]:

And whereas it was thereupon ordered by the court that the said should forfeit and pay a fine of £ for such neglect [*or* refusal]; and it was ordered that the said should pay the said sum of £ to the registrar of this court on the day of [*or* by instalments of for every days, the first instalment to be paid on the day of]:

And that in default of payment of the said fine according to the said order, payment thereof might be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said under warrant of execution:

And whereas the said fine has not been paid according to the said order, and the judge of this court has ordered it to be levied as hereinafter mentioned:

These are, therefore, to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said , wherever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds) the sum stated at the foot of this warrant, being the amount remaining unpaid under the said order, together with the costs of this execution: And also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money belonging to the said which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution

thereof; and if no sufficient distress can be found, to certify the same to the registrar of this court.

Given under the seal of the court, this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court, and others the bailiffs thereof.

	£	s.	d.
Amount of fine ordered to be paid			
Paid			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon]			

Notice.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

[*For Return of Insufficient Distress, see Form* 358.]

128.

Commitment in Default of Distress for Fine on Witness under Section 111.

In the county court of holden at .

Between A. B., plaintiff,

and

C. D., defendant.

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and

51 & 52 Vict. c. 43, ss. 111 167.

To the governor of [*prison used by the court*].

Order 52, *Rule* 7.

Whereas was duly summoned to appear as a witness in this action at a court holden at on the day of 19 , and at the time of being so summoned payment [*or* a tender of payment] of his expenses was made according to the scale of allowances prescribed by the County Court Rules:

And whereas he refused [*or* neglected], without sufficient cause shown, to appear at such court [*or* to produce] [*here describe what he was required and bound to produce*] [*or* refused to be sworn *or* to give evidence]:

[*Or*, Whereas being present in court on the day of 19 , and being required by the court to give evidence, refused to be sworn or to make affirmation [*or* after being duly sworn] [*or* after having made affirmation] refused to give evidence, [*or* to produce (*here describe what he was required and bound to produce*)]:

And whereas it was thereupon ordered by the court that the said should forfeit and pay a fine of for such neglect [*or* refusal]: and it was ordered that the said should pay the said sum of £ to the registrar of the court on the day of [*or* by instalments of for every days, the first instalment to be paid on the day of].

And that in default of payment of the said fine according to the said order payment thereof might be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said under warrant of execution, or, in default or in lieu of distress, by imprisonment of the said for any period not exceeding the period which, under the Summary Jurisdiction Acts, may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction :*

And whereas default having been made, &c. [*follow Form* 359 *from the asterisk*(*) *to the end*].

129.

Commitment in Lieu of Distress for Fine on Witness under Sect. 111.

[*Follow Form* 128 *down to the asterisk*(*). *Then follow Form* 360 *from the asterisk*(*) *to the end.*]

130.

Affidavit to obtain Order to bring up Prisoner to give Evidence.

[*Not to be printed.*]

51 & 52 Vict. c. 43, s. 112.

I, of the plaintiff [*or* defendant], make oath and say :

1. That the above action is appointed to be tried at this court on the day of 19 , and that E. F., now a prisoner confined in [*state the prison*], will be a material witness for me upon the said trial.

2. That I am advised and verily believe, that I cannot safely proceed to the trial of the said action without the testimony of the said E. F.

And I hereby make application to his honour the judge of this court for an order under section 112 of the County Courts Act, 1888, that the said E. F. may be brought before this court to be examined as a witness on my behalf.

131.

Order to bring up Prisoner to give Evidence.

(*Seal.*)

To [*officer in whose custody the prisoner is*].

51 & 52 Vict. c. 43, s. 112.

Whereas the plaintiff [*or* defendant] has made application to me, by affidavit, for an order under section 112 of the County Courts Act, 1888, to bring up before this court E. F., who, it is said, is detained as a prisoner in your custody, to be examined as a witness on behalf of the said plaintiff [*or* defendant] in a certain action depending in this court between the said A. B., plaintiff, and C. D., defendant :

You are therefore, by this order issued pursuant to the said section, required upon tender made to you of a reasonable sum for the conveyance and maintenance of a proper officer or officers, and of the said E. F., in going to, remaining at, and returning from this court, to bring the said E. F. before this court at [*court-house*] on the day of 19 , at o'clock in the noon, then and there to be examined as a witness

on behalf of the said plaintiff [*or* defendant]; and immediately after the said E. F. shall have given his testimony before this court, you are required safely to conduct him the said E. F. to the prison from which he shall have been brought under this order.

Dated this day of 19 .

Judge.

132.

Order for Examination of Witnesses before Trial.

Upon hearing and upon reading the affidavit of filed the day of 19 , and . *Order* 18, *Rules* 18–20, 28.

It is ordered that a witness on behalf of the be examined *viva voce* (on oath or affirmation) before [*here insert name of person appointed*], the plaintiff [*or* defendant] or his solicitor or the agent of such solicitor giving to the defendant [*or* plaintiff] or his solicitor or the agent of such solicitor notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed with the registrar of this court at his office situate at , and that an office copy thereof may be read and given in evidence on the trial of this action, saving all just exceptions, on proof to the satisfaction of the judge that the deponent is dead, or out of England and Wales, or unable from sickness or infirmity to attend the trial, and that the costs of this application be *Order* 18, *Rule* 30.

133.

Notice by Registrar rejecting Affidavit.

I hereby give you notice that I reject the affidavit of of sworn the day of , and refuse to file the same, and my reasons for rejecting such affidavit and refusing to file same are as follows:— *Order* 19, *Rule* 14.

Dated this day of , 19 .

Registrar.

To the above-named plaintiff [*or* defendant].

134.

Order of Reference.

By the consent of the plaintiff and defendant, it is ordered that all matters in difference in this action [*and all other matters within the jurisdiction of this court in difference between the said parties*] be referred to of whose award, to be made or given on or before the day of 19 , shall be entered as the judgment in this action: 51 & 52 Vict. c. 43, s. 104. *Order* 30, *Rule* 1.

And it is further ordered that the time for making or giving such award may be from time to time enlarged by the court, in its discretion, for such time as it shall, by indorsement to be made on this order, direct; and that the said award, when made or given, may be referred back again to the said arbitrator at the like discretion of the court without the further consent of the said parties, and in case either of the said parties shall neglect or refuse to attend any appointment to be made by the said arbitrator for proceeding under this

order, after two days' notice thereof in writing shall have been given to him by serving the same personally or by leaving it at his usual or last known place of abode, the said arbitrator shall be at liberty to proceed *ex parte* on the matters of the said reference and his award shall be as valid as if both the said parties had duly attended before him.

And it is further ordered that the costs of the said reference and award shall be in the discretion of the arbitrator, and that the costs of the action shall abide the event [*or* be reserved] :

And it is lastly ordered, that the submission to arbitration shall not be revocable by either party.

134A.

Precedent for Award on Reference.

[*Not to be printed.*]

In the county court of holden at

No. of plaint.

Between A. B., plaintiff,
and
C. D., defendant.

Order 20, *Rule* 1. Whereas by an order made on the day of 19 , it was by consent ordered that all matters in difference in this action should be referred to me , whose award, to be made on or before the day of 19 , should be entered as the judgment in the action ; and it was further ordered that the costs of the said reference and award should be in my discretion, and that the costs of the action should abide the event :

Now having heard and considered the allegations and the evidence of the parties, I do hereby make my award concerning the matters referred to me as follows :

I award and find that the plaintiff is entitled to recover in this action from the defendant the sum of £ [*or* that the plaintiff is not entitled to recover anything in this action from the defendant] ;

And I further award and direct that the defendant [*or* plaintiff] do pay the plaintiff's [*or* defendant's] costs of the reference, to be taxed in case of dispute, and the costs of this my award [which I assess at the sum of £] :

And in case the plaintiff [*or* defendant] shall pay such last mentioned costs, then I award and direct that the defendant [*or* plaintiff] do repay to the plaintiff [*or* defendant] the amount which he shall so pay :

[*Or such other order as the arbitrator shall make as to costs.*]

Or, where a counter-claim has been made,

I award and find that the plaintiff is entitled to recover in this action from the defendant the sum of £ , and that the defendant is entitled to recover on his counter-claim from the plaintiff the sum of £ : *or* that the plaintiff is entitled to recover in this action from the defendant the sum of £ , and that the defendant is not entitled to recover anything on his counter-claim from the plaintiff [*or as the case may be*].

And I further award and direct that the plaintiff and defendant do each bear his own costs of the reference, and do each pay one half of the costs of this my award [which I assess at the sum of £] :

And that if either party shall in the first instance pay the whole or more than one half of the costs of the award, the other party shall repay him so much of the amount so paid as shall exceed one half of the said costs [*or such other order as the arbitrator shall make as to costs*].

[*If the award directs that anything be done or omitted by the plaintiff or defendant, the directions given should be concisely stated immediately before that part of the award which deals with the costs.*]

Dated this day of 19 .

Arbitrator.

135.

[*Not to be printed.*]

The county court of holden at .

List of Gentlemen who have consented to act as Assessors in this Court under Sect. 103 of the County Courts Act, 1888.

Order 21, *Rules* 1, 3.

No.	Name.	Address.	Description.
1	A. B.		
2	C. D.		
3	E. F.		
4	G. H.		
5	I. K.		
6	L. M.		
7	N. O.		
8	P. Q.		
9	R. S.		
10	T. U.		
11	V. W.		
12	X. Y.		

136.

Application for Assessors.

[*Not to be printed.*]

No. of plaint.

In the county court of holden at .

Between A. B., plaintiff,

and

C. D., defendant.

The plaintiff [*or* defendant] applies to have this action tried with an assessor [*or* assessors], and he submits to his honour the judge the name [*or* names] of No. 1, A. B., merchant [*or, as the case may be*] [*or* No. 4, G. H. *and* No. 9, R. S.], as a fit person [*or* fit persons] to be summoned to act as assessor [*or* assessors]. *Order* 21, *Rule* 7.

* The defendant [*or* plaintiff] consents to the appointment of the assessor *or* assessors] herein named, as appears by his consent thereto filed herewith.

Dated this day of 19 .

Plaintiff [*or* defendant].

Memorandum of Consent by Judge.

I consent to try this action with the assistance of an assessor [*or* assessors] [*or, as the case may be*].

Judge.

When the application is in an action under the Employers' Liability Act, 1880, *substitute as follows for the first paragraph:—*

The plaintiff [*or* defendant] applies to have an assessor [*or* assessors] appointed to assist the court in ascertaining the amount of compensation to be awarded to the plaintiff, should the judgment be in his favour; and he submits the names of the following persons who have expressed their willingness in writing to act as assessors, should they be appointed. *Order* 44, *Rule* 6.

(*Here set out the names, addresses, and occupations of the persons above referred to.*)

* Where the other party does not consent, or where the other party has filed an application for the appointment of assessors, strike this paragraph out.

137.

Summons to Assessor.

In the county court of holden at

No.

[*Title of Action.*]

(*Seal.*)

The day of 19 .

51 & 52 Vict. c. 43, s. 103.

Sir,

You are hereby summoned to attend and serve as an assessor in this court on the day of 19 , at the hour of in the noon, to assist the judge in the hearing and determination of this action under section 103 of the County Courts Act, 1888 [*or as the case may be*].

Order 21, *Rules* 8, 10.

Order 44, *Rules* 10, 11.

I am, sir,

Your obedient servant,

Registrar.

To , of .

138.

Notice to Opposite Party of Names of Assessors suggested by Party applying that Action should be tried with their Assistance.

Order 21, *Rule* 9.

Take notice that the plaintiff [*or* defendant] having applied to his honour the judge for the appointment of assessors to assist him in trying this action, his honour the judge is willing that it should be so tried.

Below are the names of the assessors the plaintiff [*or* defendant] desires should be summoned.

Should you have any objection to their acting as assessors, you must forthwith send me in writing your reasons for your objection, and must mention the names of any other of the assessors of this court whom you are willing should be summoned.

Should you have no objection to the assessors named being summoned, you must forthwith sign this notice and return it to me.

No. 1, A. B., of , merchant.

No. 4, G. H., of , merchant.

The defendant [*or* plaintiff] has no objection to make to the above assessors being summoned.

Order 44, *Rule* 7.

[*To be altered as required, where the application is in an action under the Employers' Liability Act*, 1880.]

(*Signature.*)

139.

Notice of Sitting to hear Objections raised by one Party to Assessors named by the other.

Order 21, *Rule* 10.

Take notice, that his honour the judge [*or* I] will on the day of 19 , at the hour of in the noon, sit at [*state where*] to hear the objections made by the plaintiff [*or* defendant] to the under-mentioned persons being summoned to act as assessors in this action.

Dated this day of 19 .

Registrar.

To the above-named plaintiff and defendant.

140.

Order upon hearing Objection to proposed Assessors.

Order 21, *Rule* 10.

Upon the hearing of the objections made by the plaintiff [*or* defendant] to the under-mentioned persons being summoned to act as assessors in this action [*here insert order*].

By the court,

Registrar.

141.

Notice of Refusal to Summon Assessors.

I hereby give you notice that his honour the judge of this court has directed me to inform you that the application for assessors to be summoned to assist him at the hearing of the above action is refused, he being of opinion that the appointment of such assessors is unnecessary in the present action. *Order* 21, *Rule* 8. *Order* 44, *Rule* 10.

Dated this day of 19 .

Registrar.

To the above-named plaintiff and defendant.

142.

Notice requiring a Jury.

[*Not to be printed.*]

Take notice that the plaintiff [*or* defendant] requires a jury to be summoned to try this action. 51 & 52 Vict. c. 43, s. 101.

Dated this day of 19 . *Order* 22, *Rule* 1.

Plaintiff [*or* defendant]. *Order* 44, *Rule* 4.

To the registrar of the court.

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143. *Order* 51, *Rule* 24.

Registrar's Notice of Jury.

Take notice that this action will be tried by a jury, the having demanded a jury therein. 51 & 52 Vict c. 43, s. 101.

To the defendant [*or* plaintiff]. *Order* 22, *Rule* 1.

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144 instead of 144. *Order* 44, *Rule* 4.

Summons to Juror. *Order* 51, *Rule* 24.

In the county court of holden at ,

You are hereby summoned to attend and serve as a juror in this court at the Court House situate at on day the day of , 19 , at the hour of in the noon, upon the trial of any action or actions to be tried by jury, and, unless and until discharged by the court, on any subsequent day to which the trial of any such action may be adjourned. 51 & 52 Vict. c. 43, s. 102. *Order* 22, *Rule* 1. *Order* 44, *Rule* 4.

In default of attendance you will be liable to a penalty of five pounds under section 102 of the County Courts Act, 1888. *Order* 51, *Rule* 24.

Given under the seal of the court, this day of , 19 .

Registrar.

To , of .

144A.

Notice to Juror that his Attendance will not be Required.

In the county court of holden at .

Take notice, that you will not be required to attend and serve as a juror in this court on day the day of , 19 , pursuant to the summons dated the day of , 19 which has been served on you requiring you to so attend. *Order* 22, *Rule* 5.

Dated this day of , 19 .

Registrar.

To , of .

144B.

Notice to Juror to Attend on Day to which Trial is Adjourned.

Take notice, that the trial [*or* the further hearing] of an action of v. to be tried by jury in this court has been adjourned from day *Order* 22, *Rules* 5, 5*a*.

the day of 19 , to day the day of 19 .

And that you are required to attend and serve as a juror in this court at (*Court House*) on day the day of , 19 , at the hour of in the noon, upon the trial [*or* the further hearing] of the said action, pursuant to the summons dated the day of , 19 , which has been served on you requiring you to so attend and serve.

Dated this day of , 19 .

Registrar.

To , of .

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145 instead of 145.

Order fining Juror for Non-attendance.

51 & 52 Vict. c. 43, s. 102. *Order 52, Rules 6, 7a.*

In the county court of holden at .

Whereas was duly summoned to attend and serve this day as a juror in this court upon the trial of any action or actions to be tried by jury :

And whereas he has neglected, without sufficient cause shown, to attend and serve as a juror at this court :

[*Or, in case of non-attendance on adjournment,*

Whereas was duly summoned to attend and serve as a juror in this court on the day of , upon the trial of any action or actions to be tried by jury, and on any subsequent day to which the trial of any such action might be adjourned:

And whereas he has neglected, without sufficient cause shown, to attend and serve as a juror at this court on this day of , to which day the trial of an action of *v.* was adjourned from the said day of :]

It is hereby ordered that the said do forfeit and pay a fine of £ for such neglect :

And it is ordered that the said do pay the said sum of £ to the registrar of this court forthwith [*or* on the day of , 19] [*or* by instalments of for every days, the first instalment to be paid on the day of].

Given under the seal of the court this day of .

Registrar.

---

146 instead of 146.

Warrant of Execution against Goods of Juror for Fine.

51 & 52 Vict. c. 43, ss. 102, 167. *Order 52, Rules 6, 7a.*

Whereas was duly summoned to attend and serve as a juror at a court to be holden on the day of upon the trial of any action or actions to be tried by jury :

And whereas he neglected, without sufficient cause shown, then to attend and serve as a juror in this court, and it was thereupon ordered by the court that he should forfeit and pay a fine of £ for such neglect, and it was ordered that the said should pay the said sum of £ to the registrar of this court on the day of , 19 : [*or* by instalments of for every days, the first instalment to be paid on the day of] :

Or, in case of non-attendance on adjournment,

Whereas was duly summoned to attend and serve as a juror in this court on the day of , upon the trial of any action

or actions to be tried by jury, and on any subsequent day to which the trial of any such action might be adjourned :

And whereas he neglected, without sufficient cause shown, to attend and serve as a juror in this court on the day of , to which day the trial of an action of *v.* was adjourned from the said day of , and it was thereupon ordered by the court that he should forfeit and pay a fine of £ for such neglect, and it was ordered that the said should pay the sum of £ to the registrar of this court on the day of , 19 : [*or* by instalments of for every days, the first instalment to be paid on the day of] ;

And whereas the said sum has not been paid according to the said order, and his honour the judge of this court has ordered it to be levied as hereinafter mentioned :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds) the sum stated at the foot of this warrant, being the amount of such fine, together with the costs of this execution ; and also to seize and take any money or bank notes, whether of the Bank of England or of any other bank, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to him, which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court, this day of , 19 .

By the court,

Registrar.

[*Conclude as in Form* 127.]

147.

Order for Costs of Day where Rule for Certiorari or Prohibition has not been served.

Whereas a rule [*or* summons] has been granted by the High Court of Justice [*or* a judge of the High Court of Justice] requiring cause to be shown why a writ of *certiorari* [*or* prohibition] should not issue in this action, and no order has been made by such court [*or* judge] respecting the costs in this court : 51 & 52 Vict. c. 43, s. 129.

And whereas a copy of such rule [*or* summons] has not been served on the plaintiff [*or* defendant] [*or* on the registrar], according to section 129 of the County Courts Act, 1888 :

And whereas the plaintiff [*or* defendant] has on this day appeared at this court to prosecute [*or* defend] this action :

It is ordered, that the defendant [*or* plaintiff] do pay the sum of £ for the plaintiff's [*or* defendant's] costs of the day ; and it is ordered that the defendant [*or* plaintiff] do pay the same to the registrar of this court on the day of 19 .

148.

Order for Costs of Day where Writ of Certiorari or Prohibition has not been lodged.

51 & 52 Vict. c. 43, s. 130.

Whereas a writ of *certiorari* [*or* prohibition] has been granted in this action by the High Court of Justice [*or* a judge of the High Court of Justice] on the *ex parte* application of the defendant [*or* plaintiff], who has not lodged it with the registrar of this court [*or* has not given notice to the plaintiff [*or* defendant] that it has issued] two clear days before this day, being the day fixed for hearing this action:

And whereas the said court [*or* judge] has made no order respecting the costs in this court:

And whereas the plaintiff [*or* defendant] has on this day appeared at this court to prosecute [*or* defend] this action:

It is ordered, that the defendant [*or* plaintiff] do pay the sum of £ for the plaintiff's [*or* defendant's] costs of the day; and it is ordered that the defendant [*or* plaintiff] do pay the same to the registrar of this court on the day of 19 .

149.

Order for Costs to Defendant where Plaintiff does not Appear.

Order 22, Rule 6.

Whereas the plaintiff has not appeared, either in person or by his solicitor, at the court holden this day, being the day appointed for the trial of this action, and the defendant has appeared in person [*or* by his solicitor], and has not admitted the demand: It is awarded that the plaintiff do pay the sum of £ for the defendant's costs: and it is ordered that the plaintiff do pay the same to the registrar of this court on the day of 19 .

[*To be altered as required, where order made for payment of costs to be taxed.*]

150.

Judgment for Defendant, or Nonsuit.

51 & 52 Vict. c. 43, ss. 88, 93.

Upon the trial of this action at a court holden this day, it is adjudged that judgment be entered for the defendant [*or* that a nonsuit be entered], and that the plaintiff do pay the sum of £ for the defendant's costs: And it is ordered that the plaintiff do pay the same to the registrar of this court on the day of 19 .

[*To be altered as required, if order made for payment of costs to be taxed.*]

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151 instead of 151.

Judgment for Plaintiff.

(1.)

Acknowledgment of payment into Court.

Date.	£	s.	d.	Received by

It is this day adjudged that the plaintiff do recover against the defendant the sum of £ for debt [*or* damages], and £ for costs, amounting together to the sum of £ : *Order* 23 *Rule* 2. *Order* 34, *Rule* 3.

And it is ordered that the defendant do pay the same to the registrar of this court forthwith [*or* on the day of] [*or* by instalments of for every days, the first instalment to be paid on the day of 19]. *Order* 35, *Rule* 1*a*.

[In case default be made in payment of any instalment according to this order, execution or successive executions may issue for the whole of the said sum and costs then remaining unpaid, or for such portion thereof as the court shall order.] 51 & 52 Vict. c. 43, s. 149. *Order* 25, *Rule* 8.

N.B.—*This form will, by striking out the words not required, apply to judgments whether for payment of the whole claim forthwith, or within fourteen days or any other specified time, or for payment by instalments, and to judgments under section* 99 *of the County Courts Act*, 1888, *and also to judgments in replevin, where the judgment is for the plaintiff. If at the time of making an order for payment by instalments the court directs that, in case default be made in payment of any instalment, execution shall issue for a portion only of the amount remaining unpaid, the last paragraph must be altered so as to give effect to such order.*

(2.) (*a*).

Where judgment is given for a sum exceeding £20, *the court may order judgment to be entered as follows :—*

It is this day adjudged that the plaintiff do recover against the defendant the sum of £ for debt [*or* damages], and his costs of this action, to be taxed according to column of the scales of costs : *Order* 23, *Rule* 12

And it is ordered that the defendant do pay the said sum of £ to the registrar of this court forthwith [*or* on the day of], and do pay the amount of the said costs when taxed to the registrar of this court forthwith [*or* within fourteen days] after the date of the certificate of taxation.

In case default be made in payment, execution may issue for the sum and costs remaining unpaid; or if default is made in payment of the said sum of £ before the said costs have been taxed, separate warrants may issue for the recovery of the said sum on default in payment thereof, and for the recovery of the said costs after the same have been taxed and default has been made in payment thereof, subject to the provisions of Order XXV. r. 9, of the County Court Rules.

(*a*) Amended, 1914.

151A.

Judgment against Married Woman, Widow, or Divorced Woman, alone or with others, in respect of Ante-nuptial Contract or Tort, or Contract or Tort during Coverture.

Order 23, *Rules* 2, 3. *Enter judgment according to form* 151, *and proceed as follows:—*

(1.)

Against married woman, widow, or divorced woman, in respect of ante-nuptial contract or tort.

And it is ordered that the debt [*or* damages] and costs hereby recovered against the defendant (*name of married woman, widow, or divorced woman*) shall be payable out of the separate property of the said defendant which she is now or may hereafter be possessed of or entitled to [*or, in case of widow or divorced woman*, out of such property of the said defendant as during her coverture was her separate property], and any property which she may hereafter while discovert be possessed of or entitled to: Provided that nothing herein contained shall render available to satisfy this judgment any separate property which she is now [*or, in case of widow or divorced woman*, was during her coverture] or may hereafter be restrained from anticipating, unless by reason of section 19 of the Married Women's Property Act, 1882, such property shall be available to satisfy this judgment notwithstanding such restriction.

(2.)

Against married woman, widow, or divorced woman, in respect of contract during coverture made prior to the 5th of December, 1893 (*the date of the commencement of the Married Women's Property Act*, 1893), *or in respect of tort during coverture.*

And it is ordered that the debt [*or* damages] and costs hereby recovered against the defendant (*name of married woman, widow, or divorced woman*) shall be payable out of the separate property of the said defendant [*or, in case of widow or divorced woman*, out of such property of the said defendant as during her coverture was her separate property], and not otherwise: Provided that nothing herein contained shall render available to satisfy this judgment any separate property which she is [*or, in case of widow or divorced woman*, was during her coverture] restrained from anticipating, unless by reason of section 19 of the Married Women's Property Act, 1882, such property shall be available to satisfy this judgment notwithstanding such restriction.

(3.)

Against married woman, widow, or divorced woman, in respect of contract made on or since the 5th of December, 1893.

And it is ordered that the debt [*or* damages] and costs hereby recovered against the defendant (*name of married woman, widow, or divorced woman*) shall be payable out of the separate property of the said defendant which she is now or may hereafter be possessed of or entitled to [*or, in case of widow or divorced woman*, out of such property of the said defendant as during her coverture was her separate property], and any property which she may hereafter while discovert be possessed of or entitled to, and not otherwise: Provided that nothing herein contained shall render available to satisfy this judgment any separate property which at the time of entering into the contract sued on in this action or thereafter she was or may be restrained from anticipating [*or, in case of widow or divorced woman*, which she was during her coverture or may hereafter be restrained from anticipating], unless by reason of section 19 of the Married Women's Property Act, 1882, such property shall be available to satisfy this judgment notwithstanding such restriction.

152.

Judgment where Counter-claim has been made.

It is this day adjudged that the plaintiff in this action do recover against the defendant the sum of £ for debt [*or* damages] and £ for costs, amounting together to the sum of £ [*or* that judgment be entered for the defendant [*or* that a nonsuit be entered] in this action, and that the plaintiff do pay the sum of £ for the defendant's costs]. *Order* 22, *Rule* 22.

And it is further adjudged that the defendant do recover on his counter-claim against the plaintiff the sum of £ for debt [*or* damages, *as the case may be*] and £ for costs, amounting together to the sum of £ [*or* that judgment be entered for the plaintiff on the defendant's counter-claim [*or* that the counter-claim be struck out], and that the defendant do pay the sum of £ for the plaintiff's costs of the said counter-claim].

If the same party succeeds both in the action and on the counter-claim, proceed as follows:—

And it is ordered that the [*party against whom judgment is given*] do pay to the registrar of this court the sum of £ , being the total amount adjudged against him as aforesaid in this action and on the defendant's counter-claim:

[*Or, if one party succeeds in the action and the other on the counter-claim, proceed as follows:—*

And it is ordered that the [*party against whom the balance is*] do pay to the registrar of this court the sum of £ , being the balance in favour of [*the other party*] after deducting the amount adjudged to the [*party against whom the balance is*] as aforesaid]:

And it is ordered that the said sum be so paid forthwith [*or* on the day of] [*or* by instalments of for every days, the first instalment to be paid on the day of 19].

[*To be altered as required, where judgment is given for payment of a sum of money and costs to be taxed.*]

153.

Order to suspend Judgment or Order.

It is ordered that the judgment [*or* order] [*or* that execution under the judgment [*or* order]] of this court in this action, bearing date the day of 19 , be suspended until the day of 19 . 51 & 52 Vict. c. 43, s. 153.

154.

Order for New Trial.

It is ordered that the judgment in this action, and all subsequent proceedings thereon, be set aside, and a new trial had between the parties on [*set out the terms or conditions, if any, on which the order is made*]. 51 & 52 Vict. c. 43, s. 93. *Order* 31, *Rules* 1, 2.

Order 23, Rule 10. Order 25, Rule 29. Order 26, Rules 2, 9.

155.

Certified Copy of Judgment or Order.

The county court of holden at

Minutes of judgments, orders, and other proceedings at a court held at on the day of 19 , before His Honour Judge.

No.	Plaintiff.	Appearance.	Defendant.	Appearance.	Particulars of Claim.	Amount claimed.	Special Defence.	By whom Jury required.	For whom Judgment given.	Amount of Judgment.	Costs.	Order.

	£	s.	d.
Amount of Judgment or Order, including Costs . .			
Subsequent Costs			
Paid into Court			
Total sum now due			

I HEREBY CERTIFY that the above is a true copy of an entry in the minute book, judgments, orders, and other proceedings of the county court of holden at .

Dated this day of 19 .

Registrar.

Last date of payment [*or* if no payment has been made, date on which default was made].

NOTE.—If the judgment or order is entered in any minute or order book of a different form to the above, then the certificate must follow the form of such book.

156.

Notice of Payment into Court under Judgment or Order.

I hereby give you notice, that A. B., the defendant, [*or* garnishee] has paid into court the sum of £ under the judgment [*or* order] obtained by you against him herein. *Order 23, Rule 13.*

[N.B.—*Upon your applying for the above amount it will be necessary that you should produce or send the plaint-note given to you on the entry of the plaint.*]

157.

Order altering Judgment or Order.

In the county court of holden at

No. of plaint. *Order 23, Rules 14, 15.*

Between A. B., plaintiff,
[*Address, description,*]
and
C. D., defendant,
[*Present address, description, and, if known, place of employment.*]

Whereas the plaintiff obtained a judgment [*or* an order] against the defendant in this court on the day of 19 , for the payment of £ , together with £ for costs, [and in payment thereof [*or* of part thereof] the defendant has made default] :

Acknowledgment of payment into Court.

Date.	£	s.	d.	Received by

Upon the application of the plaintiff [*or* defendant] it is ordered that the defendant do pay the amount still due under the said judgment [*or* order], as stated at the foot of this order, to the registrar of this court, on the day of 19 , [or by instalments of for every days; the first payment to be made on the day of 19].

Given under the seal of the court, this day of 19 .

Registrar.

£ s. d.

Amount remaining due on judgment [*or* order].

158.

Order to proceed after Death of Plaintiff after Judgment.

Upon reading the affidavit of , it is ordered that E. F., the executor of A. B., the plaintiff in this action, who has died since judgment, be substituted as plaintiff for the original plaintiff, and that the said E. F. be at liberty to issue execution against C. D., the defendant in this action [*or* to take any such proceedings against C. D. the defendant in this action, as the deceased plaintiff was entitled to take against him], for the amount of the unsatisfied judgment and costs in this action [*or* that the question whether E. F., the executor of A. B., the original plaintiff in this action, now deceased, is entitled to recover the amount of the judgment obtained against C. D., the defendant in this action, and costs, shall be tried by action to be commenced by plaint in the ordinary way, wherein the said E. F. shall be plaintiff and the said C. D. shall be defendant]. *Order 25, Rule 14.*

Dated this day of 19 .

Judge [*or* Registrar].

159.

Order to proceed after Death of Plaintiff after Judgment, where such Order affects more Actions than one.

Upon reading the affidavit of it is ordered that E. F. the executor of A. B. the plaintiff in the several actions mentioned in the schedule hereto, who has died since judgment, be substituted as plaintiff for *Order 25, Rule 16.*

the original plaintiff in the said actions, and that the said E. F. be at liberty to issue execution against the several defendants in the said actions [*or* to take any such proceedings against the several defendants in the said actions as the deceased plaintiff was entitled to take against them respectively] for the several amounts of the unsatisfied judgments and costs in the said actions [*or* that the question whether E. F., the executor of A. B. the original plaintiff, now deceased, in the several actions mentioned in the schedule hereto is entitled to recover against the several defendants in the said actions the several amounts of the unsatisfied judgments and costs in the said actions shall be tried by separate actions to be commenced by plaint in the ordinary way, wherein the said E. F. shall be plaintiff, and the several defendants in the said actions shall be defendants].

Dated this day of 19 .

Judge [*or* Registrar].

The Schedule above referred to.

Letter and Number.	Plaintiff.	Defendant.

160.

Order to proceed after Change of Interest by Assignment or otherwise after Judgment.

Order 25, *Rule* 14.

Upon reading the affidavit of , it is ordered that E. F., the assignee [*or as the case may be*] of the judgment [*or* order] obtained by A. B., the plaintiff [*or* C. D., the defendant, *as the case may be*] in this action be substituted as plaintiff [*or* defendant] in this action in the name and by the description of E. F., of, &c., the assignee of A. B., [*or* C. D., the defendant], of, &c., and that the said E. F., in and by such name and description, be at liberty to issue execution against the defendant [*or* the plaintiff] in this action [*or* to take any such proceedings against the defendant [*or* the plaintiff] in this action, as the said plaintiff [*or* defendant] was entitled to take against him for the amount of the unsatisfied judgment and costs in this action [*or* that the question whether E. F., of, &c., the assignee of A. B., of, &c. [*or* of C. D., of, &c.,] is entitled to the benefit of the judgment [*or* order] obtained by the plaintiff [*or* defendant] against the defendant [*or* plaintiff] in this action, shall be tried by action to be commenced by plaint in the ordinary way, wherein the said E. F., in and by such name and description as aforesaid, shall be plaintiff, and the said C. D. [*or* the said A. B.] shall be defendant.

Dated this day of 19 .

Judge [*or* Registrar].

161.

Order to proceed after Change of Interest by Assignment or otherwise after Judgment, where such Order affects more Actions than one.

Order 25, *Rule* 16.

Upon reading the affidavit of , it is ordered that E. F., the assignee (*or as the case may be*) of the several judgments [*or* orders] obtained by A. B. the plaintiff in the several actions mentioned in the schedule hereto, be substituted as plaintiff in the said actions in the

name and by the description of E. F. of, &c., the assignee of A. B. of, &c., and that the said E. F., in and by such name and description, be at liberty to issue execution against the several defendants in the said actions [*or* to take any such proceedings against the several defendants in the said actions as the said A. B. the plaintiff was entitled to take against them respectively] for the several amounts of the unsatisfied judgments and costs in the said actions [*or* that the question whether E. F., of, &c., , the assignee of A. B., of, &c., is entitled to the benefit of the several judgments [*or* orders] obtained by the said A. B., the plaintiff in the several actions mentioned in the schedule hereto, against the several defendants in the said actions, shall be tried by separate actions to be commenced by plaint in the ordinary way, wherein the said E. F., in and by such name and description as aforesaid, shall be plaintiff, and the several defendants in the said action shall be defendants.

Dated this day of 19

Judge [*or* Registrar].

The Schedule above referred to.

Letter and Number.	Plaintiff.	Defendant.

N.B.—*No proceedings under a judgment or order, either by judgment summons or otherwise, are sanctioned by the rules after any change of interest in the parties entitled to the benefit of the judgment or order without an order in one of the above forms numbered* 158 *to* 161.

161A.

Præcipe for Warrant of Execution against Goods.

Order 25 *Rule* 7.

In the county court of holden at .

No. of Plaint.
No. of Execution.

Plaintiff's names in full
Plaintiff's residence and occupation
Full names and addresses [*or other sufficient identification*] of all defendants, with their occupations, if known.

I apply for the issue of a warrant of execution against the above-named defendant [*name the defendant, or, if there are more defendants than one, and plaintiff desires to proceed against some or one only, name them or him*] in respect of a judgment [*or* an order] of this court.

Judgment creditor.

[*or*

Solicitor to creditor.
[*Solicitor's address.*]

To be filled up by clerk.

Fol. Min. Bk. Fol. Ledger.

	£	s.	d.
Amount of judgment [*or* order] and costs			
Paid into court			
Sum in payment of which defendant has made default .			

Date when issued 19

162.

Notice to be Delivered or Left on Levy under Warrant of Execution against Goods.

Order 25, Rule 17.

Take notice, that the warrant of execution against your goods on the judgment [*or* order] obtained against you in this action is for the following amount:—

	£	*s.*	*d.*
Amount for which judgment [*or* order] was obtained .			
Since paid by you into court			
Remaining due on judgment [*or* order] .			
Poundage for issuing this warrant			
Total amount to be levied			

The fees for keeping possession of such of your goods as may be seized (including expenses of removal, storage of goods, and all other expenses) is SIXPENCE IN THE POUND PER DAY NOT EXCEEDING SEVEN DAYS ON THE VALUE OF SUCH GOODS, to be fixed by appraisement in case of dispute, so that the total fee does not exceed 10*s.* per day although the value may exceed 20*l.*, and in addition, for feeding animals, the actual cost thereof.

If you pay the amount to be levied, as stated above, within half an hour of the entry of the bailiff, you will not be required to pay to him any further sum.

If possession is kept after the seventh day at the written request of both parties, the fees and cost of keeping possession as above may be allowed for a reasonable further time in respect of such possession.

If your goods are removed, you will have to pay the appraisement fee as undermentioned.

Your goods are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at your request.

If your goods are sold, the following fees are chargeable for the appraisement and sale, and no others:—

For the appraisement SIXPENCE IN THE POUND on the value of the goods appraised, over and above the stamp duty.

For the sale, including advertisements, catalogues, sale, and commission, and delivery of the goods, ONE SHILLING IN THE POUND ON THE NET PRODUCE OF THE SALE.

For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the last-mentioned fee, the sum actually and necessarily paid.

Where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, there may be allowed all charges actually and necessarily incurred for inventory, appraisement, cataloguing, lotting, and preparing for sale, not exceeding ONE SHILLING IN THE POUND on the value of the goods seized, if such value does not exceed ten pounds, and EIGHTPENCE IN THE POUND on any excess above ten pounds, the value to be fixed by appraisement in case of dispute, and, in addition, any sum actually and necessarily paid for advertising pursuant to section 145 of the Bankruptcy Act, 1883.

If your goods are removed, the bailiff is required to give you a sufficient inventory of the goods so removed, and to give you notice of the time when and the place where such goods will be sold, at least twenty-four hours before the time fixed for the sale.

If your goods are sold, the bailiff is required to furnish you, on your request, with a detailed account in writing of the sale, and of the application of the proceeds thereof.

163.

Warrant of Execution against Goods of Defendant.

Whereas on the day of 19 , the plaintiff obtained a judgment [*or* an order] in this court against the defendant [*name the defendant or all the defendants*] for the sum of £ for debt [*or* damages] and costs; and it was thereupon ordered by the court that the defendant should pay the same to the registrar on the day of [*or* by instalments of for every days]; *Order 25, Rule 8.*

And whereas default has been made in payment according to the said judgment [*or* order]:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, [*name the defendant against whose goods execution is issued*] wheresoever they may be found, within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said judgment [*or* order], together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the said defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	*s.*	*d.*
Amount for which judgment [*or* order] was obtained .			
Paid into court			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon.] . . .			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

[*To be indorsed on every warrant of execution.*] 51 & 52 Vict. c. 43, s. 155.

FEES FOR THE EXECUTION OF THIS WARRANT.

The fees for keeping possession of the goods seized (including expenses of removal, storage of goods, and all other expenses) IS SIXPENCE IN THE POUND PER DAY NOT EXCEEDING SEVEN DAYS ON THE VALUE OF SUCH GOODS, to be fixed by appraisement in case of dispute, so that the total fee does not exceed 10*s.* per day although the value may exceed 20*l.* [and, in addition, for feeding animals the actual cost thereof]. *Order 25, Rule 17.*

If the debtor pays the amount to be levied, as stated on the other side, within half an hour of the entry of the bailiff, he will not be required to pay to him any further sum.

If possession is kept after the seventh day at the written request of both parties, the fees and cost of keeping possession as above may be allowed for a reasonable further time in respect of such possession.

If the goods are removed, the debtor will have to pay the appraisement fee as undermentioned.

If the goods are sold, the following fees are chargeable for the appraisement and sale, and no others :—

For the appraisement, SIXPENCE IN THE POUND on the value of the goods appraised, over and above the stamp duty.

For the sale, including advertisements, catalogues, sale and commission, and delivery of the goods, ONE SHILLING IN THE POUND ON THE NET PRODUCE OF THE SALE.

For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the last-mentioned fee, the sum actually and necessarily paid.

Where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped there may be allowed all charges actually and necessarily incurred for inventory, appraisement, cataloguing, lotting, and preparing for sale, not exceeding ONE SHILLING IN THE POUND on the value of the goods seized, if such value does not exceed 10*l.*, and EIGHTPENCE IN THE POUND on any excess above 10*l.*, the value to be fixed by appraisement in case of dispute, and in addition any sum actually and necessarily paid for advertising pursuant to section 145 of the Bankruptcy Act, 1883.

If the goods are removed, the bailiff is required to give the debtor a sufficient inventory of the goods so removed, and to give him notice of the time when and the place where such goods will be sold, at least twenty-four hours before the time fixed for the sale.

If the goods are sold, the bailiff is required to furnish the debtor, on request, with a detailed account in writing of the sale, and of the application of the proceeds thereof.

163A.

Indorsement on Warrant of Execution or Order of Commitment, of Fact of Renewal thereof.

Order 25, Rules 6, 46 (4).

The time during which this warrant [*or* order] is to remain in force was on the day of extended by leave of the court for one year from the day of .

Registrar.

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164 instead of 164.

Warrant of Execution on Judgment against Married Woman, Widow, or Divorced Woman, alone or with others, in respect of Ante-nuptial Contract or Tort, or Contract or Tort during Coverture.

Order 25, Rule 8.

Whereas on the day of 19 , the plaintiff obtained a judgment [*or* an order] in this court against the defendant [*name the defendant or all the defendants*] for the sum of £ for debt [*or* damages] and costs ; and it was thereupon ordered by the court that the defendant should pay the same to the registrar on the day of 19 [*or* by instalments of for every days] :

[*Proceed as follows :—*

(1.)

Where judgment was entered according to form 151A (1)—

And it was further ordered that the debt [*or* damages] and costs recovered against the defendant (*name of married woman, widow, or divorced*

woman) should be payable out of the separate property of the said defendant which she was then or might thereafter be possessed of or entitled to [*or, in case of widow or divorced woman*, out of such property of the said defendant as during her coverture was her separate property], and any property which she might thereafter while discovert be possessed of or entitled to: Provided that nothing in the said judgment [*or* order] contained should render available to satisfy the said judgment [*or* order] any separate property which she was then [*or, in case of widow or divorced woman*, was during her coverture] or might thereafter be restrained from anticipating, unless by reason of section 19 of the Married Women's Property Act, 1882, such property should be available to satisfy the said judgment [*or* order] notwithstanding such restriction:

(2.)

Where judgment was entered according to form 151A (2)—

And it was further ordered that the debt [*or* damages] and costs recovered against the defendant (*name of married woman, widow, or divorced woman*) should be payable out of the separate property of the said defendant [*or, in case of widow or divorced woman,* out of such property of the said defendant as during her coverture was her separate property], and not otherwise: Provided that nothing in the said judgment [*or* order] contained should render available to satisfy the said judgment [*or* order] any separate property which she was [*or, in case of widow or divorced woman*, was during her coverture] restrained from anticipating, unless by reason of section 19 of the Married Women's Property Act, 1882, such property should be available to satisfy the said judgment [*or* order] notwithstanding such restriction:

(3.)

Where judgment was entered according to form 151A (3)—

And it was further ordered that the debt [*or* damages] and costs recovered against the defendant (*name of married woman, widow, or divorced woman*) should be payable out of the separate property of the said defendant which she was then or might thereafter be possessed of or entitled to [*or, in case of widow or divorced woman*, out of such property of the said defendant as during her coverture was her separate property], and any property which she might thereafter while discovert be possessed of or entitled to, and not otherwise: Provided that nothing in the said judgment [*or* order] contained should render available to satisfy the said judgment [*or* order] any separate property which at the time of entering into the contract sued on or thereafter she was or might be restrained from anticipating [*or, in case of widow or divorced woman*, which she was during her coverture or might thereafter be restrained from anticipating], unless by reason of section 19 of the Married Women's Property Act, 1882, such property should be available to satisfy the said judgment [*or* order] notwithstanding such restriction:]

And whereas default has been made in payment according to the said judgment [*or* order]:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant (*name of married woman, widow, or divorced woman*) being property available to satisfy the said judgment [*or* order] as hereinbefore mentioned, wheresoever they may be found within the district of the court (except the wearing apparel and bedding of her or her family, and the tools and implements of her trade if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said judgment [*or* order], together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the said defendant, being property available to satisfy the said judgment [*or* order] as hereinbefore mentioned, which may there be found, or such part or

so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Amount for which judgment [*or* order] was obtained			
Paid into court			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon]			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

165.

Warrant of Execution against Goods of Plaintiff.

Order 25, *Rule* 8.

Whereas at a court holden at on the day of 19 , it was ordered by the court, that judgment should be entered for the defendant [*or* that a nonsuit be entered], and that the plaintiff should pay to the registrar on or before the day of the sum of £ for the defendant's costs :

And whereas default has been made in payment according to the said order : These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the plaintiff, wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the defendant under the said order, together with the costs of this execution ; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the plaintiff which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court, this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Costs adjudged			
Paid into court			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon]			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said plaintiff.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

166.

Receipt for Money Levied.

No. 19 .

No. of plaint

No. of execution

Amount received

£

In the county court of holden at .

No.

No. of plaint } Between plaintiff and

No. of execution } defendant.

19

Received of the above-named the sum of pounds shillings and pence.

£ : : for

R. S. (possession man).

bailiff.

For forms 167—169 (Friendly Societies and other Acts) see Part V. under "Building Societies Acts," *post*, p. 1784.

170.

Notice of Application for Sale of Goods otherwise than by Auction.

[*Not to be printed.*]

Take notice that I, the undersigned A. B., the execution creditor [*or* execution debtor] herein, shall on the day of at o'clock in the noon at [*state where application will be made*] apply to his honour the judge [*or* to the registrar] of this court for an order that a sale of the goods seized under the execution herein may be made otherwise than by public auction, that is to say [*e.g.*, by private sale to (*state name of intending purchaser if known*)].

46 & 47 Vict. c. 52, s. 145. 53 & 54 Vict. c. 71, s. 2. *Order* 25, *Rule* 24.

The grounds of the application are as follows [*state the grounds*].

A. B.

To the high bailiff and to E. F., G. H., &c. [*name the other persons to be served*].

171 instead of 171.

Notice of Sale or Payment under Execution in respect of a Judgment for a Sum exceeding £20.

4 & 5 Geo. 5, c. 59, s. 41. *Order* 2, *Rule* 35.

Take notice, that under the warrant of execution issued in this action against the goods of the defendant [*naming him*], the goods of the defendant have been sold [*or* the sum of £ has been paid in order to avoid a sale], and that the balance now left in my hands, after deduction of £ for the costs of the execution, amounts to the sum of £ , which will be duly retained by me for fourteen days pursuant to the provisions of sub-section 2 of section 41 of the Bankruptcy Act, 1914.

Dated this day of 19 .

High bailiff.

To the registrar of the county court of holden at .
And to (*the execution creditor*).

(New Form, Rules of 1917, dated February 19, 1917.)

172 instead of 172.

Notice of Withdrawal from Possession, or Payment over of Money, on Notice of Receiving Order.

4 & 5 Geo. 5, c. 59, s 41. *Order* 2, *Rule* 36.

Take notice, that having received notice that a receiving order has been made under the Bankruptcy Act, 1914, against the defendant [*naming him*], I have withdrawn from possession of the goods seized under the warrant of execution issued in this action against the goods of the said defendant [and have delivered the same to the official receiver [*or* trustee] under the said order] [*or* I have paid over the proceeds of sale of the goods of the said defendant sold under the warrant of execution issued in this action [*or* the money paid in order to avoid a sale under [*or* the money received in part satisfaction of] the warrant of execution issued in this action against the goods of the said defendant] to the official receiver [*or* trustee] under the said order].

Dated this day of 19 .

High bailiff.

To the registrar of the county court of holden at .
And to (*the execution creditor*).

(New Form, Rules of 1917, dated February 19, 1917).

173.

51 & 52 Vict. c. 43, s. 158. *Order* 28, *Rule* 1.

High Bailiff's Warrant to Registrar of Foreign Court.

Whereas the warrant of execution hereto annexed has been issued out of this court against the goods and chattels of .

And whereas the goods and chattels of the said are out of the ordinary jurisdiction of this court, and are believed to be within the jurisdiction of the county court of holden at of which you are the registrar:

[*Or*, whereas the order of commitment hereto annexed has been made against .

And whereas the said is out of the ordinary jurisdiction of this court and is believed to be within the jurisdiction of the county court of holden at , of which you are the registrar:]

These are therefore to require you to cause the said warrant [*or* order] to be executed within the ordinary jurisdiction of the said last-mentioned county court.

Dated this day of 19 .

High bailiff of the county court of holden at .

To the registrar of the county court of holden at .

NOTE.—This warrant must be signed by the high bailiff and sealed in accordance with section 158 of the Act.

173A.

Notice to be annexed to Form 162 (Notice on Levy) where Warrant of Execution sent to Foreign Court.

Take notice, that all payments under the warrant of execution issued in this action should be made and all notices or claims in respect of the execution or the goods taken in execution should be given or sent to the high bailiff of the county court of holden at , and not to the high bailiff of the county court of holden at .

Order 28, *Rule* 1 (2).

Dated this day of 19 .

High bailiff of the county court of holden at .

(New Form, Rules of 1917, dated February 19, 1917.)

174.

Notice of Non-Execution of Warrant or Order of Commitment.

Take notice, that the warrant of execution [*or* order of commitment] in this action has not been executed within one calendar month from the day of its delivery to me for the following reasons (*state reasons*).

Order 2, *Rule* 37.

High bailiff to the county court of holden at .

To the registrar of the county court of holden at .

175.

Return and Certificate from Foreign Court.

A. B. *v.* C. D.

Return to above warrant of execution [*or* order of commitment] from the high bailiff of the county court of holden at to the high bailiff of the county court of holden at .

Order 28, *Rules* 2, 3.

No. of plaint
No. of warrant.

	£	*s.*	*d.*	£	*s.*	*d.*
Gross amount levied or received—						
Payments in deduction						
Man in possession days, on £ , value of goods seized .						
For appraisement fees on £ . .						
Paid for stamp						
For fees of sale on £ . . .						
For rent to landlord						
Extra possession under claim days (actual costs).						
Costs of interpleader ordered by court to be deducted out of the proceeds.						
Net amount paid to the credit of the execution creditor.						

High bailiff.

I hereby certify that the above charges are correct, and that the sum of £ was paid into court this day of 19 .

Registrar.

176 instead of 176.

Præcipe for Judgment Summons.

Order 25, Rule 5. In the county court of holden at .

No. of plaint.
No. of J. S.

Plaintiff's name in full.

Plaintiff's residence and occupation.

Full names and addresses (*or other sufficient identification*) of all defendants with their occupations, if known.

I apply for an issue of a judgment summons against the above-named defendant [*name the defendant, or, if there are more defendants than one, and plaintiff desires to proceed against some or one only, name them or him*] in respect of a judgment [*or* an order] of this court.

And I undertake to prove to the satisfaction of the court at the hearing, that the judgment debtor has, or has had since the date of the judgment [*or* order], the means to pay the sum in respect of which he has made default, and that he has refused or neglected, or refuses or neglects, to pay the said sum.

I am aware that if I do not prove the same accordingly I shall have to pay the costs of this summons.

Judgment creditor,
or,
Solicitor to creditor.
Solicitor's address.

To be filled up by Clerk.

Fol. . Min. Bk. . Fol. . Ledger .

	£	s.	d.	£	s.	d.
Amount of judgment [*or* order] and costs .						
Deduct:—Amounts (if any) in respect of which an order of commitment was made and defendant was imprisoned before date of order . .						
Add:—Costs of previous judgment summonses, hearings, and commitments (if any) since date of judgment [*or* order] allowed by the judge .						
Deduct:—						
Paid into court—						
otherwise than under execution against the goods						
under execution against the goods, after deducting costs of execution						
Amounts in respect of which an order of commitment has been made *since* date of judgment [*or* order], and in respect of which defendant has been or may be imprisoned . . .						
Amounts which were not required to have been paid before the date of this summons .						
Sum in payment of which defendant has made default .						

Date when granted 19 .

177 instead of 177.

Affidavit for Leave to Issue Judgment Summons against Defendant out of the District.

No. of plaint.

In the county court of holden at , *Order 25, Rule 6.*
Between plaintiff,
and
defendant.

I, [*state name, residence, and occupation*] of , the above-named plaintiff, [*or* I, of] make oath and say as follows :—

1. On the day of 19 , I [*or* the plaintiff] obtained a judgment [*or* an order] in this court for the sum of £ [*or* for £ including costs] against the above-named defendant, and the same [*or* £ part thereof] is still unsatisfied [and instalments of are now in arrear] :

2. The said defendant [*if there are more defendants than one, name the defendant against whom plaintiff desires to proceed*] was [*or* was not] at the date of the entry of the plaint in the action in which the said judgment [*or* order] was obtained living [*or* carrying on business] within the district of this court.

2A. [*If the defendant was not living or carrying on business within the district when the plaint was entered, state where he lived or carried on business when the cause of action arose.*] The said defendant was living [*or* carrying on business] at in the county of when the debt sued for in the said action was contracted [*or* the cause of action arose.]

3. The said defendant now lives at in a house [*or* shop] apparently of the yearly rent or value of £ :

4. The said defendant carries on the business of a [*state what*] in a [*state what*] at [*state where, and any circumstances showing that the business is profitable or that he has means to pay*]. If a master.

[*Or* 4. The said defendant is now employed as a at [*state the name and place of business of his employer, if known*] and earns per week. If a workman.

5. The said defendant is unmarried [*or* is married and has children, of whom work and earn wages] [*or, if these facts are not known, state that the deponent does not know them*].

6. I apply to the court for leave to issue a judgment summons against the said defendant in respect of the non-payment of the said sum of remaining unsatisfied and in arrear as above-mentioned.

Sworn at in the county of this day of one thousand nine hundred and

Before me,

Registrar.
[*or* Clerk nominated to take affidavits].

Leave granted [*or* refused].

Judge.

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178 instead of 178.

Judgment Summons on a Judgment or an Order of a County Court.

The Debtors Act, 1869.

In the [*title of court issuing summons*]. 32 & 33 Vict. c. 62, s. 5.

No. of plaint.
No. of judgment summons. *Order 25, Rule 31.*

Between A. B., plaintiff,
[*Address, description,*]
and C. D., defendant,
[*Present address, description, and if known, place of employment.*]

Whereas the plaintiff obtained a judgment [*or, if no judgment has been*

obtained, or if a fresh order has been obtained upon a judgment, an order] against the above-named defendant in this court [*or* in the county court of holden at] on the day of 19 , for the payment of £ for debt [*or* damages] and costs, forthwith [*or* on the day of 19 , *or* by instalments of for every days], and subsequent costs have been incurred in pursuance thereof and allowed by the judge, amounting to :

And whereas default has been made in payment of the sum of payable in pursuance of the said judgment [*or* order], and the plaintiff has required this judgment summons to be issued against you the defendant [*if the summons is issued against some or one only of several defendants, name them or him*] :

You are therefore hereby summoned to appear personally in this court at [*place where court holden*] on the day of , 19 , at the hour of in the noon, to be examined on oath by the court touching the means you have or have had since the date of the said judgment [*or* order] to satisfy the sum payable in pursuance of the said judgment [*or* order] ; and also to show cause why you should not be committed to prison for such default, [*or* why a receiving order should not be made against you pursuant to sub-section 5 of section 103 of the Bankruptcy Act, 1883].

Dated this day of 19 .

Registrar.

To the defendant [*if the summons is issued against some or one only of several defendants, name them or him.*]

	£	s.	d.	£	s.	d.
Amount of judgment [*or* order], and costs						
Deduct :—Amounts (if any) in respect of which an order of commitment was made and defendant was imprisoned *before* date of order						
Add :—Costs of previous judgment summonses, hearings, and commitments (if any) *since* date of judgment [*or* order], allowed by the judge						
Deduct :—						
Paid into court, Led. Fo. otherwise than under execution against the goods						
under execution against the goods (after deducting costs of execution)						
Amounts in respect of which an order of commitment has been made *since* date of judgment [*or* order], and in respect of which defendant has been or may be imprisoned						
Amounts which were not required to have been paid before the date of this summons (*see note* (*) *below*)						
Sum in payment of which defendant has made default						
Costs of this summons						

* Where a fresh order has been made *after* defendant has been committed and imprisoned, this amount will be the difference between the amount of the instalments in arrear at the date of the summons and the

whole sum payable under the fresh order, *exclusive* of the amount in respect of which defendant was imprisoned *before* the order. *See* Order XXV., Rule 55.

For indorsement of service, see Form 34.

178A.

Memorandum to be printed at foot of or annexed to Judgment Summons.

In default of your attendance you will, if at the time of the service of this summons on you payment or tender of your expenses is made on the prescribed scale of allowances, be liable to a fine of £10 under section 111 of the County Courts Act, 1888, payment of which fine may, under section 167 of the Act, be enforced, upon the order of the judge, in such manner as payment of a sum adjudged to be paid on summary conviction may be enforced under the Summary Jurisdiction Acts, that is to say, by distress and sale of your goods, or, in default or in lieu of distress, by imprisonment. *Order* 25, *Rule* 31 (3).

179.

Memorandum to be printed at foot of or annexed to every Judgment Summons issued pursuant to Order XXV. Rule 26, for service out of the district.

NOTE.—By Order XXV. Rule 37, of the County Court Rules, it is provided as follows:— *Order* 25, *Rule* 37.

Where a judgment creditor at whose instance a judgment summons is issued, or a judgment debtor summoned to appear by a judgment summons, does not reside within the district of the court in which the summons is to be heard, he may forward to the registrar of the court from which the summons is issued an affidavit, setting forth any facts which he may wish to be before the court prior to any order being made on the summons. And the judge may, if he thinks fit, on the hearing of the judgment summons admit the affidavit as the evidence of the person by whom the same is made.

An affidavit may be sworn before any judge or registrar, or clerk to a registrar nominated by the judge for that purpose, or a commissioner for oaths, or a justice of the peace. 51 & 52 Vict. c. 43, s. 83.

180 instead of 180.

Affidavit where Judgment Summons is sought on a Judgment or an Order of a Court other than a County Court.

The Debtors Act, 1869.

In the county court of holden at

In the matter of a judgment [*or* order] of the High Court of Justice [*or as the case may be*]. *Order* 25, *Rule* 30.

Between A. B., plaintiff,
[*Address, description.*]
and
C. D., defendant,
[*Address, description.*]

I [*state name*] of [*state residence and occupation*], the above-named plaintiff [*or* I (*state name*) of (*state residence and occupation*)], make oath and say as follows:

1. That on the day of 19 , I [*or* the above-named plaintiff] obtained a judgment [*or* an order] in (*here set forth the style of the court in which the judgment or order was obtained*) against the above-named defendant, for the payment of the sum of .

2. That there is still due under the said judgment [*or* order] the sum of .

3. I apply for the issue of a judgment summons against the above-named defendant [*if the application is for a summons against some or one only of several defendants, name them or him*] in respect of the non-payment of the said sum of .

4. [*To be added where the plaintiff does not himself make the affidavit.*] The facts above deposed to are within my own knowledge, and I am duly authorised by the plaintiff to make this affidavit on his behalf.

Sworn at, &c. A. B.

181 instead of 181.

Judgment Summons on a Judgment or Order of a Court other than a County Court.

The Debtors Act, 1869.

32 & 33 Vict. c. 62, s. 5. *Order* 25, *Rules* 30, 31.

In the [*title of court issuing summons*].

No. of judgment summons.

Between A. B., plaintiff,
[*Address, description.*]
and
C. D., defendant.
[*Present address, description, and if known, place of employment.*]

Whereas the plaintiff obtained a judgment [*or* an order] against the above-named defendant in the High Court of Justice [*or as the case may be*] on the day of for the sum of £ and there is now due and payable under the said judgment [*or* order] the sum of £ :

And whereas the plaintiff has required this judgment summons to be issued against you the defendant [*if the summons is issued against some or one only of several defendants name them or him*].

You are therefore hereby summoned to appear personally in this court at [*place where court holden*] on the day of 19 , at the hour of in the noon, to be examined on oath by the court touching the means you have or have had since the date of the said judgment [*or* order] to pay the said sum, in payment of which you have made default ; and also to show cause why you should not be committed to prison for such default [*or*, why a receiving order should not be made against you pursuant to sub-section 5 of section 103 of the Bankruptcy Act, 1883].

Dated this day of 19 .

Registrar.

To the defendant [*if the summons is issued against some or one only of several defendants, name them or him*].

	£	*s.*	*d.*
Amount remaining due under judgment [*or* order] .			
Costs of this summons			
Total sum due			

For indorsement of service, see Form 34.

182.

Affidavit for Leave to Issue Judgment Summons on Judgment or Order against a Firm, or a Person carrying on Business in a Name other than his own.

No. of plaint.

Order 25, *Rule* 27.

In the county court of holden at
Between plaintiff,
and
defendants.

I of [*state name, residence, and occupation*], the above-named plaintiff [*or* I, of [*state name, residence, and occupation*]], make oath and say as follows :—

1. On the day of 19 , I [*or* the plaintiff] obtained judgment [*or* an order] in this action in this court [*or* in the county court of holden at , *or* in the High Court of Justice, *or as the case may be*] against the defendants [*state name in which defendants were sued*] for the sum of £ [and costs] and there is now due and payable under the said judgment [*or* order] the sum of £

2. I allege that , of [*state name, residence, and occupation*] is liable as a partner in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [*or* order], and I make this allegation on the following grounds:

(1) that the said has admitted before the court in the proceedings in which the said judgment [*or* order] was obtained that he was a partner in [*or* the sole member of] the said firm of [*or* the person carrying on business on his own behalf in the name of] at the time of the accruing of the cause of action [*or* has been adjudged in the proceedings in which the said judgment [*or* order] was obtained to be liable as a partner in [*or* the sole member of] the said firm of] [*or* as the person carrying on business on his own behalf in the name of]: *Compare Order 25, Rule 11.*

[*or* (2) that the said was individually served as a partner in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] with the summons in the action in which the said judgment [*or* order] was obtained, and failed to appear at the trial]: *Compare Order 25, Rule 11.*

[*or* (3) (*State any other grounds on which the person against whom a judgment summons is sought is alleged to be liable, with the deponent's sources of information and grounds of belief.*)]

3. I verily believe that the said is well able to pay the said sum of now due and payable under the said judgment [*or* order] [(*to be added where plaintiff does not himself make the affidavit*), and I am duly authorised by the plaintiff to make this affidavit on his behalf].

4. I apply for the issue of a judgment summons against the said in respect of the non-payment of the said sum of £ .

Sworn at in the county of }
this day of 19 . }
Before me,

183.

Affidavit for Leave to Issue Judgment Summons for service out of the District on Judgment or Order against a Firm, or a Person carrying on Business in a Name other than his own.

No. of plaint.

In the county court of holden at *Order 25, Rule 27.*
Between plaintiff,
and
defendants.

I, of [*state name, residence, and occupation*], the above-named plaintiff [*or* I, of [*state name, residence, and occupation*]], make oath and say as follows:—

1. On the day of , 19 , I [*or* the plaintiff] obtained judgment [*or* an order] in this action in this court [*or* in the county court of holden at *or* in the High Court of Justice, *or as the case may be*] against the defendants [*state name in which defendants were sued*] for the sum of £ [and costs] and there is now due and payable under the said judgment [*or* order] the sum of £ .

2. I allege that , of [*state name, residence, and occupation*] is liable as a partner in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [*or* order], and I make this allegation on the following grounds:

(1) that the said has admitted before the court in the proceedings in which the said judgment [*or* order] was obtained that he was a partner in [*or* the sole member of] the said firm of [*or* the person carrying on business on his own behalf in the name of] at the time of the accruing of the cause of action [*or* has been *Compare Order 25, Rule 11.*

adjudged in the proceedings in which the said judgment [*or* order] was obtained to be liable as a partner in [*or* the sole member of] the said firm of] [*or* as the person carrying on business on his own behalf in the name of]:

Compare Order 25, *Rule* 11.

[*or* (2) that the said was individually served as a partner in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] with the summons in the action in which the judgment [*or* order was obtained, and failed to appear at the trial:

[*or* (3) (*State any other grounds on which the person against whom a judgment summons is sought is alleged to be liable, with the deponent's sources of information and grounds of belief.*)]

3. The said now lives at , and there occupies a house [*or* shop *or* rooms, *or as the case may be*] of the yearly rent or value of £ .

4. The said firm of [*state name in which defendants were sued*] [*or* the said [*state name in which defendants were sued*]] carry [*or* carries] on the business of [*state what*] in a [*state what*] at [*state where, and add any facts showing that the business is profitable*].

5. The said has [*or* has not] separate means apart from the business of the said [*state name in which defendants were sued*] [*or* the said [*state name in which defendants were sued*] [*if separate means are alleged, state any facts showing such means*]].

6. The said is unmarried [*or* is married and has children, of whom work and earn wages] [*if these facts are not known, state that deponent does not know them*].

7. I verily believe that the said is well able to pay the said sum of £ now due and payable under the said judgment [*or* order] [*to be added where plaintiff does not himself make the affidavit*, and I am duly authorised by the plaintiff to make this affidavit on his behalf].

8. I apply to the court for leave to issue a judgment summons against the said in respect of the non-payment of the said sum of £ .

Sworn at in the county of
this day of 19 .
Before me,

Registrar.
[*or* Clerk nominated to take affidavits].

Leave granted [*or* refused].

Judge.

184.

Judgment Summons on Judgment or Order against a Firm, or a Person carrying on Business in a name other than his own.

The Debtors Act, 1869.

32 & 33 Vict. c. 62, s. 5.

Order 25, *Rules* 27, 31.

No. of plaint.
No. of judgment summons.

In the county court of holden at .

Address, description.

Between plaintiff,
and
defendants

* State name, address, and description as in the original summons with any amendment made by the court.

*

To of [*state the name, address, and description of one of the persons alleged to be partners in the firm against whom the judgment or order was obtained, or of the person alleged to be the sole member thereof, or of the person alleged to be carrying on business in a name other than his own*] of .

Whereas the plaintiff obtained judgment [*or* an order] against the defendants by and in the name of* above described in this court [*or* in the county court of holden at *or* in the High Court of Justice, *or as the case may be*] on the day of , 19 , for the sum of £

[and costs] and there is now due and payable under the said judgment [*or* order] from the said* to the said plaintiff the sum of £ :

And whereas the said plaintiff has filed an affidavit in this court a copy whereof is hereunto annexed, wherein it is alleged that you the above-named are liable as one of the partners in [*or* the sole member of] the said firm of* [*or* as the person carrying on business on your own behalf in the name of*] to pay the sum payable under the said judgment [*or* order] :

You are therefore hereby summoned to appear personally in this court, at [*place where court holden*] on the day of 19 , at the hour of in the noon, to be examined on oath by the court touching the means you have or have had since the date of the said judgment [*or* order] to pay the said sum of £ now due and payable under the said judgment [*or* order] ; and also to show cause why you should not be committed to prison for default in payment of the said sum [*or* why a receiving order should not be made against you pursuant to sub-section 3 of section 103 of the Bankruptcy Act, 1883] :

And take notice, that if you deny that you are liable as one of the partners in [*or* the sole member of] the said firm of* [*or* as the person carrying on business on your own behalf in the name of*] to pay the sum payable under the said judgment [*or* order] you must appear at this court on the day and at the hour above mentioned, and that in default of your so appearing you will be deemed to admit your liability as aforesaid to pay the amount due and payable under the said judgment [*or* order].

Dated this day of 19 .

Registrar.

	£	*s.*	*d.*
Amount remaining due under judgment [*or* order]			
Costs of this summons			
Total sum due			

For indorsement of service, see Form 34.

[*N.B.—This summons is available against one person only, and where an order for payment by instalments has been made, part only of which are due, must be modified in accordance with the facts.*]

185.

Affidavit of Service of Judgment Summons.

Order 25, *Rules* 31 , 33

I, A. B., of [*state name, residence, and occupation*] the above-named plaintiff [*or* clerk *or* servant to the above-named plaintiff, *or* solicitor to the above-named plaintiff, *or* clerk to Mr. of , solicitor to the above-named plaintiff, *or as the case may be*], make oath and say :

That I did on the day of 19 , at [*state the place of service exactly, as* 22, King Street, Croydon, the residence of the above-named defendant, C. D., *or* the place of business of E. F., the employer of the above-named defendant, C. D.], duly serve the above-named defendant, C. D., with a judgment summons, a true copy whereof is hereunto annexed, marked A., [*add, if so*, with copy of affidavit annexed] by delivering the same personally to the said defendant.

[*Add, if travelling expenses paid or tendered with judgment summons*, That I paid [*or* tendered] to the said , at the same time and place, the sum of for his expenses.]

[*Indorse the copy judgment summons thus :*—This paper, marked A., is the paper referred to in the annexed affidavit.]

186.

Order on Judgment Summons altering Original Judgment or Order.

32 & 33 Vict. c. 62, s. 5. *Order* 25, *Rule* 49.

The Debtors Act, 1869.

In the [*title of court issuing summons*].

No. of plaint.
No. of judgment summons.

Between A. B., plaintiff,
[*Address, description.*]
and
C. D., defendant,
[*Present address, description, and if known, place of employment.*]

Whereas the plaintiff obtained a judgment [*or* an order] against the defendant in this court [*or* in the county court of holden at] on the day of 19 , for the payment of the sum of £ , together with £ for costs, and in payment thereof [*or* of part thereof] the defendant has made default:

[*or*, Whereas the plaintiff obtained a judgment [*or* an order] against the defendant in the High Court of Justice [*or as the case may be*] on the day of , for the sum of £ , and there is now due and payable under the said judgment [*or* order] the sum of]:

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant [*name the defendant against whom the judgment summons was issued*] was required to appear personally at this court on the day of 19 , to be examined on oath touching the means he had then or had had since the date of the said judgment [*or* order] to pay the said sum of £ , which summons has been proved to this court to have been personally and duly served on the said defendant:

It is ordered, that the said defendant [*naming him*] do pay the amount still due on the said judgment [*or* order], and the costs of the said summons and its hearing, as stated at the foot of this order, to the registrar of this court, by instalments of £ for every days; the first payment to be made on the day of 19 .

Given under the seal of the court, this day of 19 .

Registrar.

Acknowledgment of payment into Court.

Date.	£	s.	d.	Received by

	£	s.	d.
Amount remaining due under judgment [*or* order]			
Costs of judgment summons and its hearing			

187.

Order of Commitment on a Judgment or Order of a County Court.

32 & 33 Vict. c. 62, s. 5. *Order* 25, *Rule* 46.

The Debtors Act, 1869.

In the [*title of court ordering commitment*].

No. of plaint.
No. of judgment summons.
No. of order.

Between A. B., plaintiff,
and
C. D., defendant,

To the high bailiff and others the bailiffs of the said court and all peace officers within the jurisdiction of the said court, and to the governor of the [*prison used by the court*].

Whereas the plaintiff obtained a judgment [*or* an order] against the defendant in this court [*or* in the county court of holden at] on the day of , 19 , for the payment of £ for debt [*or* damages] and costs, and subsequent costs have been incurred in pursuance thereof amounting to :

And whereas the defendant has made default in payment of payable in pursuance of the said judgment [*or* order] :

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant [*name the defendant against whom judgment summons was issued*] was required to appear personally at this court on the day of 19 , to be examined on oath touching the means he had then or had had since the date of the said judgment [*or* order] to satisfy the sum then due and payable in pursuance of the said judgment [*or* order], and to show cause why he should not be committed to prison for such default, which summons has been proved to this court to have been personally and duly served on the said defendant :

And whereas, at the hearing of the said summons, it has now been proved to the satisfaction of the court that the said defendant now has [*or* has had since the date of the said judgment [*or* order]], the means to pay the sum due and payable in pursuance of the said judgment [*or* order], and refuses [*or* neglects] [*or* has refused *or* neglected] to pay the same, and the said defendant has shown no cause why he should not be committed to prison.

Now, therefore, it is ordered that, for such default as aforesaid, the said defendant [*naming him*] shall be committed to prison for days, unless he shall sooner pay the sum stated below as that upon the payment of which he is to be discharged, or shall file such affidavit as is mentioned in Order XXV. Rule 43, of the County Court Rules.

These are therefore to require you, the said high bailiff, bailiffs, and others, to take the defendant [*naming him*] and to deliver him to the governor of the [*prison used by the court*], and you the said governor to receive the said defendant, and him safely keep in the said prison for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Given under the seal of the court this [*insert date of order*] of 19 .

Registrar.

	£	*s.*	*d.*
Sum in payment of which defendant had made default at time of issue of judgment summons . . .			
Fees and costs on issue and hearing of judgment summons			
Deduct amount paid into court since issue of judgment summons			
Poundage on this order			
Sum on payment of which the debtor is to be discharged			

This order remains in force for one year only from the date hereof, unless such time is extended under Order XXV. Rule 46.

Add when so ordered—The time during which this order is to remain in force was on the day of extended by order of the judge to the day of 19 .

Registrar.

188.

Indorsement of Order of Commitment sent to and issued by a Foreign Court.

To the governor of the [*here insert name of prison of foreign court*].

51 & 52 Vict. c. 43, s. 158. *Order* 25, *Rule* 41.

Take notice that in accordance with the provisions of section one hundred and fifty-eight of the County Courts Act, 1888, this order of commitment has been sent to me, and issued by me to, the high bailiff of this court, and that the debtor, if apprehended within the jurisdiction of this court, is to be conveyed to the prison of this court, and is to be there kept for the time mentioned in the order of commitment, unless sooner discharged by law.

Dated this day of 19 .

Registrar.

188A.

Entry of Part Payment on Order of Commitment.

Order 25, *Rules* 48*a* (4), 49*a* (4).

Where part payment is made after the issue of an Order of Commitment, the amount paid is to be entered in ink on the face of the order and deducted from the sum on payment of which the debtor is to be discharged, and the entry signed by the bailiff or gaoler, in the following form:—

	£	*s.*	*d.*
Sum on payment of which the debtor is to be discharged			
Deduct amount paid since issue of order			
Balance on payment of which the debtor is to be discharged			

(Signed)

Bailiff [*or* Gaoler].

189.

Order of Commitment on Judgment or Order of a Court other than a County Court.

32 & 33 Vict. c. 62, s. 5. *Order* 25, *Rule* 46.

The Debtors Act, 1869.

In the [*title of court ordering commitment*].

No. of plaint.
No. of judgment summons.
No. of order.

Between A. B., plaintiff,
and
C. D., defendant.

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and to the governor of the [*prison used by the court*].

Whereas the plaintiff obtained a judgment [*or* an order] against the defendant in the High Court of Justice [*as the case may be*] on the day of , 19 , for the sum of £ , and there is now due and payable under the said judgment [*or* order] the sum of :

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant [*name the defendant against whom judgment summons was issued*] was required to appear personally at this court on the day of 19 , to be examined on oath touching the means he had then or had had since the date of the said judgment [*or* order] to pay the said sum, in payment of which he had made default, and to show cause why he should not be committed to prison for such default, which summons has been proved to this court to have been personally and duly served on the said defendant:

And whereas, at the hearing of the said summons, it has now been proved to the satisfaction of the court, that the said defendant now has [*or* has had since the date of the said judgment [*or* order]] the means to pay the sum due and payable under the said judgment [*or* order] and refuses [*or* neglects] [*or* has refused or neglected] to pay the same, and the said defendant has shown no cause why he should not be committed to prison:

Now, therefore, it is ordered, that for such default as aforesaid the said defendant [*naming him*] shall be committed to prison for days, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged, or shall file such affidavit as is mentioned in Order XXV. Rule 43, of the County Court Rules.

These are, therefore, to require you the said high bailiff, bailiffs, and others, to take the defendant [*naming him*] and to deliver him to the governor of the [*prison used by the court*], and you the said governor to receive the said defendant, and him safely keep in the said prison for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Given under the seal of the court this [*insert date of order*] day of 19 .

Registrar.

	£	*s.*	*d.*
Amount remaining due under judgment [*or* order] at time of issue of judgment summons			
Fees and costs on issue and hearing of judgment summons			
Deduct amount paid into court since issue of judgment summons			
Poundage on this order			
Sum on payment of which the debtor is to be discharged			

This order remains in force for one year only from the date hereof, unless such time is extended under Order XXV. r. 46.

Add when so ordered: The time during which this order is to remain in force was on the day of extended by order of the judge to the day of , 19 .

Registrar.

190.

Order on Judgment Summons on a Judgment or Order against a Firm, or a Person carrying on Business in a Name other than his own, altering the Original Judgment or Order.

The Debtors Act, 1869, 32 & 33 Vict. c. 62, s. 5.

No. of plaint.

No. of judgment summons. *Order* 25, *Rule* 40.

In the county court of holden at .

Between . . . plaintiff,

and

. . . defendants. Address, description.

[*State name, address, and description, as in the original summons, with any amendment made by the court.*]

Whereas the plaintiff obtained a judgment [*or* an order] against the

defendants by and in the name of above described in this court [*or* in the county court of holden at *or* in the High Court of Justice, *or as the case may be*] on the day of , 19 , for the sum of £ [and costs], and there is now due and payable under the said judgment [*or* order] from the said defendants to the said plaintiff the sum of £ :

And whereas the said plaintiff having filed an affidavit in this court, wherein it was alleged that [*state the name, address, and description of one of the persons alleged to be partners in the firm against whom the judgment or order was obtained, or of the person alleged to be the sole member thereof, or of the person alleged to be carrying on business in a name other than his own*] was liable as one of the partners in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [*or* order], a summons was, at the instance of the said plaintiff, duly issued out of this court, by which the said was required to appear personally at this court on the day of , 19 , to be examined on oath touching the means he had then or had had since the date of the said judgment [*or* order] to pay the said sum of £ , and notice was thereby given to the said that if he denied that he was liable as one of the partners in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [*or* order] he must appear at this court on the day above mentioned, and that in default of his so appearing he would be deemed to admit his liability as aforesaid to pay the amount due and payable under the said judgment [*or* order] :

And whereas the said summons came on for hearing this day, and the said summons has been proved to this court to have been personally and duly served on the said :

And whereas the said did not appear at the hearing of the said summons :

[*or* And whereas the said appeared at the hearing of the said summons, and admitted his liability as one of the partners in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [*or* order] :

[*or* And whereas the said appeared at the hearing of the said summons, and denied that he was liable as one of the partners in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [*or* order], but proof has been made to the satisfaction of the court that the said is liable as one of the partners in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the said sum :]

It is ordered, that the said do pay the amount still due on the said judgment [*or* order], and the costs of the said summons and its hearing, as stated at the foot of this order, to the registrar of this court, by instalments of £ for every days; the first payment to be made on the day of 19 .

Given under the seal of the court, this day of 19 .

Registrar.

Acknowledgment of payment into Court.

Date.	£	s.	d.	Received by

	£	s.	d.
Amount remaining due under judgment [*or* order] . .			
Cost of judgment summons and its hearing . . .			

191.

Order of Commitment on a Judgment Summons on a Judgment or Order against a Firm, or a Person carrying on Business in a Name other than his own.

The Debtors Act, 1869. 32 & 33 Vict. c. 62, s. 5.

No. of plaint.

No. of judgment summons. *Order* 25, *Rule* 46.

In the [*title of court ordering commitment*].

Between . . . plaintiff,

and

. . . defendants.

Address, description.

[*State name, address, and description, as in the original summons, with any amendment made by the courts.*]

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and to the governor of the [*prison used by the court*].

Whereas the plaintiff obtained a judgment [*or* an order] against the defendants by and in the name of above described in this court [*or* in the county court of holden at , *or* in the High Court of Justice, *or as the case may be*] on the day of 19 , for the sum of £ [and costs], and there is now due and payable under the said judgment [*or* order] from the said defendants to the said plaintiff the sum of £ :

And whereas the said plaintiff having filed an affidavit in this court, wherein it was alleged that [*state the name, address, and description of one of the persons alleged to be partners in the firm against whom the judgment or order was obtained, or of the person alleged to be the sole member thereof, or of the person alleged to be carrying on business in a name other than his own*] was liable as one of the partners in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [*or* order] a summons was, at the instance of the said plaintiff, duly issued out of this court, by which the said was required to appear personally at this court on the day of 19 , to be examined on oath touching the means he had then or had had since the date of the said judgment [*or* order] to pay the sum due and payable under the said judgment [*or* order], and also to show cause why he should not be committed to prison for default in payment of the said sum, and notice was thereby given to the said that if he denied that he was liable as one of the partners in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [*or* order] he must appear at this court on the day above mentioned, and that in default of his so appearing he would be deemed to admit his liability as aforesaid to pay the amount due and payable under the said judgment [*or* order] :

And whereas the said summons came on for hearing this day, and the said summons has been proved to this court to have been personally and duly served on the said :

And whereas the said did not appear at the hearing of the said summons :

[*or* And whereas the said appeared at the hearing of the said summons, and admitted his liability as one of the partners in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [*or* order] :

[*or* And whereas the said appeared at the hearing of the said summons, and denied that he was liable as one of the partners in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [*or* order], but proof has been made to the satisfaction of

the court that the said is liable as one of the partners in [*or* the sole member of] the said firm of [or as the person carrying on business on his own behalf in the name of] to pay the said sum]:

And whereas at the hearing of the said summons it has now been proved to the satisfaction of the court that the said now has [*or* has had since the date of the said judgment [*or* order]] the means to pay the sum due and payable under the said judgment [*or* order], and refuses [*or* neglects] [*or* has refused *or* neglected] to pay the same, and the said has shown no cause why he should not be committed to prison:

Now, therefore, it is ordered that for such default as aforesaid the said shall be committed to prison for days, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged, or shall file such affidavit as is mentioned in Order XXV. r. 43, of the County Court Rules.

These are therefore to require you the said high bailiff, bailiffs, and others, to take the said , and to deliver him to the governor of the [*prison used by the court*], and you the said governor to receive the said and him safely keep in the said prison for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Given under the seal of this court, this [*insert date of order*] day of 19 .

Registrar.

	£	*s.*	*d.*
Amount remaining due under judgment [*or* order] at time of issue of judgment summons			
Fees and costs on issue and hearing of judgment summons			
Deduct amount paid into court since issue of judgment summons			
Poundage on this order			
Sum on payment of which the debtor is to be discharged			

This order remains in force for one year only from the date hereof, unless such time is extended under Order XXV. r. 46.

Add when so ordered: The time during which this order is to remain in force was on the day of extended by order of the judge to the day of 19 .

Registrar.

191A.

Notice to Debtor where Order of Commitment Made, but Directed to be Suspended.

The Debtors Act, 1869.

No. of plaint.

No. of judgment summons.

Order 25, *Rule* 46 (2).

In the [*Title of Court ordering commitment*].

Between A. B., plaintiff,

and

C. D., defendant.

Take notice, that an order of commitment for your imprisonment for days was this day made by the judge of this court.

The order will not be put in force if the sum stated below be paid into

court on or before the day of , 19 [*or* by instalments of £ for every days, the first payment to be made on the day of , 19].

In default of payment within the time above mentioned [*or* of any instalment] an order may issue for your imprisonment for the period above mentioned unless you shall sooner pay the whole amount remaining due under the said order, and the poundage on the order.

Dated this day of , 19 . Registrar.

£ *s.* *d.*

Amount payable under the order

To the judgment debtor [*naming him*].

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192 instead of 192.

Affidavit under Order XXV. r. 43 or 44.

In the county court of holden at

Between A. B., plaintiff,

and

C. D., defendant.

I, C. D. of make oath and say,—

Order 25, Rules 43, 44.

1. That under the Debtors Act, 1869, an order for my commitment was made by this court [*or* the county court of holden at], for making default in payment of £ , due from me in pursuance of a judgment [*or* an order] of the [*here insert the court in which the judgment or order was given or made*].

2. That on the day of 19 , I was adjudicated a bankrupt by the [*here insert the court by which adjudication was made*] [*or* That on the day of 19 , a receiving order was made for the protection of my estate by the [*here insert the court by which the receiving order was made*].

3. That the receiving order [*or* the order of adjudication] was published in the *London Gazette* on the day of 19 .

4. That the debt, in respect of which the above judgment [*or* order] was given [*or* made], was provable under the bankruptcy.

Sworn at . C. D.

192A instead of 192A.

Affidavit under Order XXV. r. 24a, 45a or 45b.

In the county court of holden at

. Between A. B., plaintiff,

and

C. D., defendant.

I, C. D., of make oath and say,—

Order 25, Rules 24a, 45a, 45b.

1. That on the day of 19 , a warrant of execution against my goods was issued by this court in consequence of default made by me in payment of £ , due from me in pursuance of a judgment [*or* an order] given [*or* made] against me on the day of 19 .

[*or*

1. That under the Debtors Act, 1869, an order for my commitment was made by this court [*or* the county court of holden at], for making default in payment of £ due from me in pursuance of a judgment [*or* an order] of the [*here insert the court in which the judgment or order was given or made*].]

2. That on the day of 19 , an order for the administration of my estate was made by the [*here insert the court in which the order was made*] under the provisions of section 122 of the Bankruptcy Act, 1883, as shown by the certificate of the registrar of that court hereto annexed.

3. That the debt in respect of which the above judgment [*or* order] was given [*or* made] has been notified to the court by which the said order for administration was made, and the plaintiff who obtained the said judgment [*or* order] has not obtained leave to proceed from that court, as appears from the certificate of the registrar hereto annexed.

Sworn at C. D.

[193 instead of 193].

Certificate under Order XXV. r. 24b or 45c.

Order 25, Rules 24b, 45c.

In the county court of holden at .

I hereby certify that an order for the administration of the estate of C. D., of [*here insert address and description of debtor*], was made by this court under the provisions of section 122 of the Bankruptcy Act, 1883, on the day of , 19 , and that a debt of £ has been notified by the said C. D., to this court as being due from him to [*here insert the name, address, and description of the creditor whose name the debtor wishes to be inserted*], and that the said [*here insert the name of creditor*] has not obtained leave to proceed from this court.

Dated this day of 19 .

Registrar.

194.

Certificate by Registrar for Discharge of Judgment Debtor.

The Debtors Act, 1869.

Order 25, Rule 44.

In the county court of holden at

Between A. B., plaintiff,

and

C. D., defendant.

I hereby certify that the defendant, who was committed to your custody by virtue of an order of commitment under the seal of this court [*or* the county court of holden at], bearing date the day of 19 , has filed an affidavit in this court, stating that [*here insert statement in affidavit*]; and that the defendant may, in respect of such order, be forthwith discharged out of your custody.

Given under the seal of the court this day of 19 .

Registrar.

To the governor of the [*prison used by the court*].

195.

Certificate of Payment by Prisoner.

The Debtors Act, 1869.

[*Heading as in Form* 194.]

Order 25, Rules 49, 51.

I hereby certify that the defendant, who was committed to my [*or* your] custody by virtue of an order of commitment under the seal of this court [*or* of the county court of holden at], bearing date the day of 19 , has paid and satisfied the sum of money for the non-payment whereof he was so committed, together with all costs due and payable by him in respect thereof; [*add, where the certificate is sent by the registrar*, and that the defendant may, in respect of such order, be forthwith discharged out of your custody].

Dated [*or* given under the seal of the court] this day of 19 .

Governor of [*or* registrar of the county court of holden at].

To the governor of [*or* the registrar of the county court of holden at].

196.

Request by Creditor for Discharge of Prisoner.

The Debtors Act, 1869.

[*Heading as in Form* 194.]

Order 25, Rule 50.

I, the undersigned A. B., the plaintiff in this action, request that the defendant C. D., if still in custody, may be discharged.

A. B.

To the registrar.

197.

Certificate for Discharge of Prisoner at Request of Creditor.

The Debtors Act, 1869.

[*Heading as in Form* 194.]

I hereby certify that C. D., who was committed to your custody by virtue of an order of commitment under the seal of this court [*or* of the county court of holden at] bearing date the day of 19 , may, in respect of such order, be forthwith discharged out of your custody. *Order 25, Rule 50.*

Registrar of the county court of , holden at .

To the governor of .

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198 instead of 198.

Affidavit for Leave to Summon Garnishee.

I, A. B., of in the county of , [*or*, I, C. D., of, &c., solicitor to] the above-named plaintiff, make oath and say : *Order 26, Rules 1, 2.*

1. That I [*or* A. B.], on the day of recovered judgment [*or* obtained an order] in the county court of , holden at , in this action [*or* matter] against the above-named defendant, for the sum of £ , for debt [*or* damages] and costs [*or* for payment of the sum of £ and £ for costs].

2. That the said judgment is still wholly unsatisfied [*or* is still unsatisfied as to the sum of £].

[*Or* 2. That the whole [*or* £ part] of the sum payable under the said order is still unsatisfied.]

3. That M. N., of , in the county of , is indebted to the defendant in the sum of £ . [*Add, if so*, for payment of which sum the defendant recovered judgment [*or* obtained an order] in this court against the said M. N. on the day of 19 , and by the said judgment [*or* order] it was ordered that the said *M. N.* should pay the said sum of £ to the registrar of this court on the day of 19 , [*or* by instalments of for every days], and the sum of £ remains due and unpaid under the said judgment [*or* order].]

4. That the said M. N. is in respect of the said debt to the defendant within the jurisdiction of this court, and could be [*or* has been] sued in respect thereof in this court (*a*) on the following ground, viz. :—

(*a*) that the said M. N. resides [*or* carries on business] within the district of this court :

[*Or* (*b*) that the said M. N. resided [*or* carried on business] within the district of this court within six calendar months next before this day of] :

[*Or* (*c*) that the cause of action between the defendant and the said M. N. arose wholly or in part within the district of this court] :

[*Or* (*d*) that the said defendant resides [*or* carries on business] within the district of this court, and the said M. N. resides [*or* carries on business] within the district of the county court of , and could be sued in this court under section eighty-four of the County Courts Act, 1888.

Sworn, &c.

NOTE (*a*).—See Order 26, r. 1 (2).

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199 instead of 199.

Summons to Garnishee.

No. of plaint.

Between A. B., plaintiff,
(*Address and description*)
and
C. D., defendant,
(*Address and description*)
and
M. N., garnishee,
(*Address and description.*)

Order 26, Rules 1, 2. Whereas the plaintiff at a court holden at on the day of 19 , recovered judgment [*or* obtained an order] against C. D. of [*name, address, and description*] for the sum of £ for debt [*or* damages] and costs, [*or* for payment of the sum of £ and £ for costs] which judgment [*or* order] remains unsatisfied as to the sum of £ .

And whereas the plaintiff has filed an affidavit stating that you are indebted to the said C. D. in the sum of £ :

You are hereby summoned to appear at a court to be holden at on the day of 19 , at the hour of in the noon, to show cause why an order should not be made upon you for the payment to the plaintiff of the amount of the debts due and owing and accruing from you to the said C. D., or so much thereof as will satisfy the debt due under the said judgment [*or* order] and the plaintiff's costs of this proceeding :

And take notice, that from and after the service of this summons upon you all such debts are attached to answer the said judgment [*or* order] :

And further take notice, that if you pay to the registrar of this court the amount of such debts, or so much thereof as will satisfy the debt due under the said judgment [*or* order] [and the fees and solicitor's costs indorsed on this summons], five clear days before the day upon which you are required to appear, you will incur no further costs.

Dated this day of 19 .

Registrar.

To [*the garnishee*].

	£	*s.*	*d.*
Amount remaining due under judgment [*or* order] .			
Costs of this summons			
Solicitor's costs			
Total amount . . . . . £			

This summons is issued at the instance of , the above-named plaintiff [*or* solicitor for the above-named plaintiff], whose address for service is.

199A.

Notice to Judgment Debtor of Issue of Garnishee Summons.

[*Heading as in Garnishee Summons.*]

Order 26, Rule 4a. TAKE NOTICE, that the garnishee summons, a copy of which is hereunto annexed, was issued on the day of , and served on the day of , and that if you have any cause to show why the court should not order M. N. , the garnishee named in the said summons, to pay to the judgment creditor the debt alleged to be due from the garnishee to you, or so much thereof as may be sufficient to satisfy the sum due to the judgment creditor from you, with the costs of the garnishee proceedings, you must appear at this court on the day of at the hour of in the noon, and show such cause accordingly.

Dated this day of 19 .

To (*the judgment debtor*).

Registrar.

199B.

Notice to Judgment Creditor of Payment into Court by Garnishee.

(1.)

Where Whole Claim paid in.

[*Heading as in Garnishee Summons.*]

TAKE NOTICE, that the garnishee has paid into court the full amount of your claim in these proceedings, together with your costs therein. *Order 26, Rule 5 (2).*

The amount paid into court will, on application made by you on the day of at the hour of in the noon, be ordered to be paid out to you, unless cause is shown to the contrary; or you may apply for payment out on any earlier day, on the production of the consent in writing of the judgment debtor to the money paid into court being paid out to you.

Dated this day of 19 .

To (*the judgment creditor*).

Registrar.

(2).

Where part of Claim paid in.

[*Heading as in Garnishee Summons.*]

TAKE NOTICE, that the garnishee has paid into court the sum of £ in respect of your claim in these proceedings, and the sum of £ in respect of fees and costs.

If you elect to accept the sum paid in in full satisfaction of your claim against the garnishee, and the costs you have incurred, and send to the registrar of this court and to the garnishee a written notice of such acceptance forthwith, by post, or by leaving the same at the registrar's office and at the garnishee's residence or place of business, the proceedings against the garnishee will abate, and you will not be liable to any costs incurred by the garnishee after receiving such notice, and the amount paid into court will, on application made by you on the day of at the hour of in the noon, be ordered to be paid out to you, unless cause is shown to the contrary; or you may apply for payment out on any earlier day, on the production of the consent in writing of the judgment debtor to the money paid into court being paid out to you.

In default of such notice the proceedings will proceed: and if you do not appear at the hearing you will be liable to pay to the garnishee such costs as he may incur for appearing at the hearing, or such other sum of money as the judge may order for expenses subsequent to the payment into court.

Dated this day of 19 .

To (*the judgment creditor*).

Registrar.

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200 instead of 200.

Notice to Judgment Debtor of Payment into Court by Garnishee.

[*Heading as in garnishee summons.*]

Take notice, that M. N., the garnishee named in the proceedings herein has paid into court the sum of £ *Order 26, Rule 5 (3).*

And further take notice, that the said sum will be ordered to be paid out to the judgment creditor A. B. unless you appear at this court on the day of at the hour of in the noon, and show cause to the contrary.

Dated this day of 19 .

To (*the judgment debtor*).

Registrar.

201.

Judgment on Garnishee Summons.

[*Heading as in garnishee summons.*]

Order 26, Rules 7, 8. Whereas the plaintiff at a court holden at on the day of , 19 , recovered a judgment [*or* obtained an order] against C. D., of for the sum of £ for debt [*or* damages] and costs, [*or* for payment of the sum of £ and £ for costs], which judgment [*or* order] remains unsatisfied as to the sum of £ :

And whereas the plaintiff having filed an affidavit stating that the above-named M. N. was indebted to the said C. D. in the sum of £ , the said M. N. was summoned to show cause why he should not be ordered to pay to the plaintiff the amount of the debts due and owing and accruing from him to the said C. D., or so much thereof as would satisfy the debt due under the said judgment [*or* order], and the plaintiff's costs of this proceeding:

And whereas the said M. N. has failed to appear before the court this day [*or* has appeared before the court this day, and has failed to show cause why he should not be ordered to pay such debts] [*or* has shown sufficient cause why he should not be ordered to pay such debts] to the plaintiff:

If the plaintiff is allowed his costs of the garnishee proceedings out of the debts found due from the garnishee to the defendant, and the amount of such debts, after deducting any costs which the garnishee is allowed to deduct from the amount due from him to the defendant, is not sufficient to satisfy such costs and the amount due under the judgment or order obtained by the plaintiff against the defendant, proceed as follows:—

It is ordered that the plaintiff do recover against the said M. N. the sum of £ , being the amount of the debts found due from the said M. N. to the said C. D., [*add, if so ordered*, after deducting from such amount the sum of which is hereby allowed to be deducted by the said M. N. from the amount of such debts for his costs of this proceeding], and that the sum of £ so recovered be applied first in payment of the costs of the plaintiff of this proceeding, amounting to the sum of £ , and secondly, so far as the same will extend, in satisfaction of the debt due under the said judgment [*or* order] obtained by the plaintiff against the said C. D.

[*or, If the plaintiff is allowed his costs out of the debts, and the amount of such debts, after deducting any costs which the garnishee is allowed to deduct from the amount due from him to the defendant, is more than sufficient to satisfy such costs and the amount due under the judgment or order, proceed as follows:—*

It is ordered that the plaintiff do recover against the said M. N. the sum of £ , being so much of the amount of the debts found due from the said M. N. to the said C. D. [*add, if so ordered*, after deducting from such amount the sum of which is hereby allowed to be deducted by the said M. N. from the amount of such debts for his costs of this proceeding], as will be sufficient to satisfy the costs of the plaintiff of this proceeding, amounting to the sum of £ , and the debt due under the said judgment [*or* order] obtained by the plaintiff against the said C. D.]

[*or, If the garnishee is ordered to pay costs personally, proceed as follows:—*

It is ordered that the plaintiff do recover against the said M. N. the sum of £ , being the amount of the debts found due from the said M. N. to the said C. D. [*or, if such debts exceed the debt due under the judgment or order*, being so much of the amount of the debts found due from the said M. N. to the said C. D. as will be sufficient to satisfy the debt due under the said judgment [*or* order] obtained by the plaintiff against the said C. D.].

And it is further ordered that the plaintiff do recover against the said M. N. the sum of £ for his costs of this proceeding, such last-mentioned sum to be paid by the said M. N. personally.]

[*or, If judgment is given for the garnishee, proceed as follows:—*

It is ordered that judgment be entered in this proceeding for the said M. N., *and, if the plaintiff is ordered to pay costs, add*, and that the plaintiff do pay the sum of £ for the costs of the said M. N. of this proceeding].

And proceed as follows :—

And it is ordered that the said M. N. do pay the said sum of £ [*or* the said sums of £ and £ amounting together to the sum of £] [*or* that the plaintiff do pay the said sum of £] to the registrar of this court on the day of 19 , [*or* by instalments of £ for every days, the first instalment to be paid on the day of 19].

[*If the garnishee is allowed to deduct any costs from the debts due from him to the defendant, add :—*

And it is further ordered that the said M. N. be allowed the sum of £ for his costs of this proceeding, and the said sum is hereby allowed to him in part discharge of the debts due from him to the said C. D.]

202.

Execution against Garnishee.

[*Heading as in Garnishee Summons.*]

Whereas on the day of 19 , the above-named plaintiff A. B. obtained a judgment in this court against the above-named M. N. whereby it was ordered that the plaintiff should recover against the said M. N. the sum of £ being, &c. [*recite the judgment entered, according to Form* 201] : and it was thereupon ordered that the said M. N. should pay the said sum of £ [*or* the said sums of £ and £ , amounting together to the sum of £ , to the Registrar on the day of [*or* by instalments of for every days] :

Order 26, *Rule* 7.

And whereas default has been made in payment according to the said order :

These are therefore [*the same as in ordinary executions*].

203 instead of 203.

Notice of Claim to Goods taken in Execution.

Take notice, that E. F. of has claimed the goods [*or* certain goods] [*where only certain goods are claimed here enumerate them*] taken in execution by me under the warrant of execution issued in this action. If within four days after receiving this notice you give notice to me that you admit the title of the said E. F. to the said goods, or request me to withdraw from possession, you will not be liable for any costs incurred after the receipt by me of your notice.

Order 27, *Rule* 1 (1).

Dated, &c.

High Bailiff.

To [*the execution creditor*].

204 instead of 204.

Notice by Execution Creditor of Admission of Title of Claimant or Request to Bailiff to withdraw.

Take notice, that I admit the title of E. F. to the goods seized by you [*or* that I request you to withdraw from possession] under the execution issued under the judgment in this action.

Order 27. *Rule* 1 (2).

Execution creditor.

To the high bailiff.

205.

Notice to Claimant setting up Claim to Goods taken in Execution to make Deposit or give Security.

[*Heading as in next Form.*]

Whereas you, E. F., have claimed the goods [*or* certain goods] [*where only certain goods are claimed here enumerate them*] taken in execution by me under the warrant of execution issued in this action :

51 & 52 Vict. c. 43, s. 156. *Order* 27, *Rule* 1 (3).

Take notice, that you are hereby required, in accordance with section 156 of the County Courts Act, 1888, either—

(1) to deposit with me the amount of the value of the goods so claimed by you, such value to be fixed by appraisement in case of dispute, to be by me paid into court to abide the decision of the judge upon your claim; *or*

(2) to deposit with me the costs of keeping possession of such goods until such decision can be obtained; *or*

(3) to give me security by bond with sureties according to section 108 of the County Courts Act, 1888, and Ord. XXIX. of the County Court Rules for the value of the goods so claimed by you;

And further take notice, that in default of your making deposit or giving security the goods will be sold as if no such claim had been made by you, and the proceeds paid into court to abide the decision of the judge.

High Bailiff.

To .

206.

Interpleader Summons to Execution Creditor.

Order 27, Rule 2.

In the county court of holden at .

No. of Plaint.

Between A.B., plaintiff,
and
C.D., defendant,
and
E.F., claimant.

Whereas [*here insert the name, address, and description of claimant, so far as is then known*] has made a claim to [certain goods and chattels [*or* the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at your instance] [*or* certain rent alleged to be due to him in respect of and issuing out of the premises upon which certain goods and chattels were taken in execution under process issuing out of this court at your instance]:

You are therefore hereby summoned to appear at a court to be holden at on the day of 19 , at the hour of in the noon, when the said claim will be adjudicated upon, and such order made thereupon as to the court shall seem fit.

Dated this day of 19 .

Registrar.

To [*the execution creditor*].

NOTE.—*The claimant is called upon, five clear days at least before the day of hearing, to deliver to the high bailiff, or leave at the office of the registrar, two copies of the particulars of his claim, and the high bailiff is required to forthwith send by post to you one of the copies of such particulars.*

207.

Interpleader Summons to Claimant setting up Claim to Goods or Proceeds thereof.

[*Heading as in Form* 206.]

[*Name, address, and description of claimant.*]

Order 27, Rule 3.

You are hereby summoned to appear at a court to be holden at on the day of 19 , at the hour of in the noon, to support a claim made by you to certain goods and chattels [*or* to the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of [*the execution creditor*]; and in default of your then establishing such claim the said goods and chattels will then be sold, and the proceeds thereof paid over [*or* the said proceeds of sale [*or* value] will be paid over] according to the exigency of the said process;

And take notice, that you are hereby required, five clear days at least before the said day, to deliver to the high bailiff, or leave at my office, two copies of the particulars of the goods and chattels which [*or* the proceeds [*or* value] whereof] are claimed by you, and of the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars as aforesaid, your claim will not be heard by the court.

The hearing fee must be paid before the case is called on.

To [*the claimant above named*].

208.

Interpleader Summons to Claimant setting up Claim to Rent in respect of the Premises upon which Execution was Levied.

[*Heading as in Form* 206.]

[*Name, address, and description of claimant.*]

Order 27, Rule 3.

You are hereby summoned to appear at a court to be holden at on the day of , 19 , at the hour of in the noon, to support a claim made by you to certain rent alleged by you to be due to you in respect of and issuing out of certain premises upon which certain goods and chattels were taken in execution under process issuing out of this court at the instance of [*the execution creditor*]; and in default of your then establishing such claim the said goods and chattels will then be sold, and the proceeds thereof paid over according to the exigency of the said process [*or*, if such goods and chattels shall have been then sold or the value thereof deposited in court, then the proceeds of such sale or the amount deposited will be paid over according to the exigency of the said process];

And take notice, that you are hereby required, five clear days at least before the said day, to deliver to the high bailiff, or leave at my office, two copies of the particulars of the amount of the rent claimed by you, and of the period for which and the premises in respect of which you claim such rent, and of the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars as aforesaid, your claim will not be heard by the court.

The hearing fee must be paid before the case is called on.

To [*the claimant above named*].

209.

Interpleader Summons to Execution Creditor and High Bailiff, where Claimant claims Damages as well as the Goods seized.

In the county court of holden at .

Order 27, Rule 3.

No. of plaint.

Between A. B., plaintiff,
and
C. D., defendant,
and between E. F., claimant,
and

[*the execution creditor*] and the high bailiff of this court, respondents.

Whereas [*name, address, and description of claimant*] has made a claim to certain goods and chattels [*or* to the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at your instance, and has also claimed from you and from the high bailiff of this court the sum of £ for damages arising out of the said execution:

You and the high bailiff are therefore hereby summoned to appear at a court to be holden at on the day of , 19 , at the hour of in the noon, when the said claim, both as to the said goods and chattels [*or* the proceeds of sale [*or* value] of the said goods and chattels], and

as to the said damages, will be adjudicated upon, and such order made thereupon as to the court shall seem fit.

To [*the execution creditor*] and to
the high bailiff of this court.

NOTE.—*The claimant is called upon five clear days at least before the day of hearing to deliver to the high bailiff, or leave at the office of the registrar, two copies of the particulars of his claim, and the high bailiff is required to forthwith send by post to the execution creditor one of the copies of such particulars.*

210.

Interpleader Summons to Claimant setting up Claim to Damages, as well as to the Goods or the Proceeds thereof.

[*Heading as in Form* 209.]

[*Name, address, and description of claimant.*]

Order 72, *Rule* 3. You are hereby summoned to appear at a court to be holden at , on the day of , 19 , at the hour of in the noon, to support a claim made by you to certain goods and chattels [*or* to the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of [*the execution creditor*], and also for damages arising out of such execution, and, in default of your then establishing such claim, the said goods and chattels will then be sold and the proceeds thereof paid over [*or* the said proceeds of sale [*or* value] will be paid over], according to the exigency of the said process;

And take notice, that you are hereby required five clear days at least before the said day to deliver to the high bailiff, or leave at my office, two copies of the particulars of the goods and chattels which [*or* the proceeds [*or* value] whereof] are claimed by you, and of the grounds of your claim, and you must also state in such particulars the amount of the damages you claim, and the party from whom you claim the same, and the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars as aforesaid your claim will not be heard by the court.

The hearing fee must be paid before the case is called on.

To [*the claimant above named*].

211.

Particulars of Claim under Interpleader Summons.

[*Not to be printed.*]

[*Heading as Interpleader Summons.*]

Order 27, *Rules* 5, 8. *Order* 33, *Rule* 10. Take notice, that I, E. F., of [*address and description*] claim certain goods and chattels [*or* the proceeds of sale [*or* value] of certain goods and chattels] to wit [*specify them, or add,* as specified in the schedule hereunder written] taken in execution under process issuing out of this court in this action, and mentioned in the interpleader summons herein, and that the grounds of my claim are that the said goods and chattels were assigned to me by an indenture dated the day of , and made between the said , the above-named defendant, of the one part, and me, the said E. F. , the claimant of the other part.

And further take notice that I claim the sum of £ from the said A. B. , the plaintiff and the high bailiff of this court, for damages arising out of the said execution; and that the grounds of my claim are that they broke and entered my said house at aforesaid, and that they there seized and took away the said goods and chattels under the said execution.

Dated, &c. (Signed) E. F., Claimant.

To the execution creditor, and the
high bailiff of this court.

212.

Particulars of Claim for Rent under Interpleader Summons.

[*Not to be printed.*]

[*Heading as in Interpleader Summons.*]

Take notice, that C. D. , the defendant, is my tenant of [*describe the premises*] situate at in the county of , and that the goods and chattels taken in execution under process issuing out of this court in this action, and mentioned in the interpleader summons herein, were in and upon the said [*house and premises*], and that there was at the date of the said execution due to me from the said C. D. the sum of £ for [*one year's*] rent of the said [*house and premises*], and that the same is still due and owing from the said C. D. to me, and that I claim payment of the said sum of £ out of the proceeds of the said execution. *Order 27, Rule 5.*

Dated this day of .

(Signed) E. F. [*name, address, and description*].

To [*the execution creditor*] and the high bailiff of this court.

212A.

Order for Sale of Goods taken in Execution, but claimed by a Claimant as Security for a Debt.

[*Heading as in Action, or if Interpleader Summons issued, Heading as in Summons.*]

Upon the application of , and upon hearing , and the execution creditor undertaking to secure any persons entitled to priority over him against any loss by reason of the sale hereinafter directed: *Order 27, Rule 13 (2)*

It is ordered that the high bailiff do proceed to sell enough of the goods seized under the warrant of execution issued in this action to satisfy—

(1) the expenses of and incident to the sale;
(2) the rent [*if any*] duly claimed by the landlord of the premises on which the goods were seized;
(3) the taxes [*if any*] charged upon the execution debtor, and in arrear or payable for the year in which the goods were seized, not exceeding the taxes for one year;
(4) the claim of the claimant E. F. . . . . .
(5) the costs of the high bailiff in relation to the execution in this action; and
(6) the claim of the execution creditor in this action.

And it is further ordered that the high bailiff do, after deducting the expenses of and incident to the sale, pay the rent and taxes claimed and charged as above-mentioned, and do pay the balance of the proceeds of sale into court, and that the registrar do apply such balance in payment of the various sums herein mentioned in the order herein mentioned, and that the ultimate balance [*if any*] of such proceeds be paid to the execution debtor:

But if the proceeds of sale shall be insufficient to pay any of the sums herein directed to be paid in priority to the claim of the execution creditor

then it is ordered that the execution creditor do pay so much of the said sums as such proceeds shall be insufficient to pay to the several parties entitled thereto respectively:

And any of the parties are to be at liberty to apply to the court as they may be advised.

213.

Order on Interpleader Summons where Claim is not established.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Interpleader Summons.*]

Order 27, *Rule* 14. *Order* 33, *Rule* 18.

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of [*the execution creditor*], [*or* to certain rent alleged to be due to him in respect of and issuing out of certain premises upon which certain goods and chattels were taken in execution under process issuing out of this court at the instance of the said [*execution creditor*], that the said goods and chattels [*or* proceeds of sale [*or* value]] are not the property of the said E. F. [*or* that there is no rent due to the said E. F.].

And it is ordered, that the said E. F. do pay the sum of £ for costs to the registrar of this court, for the use of the said [*execution creditor*], on or before the day of , 19 .

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court, or, in the case of an interpleader transferred from the High Court, any moneys in the hands of the sheriff, are to be disposed of, and an order on the sheriff to deal with such moneys accordingly: for example, thus—*

Hearing fee.

And it is ordered that the said E. F. do on or before the day of pay the sum of £ , being the fee payable on the hearing of this proceeding estimated on the sum of £ , to the registrar of this court:

Disposal of deposit or proceeds of sale.

And it is ordered that out of the sum of £ paid into court in this proceeding by the high bailiff, being the value of the said goods and chattels deposited by the said E. F. with the said high bailiff [*or* being the proceeds of the sale by the said high bailiff of the said goods and chattels] the sum of £ be paid to the said high bailiff for possession money and charges in respect of the said execution, and that the balance of the said sum of £ be paid to the said [*execution creditor*] in satisfaction, so far as the same will extend, of the sum in respect of which the said execution issued:]

[Or, *where security given for value of goods:*

Where security given for value of goods.

And it is ordered that the said E. F. do on or before the day of pay to the registrar of this court the sum of £ , being the value of the said goods and chattels, and that in default of such payment the high bailiff do proceed to enforce the security given by the said E. F. for such value:

And it is ordered that all moneys paid by the said E. F. in respect of the said sum of £ , or recovered by the enforcement of the said security, be applied first in payment to the high bailiff of the sum of £ for the possession money and charges payable to him in respect of the said execution, and then in payment to the said [*execution creditor*], so far as the same will extend, of the sum in respect of which the said execution issued.]

[Or, *in the case of an interpleader transferred from the High Court:* Interpleader transferred from High Court.
And it is ordered that the sheriff of do forthwith after service of this order upon him pay to the said [*execution creditor*] the sum of £ paid to the said sheriff by the said E. F. pursuant to the order of Master dated the day of , 19 , [*or* the moneys in the hands of the said sheriff, representing the proceeds of the sale of the said goods and chattels by the said sheriff pursuant to the order of Master dated the day of , 19 ,] [or that the sum of £ paid into court by the sheriff of pursuant to the order of Master dated the day of , 19 , being the amount paid to the said sheriff by the said E. F. pursuant to the said order [*or* the proceeds of the sale of the said goods and chattels by the said sheriff pursuant to the said order] be paid to the said [*execution creditor*]], after deducting from the said sum [*or* moneys] the charges of the said sheriff in respect of the said execution, [such charges to be taxed by the registrar in case of dispute:] Disposal of moneys in hands of or paid into court by sheriff.

And it is further ordered that the said E. F. do pay to the said sheriff his costs of this proceeding down to and including the order directing this proceeding to be transferred to this court, such costs in case of dispute to be taxed by the registrar, and paid by the said E. F. to the registrar for the use of the sheriff within days from the date of the certificate of taxation.] Costs of sheriff.

To [*the claimant*]
and to the high bailiff
[or the sheriff of .

214.

Order on Interpleader Summons where Claim is established.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Interpleader Summons.*]

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of the said [*execution creditor*], [*or* to certain rent alleged to be due to him in respect of and issuing out of certain premises on which certain goods and chattels were taken in execution under process issuing out of this court at the instance of the said [*execution creditor*], that the said goods and chattels [*or* proceeds of sale] [*or* value] [or part of the said goods and chattels *or* proceeds of sale *or* value, to wit, *specifying them or it*] are the property of the said E. F. [*or* that rent to the amount of £ is due to the said E. F.]. *Order 27, Rule 14. Order 33, Rule 18.*

And it is ordered, that the said [*execution creditor*] do pay the sum of £ for costs to the registrar of this court, for the use of the said E. F., on or before the day of 19 .

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court, or, in the case of an interpleader transferred from the High Court, any moneys in the hands of the sheriff, are to be disposed of, and an order on the sheriff to deal with such moneys accordingly: for example, thus—*

And it is ordered, that the said [*execution creditor*] do, on or before the day of 19 , pay the sum of , being the fee payable on the hearing of this proceeding, estimated on the sum of £ , to the registrar of this court: Hearing fee.

And it is ordered that the sum of £ paid into court in this proceeding by the high bailiff, being the value of the said goods and chattels Disposal of deposit or proceeds of sale.

deposited by the said E. F. with the said high bailiff [*or* being the proceeds of the sale by the said high bailiff of the said goods and chattels] be paid to the said E. F. :]

[Or, *where security given for value of goods :*

Where security given for value of goods.

And it is ordered, that the security given by the said E. F. for the value of the said goods and chattels be delivered up to the said E. F. to be cancelled :]

[Or, *where the costs of keeping possession of the goods have been deposited with the high bailiff :*

Where costs of keeping possession deposited.

And it is ordered, that the sum of £ deposited by the said E. F. with the high bailiff for the costs of keeping possession of the said goods and chattels be forthwith repaid by the said high bailiff to the said E. F. :]

High bailiff's possession money and charges.

And it is ordered that the said [*execution creditor*] do, on or before the day of , 19 , pay to the registrar of this court, for the use of the high bailiff the sum of £ for possession money and charges in respect of the said execution.

[Or, *in the case of an interpleader transferred from the High Court :*

Interpleader transferred from High Court.

And it is ordered, that the sheriff of do forthwith after service of this order upon him pay to the said E. F. the sum of £ paid to the said sheriff by the said E. F. pursuant to the order of Master dated the day of , 19 , [*or* the moneys in the hands of the said sheriff representing the proceeds of the sale of the said goods and chattels by the said sheriff pursuant to the order of Master dated the day of , 19 :] [*or* that the sum of £ paid into court by the sheriff of pursuant to the order of Master dated the day of , 19 , being the amount paid to the said sheriff by the said E. F. pursuant to the said order [*or* the proceeds of the sale of the said goods and chattels by the said sheriff pursuant to the said order], be paid to the said E. F. :

Disposal of moneys in hands of or paid into court by sheriff.

Possession money since date of Master's order.

And it is ordered, that the said [*execution creditor*] do, on or before the day of , 19 , pay to the registrar of this court, for the use of the said E. F. the sum [*if any*] paid by the said E. F. to the said sheriff for possession money from the date of the said order of Master :

Costs of sheriff.

And it is ordered that the said [*execution creditor*] do pay to the said sheriff his costs of the said execution and of this proceeding down to and including the order directing this proceeding to be transferred to this court, such costs in case of dispute to be taxed by the registrar and to be paid by the said [*execution creditor*] to the registrar for the use of the sheriff within days from the date of the certificate of taxation.]

To [*the execution creditor*]
and to the high bailiff
[*or* the sheriff of].

215.

Order on Interpleader Summons where both Goods and Damages are claimed, and the Claim to neither is established.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Interpleader Summons.*]

Order 27, Rule 14.

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of the said [*execution creditor*], and for damages arising out of the said execution, and which the said E. F. claims against [*the execution creditor*] and the high bailiff of this court, that the said goods and chattels

[*or* proceeds of sale] [*or* value] are not the property of the said E. F., and that the said E. F. is not entitled to recover any damages from either [*the execution creditor*] or the high bailiff of this court:

And it is ordered that the said E. F. do pay to the registrar of this court the sum of £ for costs for the use of the said [*execution creditor*], and the sum of £ for costs for the use of the high bailiff of this court, on or before the day of 19 .

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees or other charges or expenses; also directions as to how any moneys paid into court are to be disposed of; see Form* 213.]

To [*the claimant*].

216.

Order on Interpleader Summons where both Goods and Damages are claimed, and the Claim to both is established.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Interpleader Summons.*]

Order 27, *Rule* 14.

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of the said [*execution creditor*], and for damages arising out of the said execution, and which the said E. F. claims against [*the execution creditor*] and the high bailiff of this court, that the said goods and chattels [*or* proceeds of sale] [*or* value] [*or* part of the said goods and chattels *or* proceeds of sale *or* value], to wit [*specifying them or it*] are the property of the said E. F., and that the said E. F. is entitled to recover the sum of £ for damages arising out of the said execution against the said [*execution creditor*] and the high bailiff of this court:

[*Or*, and that the said E. F. is entitled to recover the sum of £ for damages arising out of the said execution against the said [*execution creditor*], but is not entitled to recover any damages against the high bailiff of this court:]

[*Or*, and that the said E. F. is entitled to recover the sum of £ for damages arising out of the said execution against the high bailiff of this court, but is not entitled to recover any damages against the said [*execution creditor*]:

And it is ordered, that the said [*execution creditor*] and the high bailiff of this court do pay the said sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E. F., on or before the day of 19 :

[*Or*, that the said [*execution creditor*] do pay the said sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E. F., on or before the day of 19 , and that the said E. F. do pay the sum of £ for costs to the registrar of this court, for the use of the high bailiff of this court, on or before the day of 19 :]

[*Or*, that the high bailiff of this court do pay the said sum of £ for damages, and the sum of £ for costs, and that the said [*execution creditor*] do pay the sum of £ for costs to the registrar of this court, for the use of the said E. F., on or before the day of 19 :]

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court are to be disposed of; see Form* 214.]

To [*the execution creditor*] and the high bailiff.

217.

Order on Interpleader Summons where both Goods and Damages are claimed and the Claim to the Goods *is*, but that to Damages *is not*, established.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Interpleader Summons.*]

Order 27, Rule 14. It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of the said [*execution creditor*], and for damages arising out of the said execution, and which the said E. F. claims against [*the execution creditor*] and the high bailiff of this court, that the said goods and chattels [*or* proceeds of sale] [*or* value] [*or* part of the said goods and chattels *or* proceeds of sale *or* value], to wit, [*specifying them or it*] are the property of the said E. F., but that the said E. F. is not entitled to recover any damages from either [*the execution creditor*] or the high bailiff of this court:

And it is ordered that [*the execution creditor*] do pay to the registrar of this court the sum of £ for costs, for use of the said E. F., on or before the day of 19 , and that the said E. F. do pay to the registrar of this court the sum of £ for costs, for the use of the high bailiff of this court, on or before the day of 19 .

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into Court are to be disposed of; see Form* 214.]

To the [*execution creditor*] and
to E. F. [*the claimant*].

218.

Order on Interpleader Summons where both Goods and Damages are claimed, and the Claim to the Goods *is not*, but the Claim to Damages *is*, established.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Interpleader Summons.*]

Order 27, Rule 14. It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of the said [*execution creditor*], and for damages arising out of the said execution, and which the said E.F. claims against [*the execution creditor*] and the high bailiff of this court, that the said goods and chattels [*or* proceeds of sale [*or* value]] are not the property of the said E.F., but that the said E.F. is entitled to recover the sum of £ for damages arising out of the said execution against the said [*execution creditor*] and the high bailiff of this court.

[*Or*, but that the said E.F. is entitled to recover the sum of £ for damages arising out of the said execution against the said [*execution creditor*], but is not entitled to recover any damages against the high bailiff of this court:

[*Or*, but that the said E.F. is entitled to recover the sum of £ for damages arising out of the said execution against the high bailiff of this court, but is not entitled to recover any damages against the said [*execution creditor*]:]

And it is ordered that the said [*execution creditor*] and the high bailiff of this court do pay the said sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E.F., on or before the day of 19 :

[*Or*, that the said [*execution creditor*] do pay the said sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E.F., on or before the day of 19 , and that the said E.F. do pay the sum of £ for costs to the registrar of this court, for the use of the high bailiff of this court, on or before the day of 19 :]

[*Or*, that the high bailiff of this court do pay the said sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E.F., on or before the day of 19 , and that the said E.F. do pay the sum of £ for costs to the registrar of this court, for the use of the said [*execution creditor*], on or before the day of 19 :]

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court are to be disposed of; see Form* 213.]

To E.F. [*the claimant*],
and to [*execution creditor*],
and the high bailiff.

219.

Order on Interpleader Summons where both Goods and Damages are claimed, and Money is paid into Court in respect of the latter, and the Claim to the Goods is established, and the Money paid into Court is found to be sufficient to satisfy the Damages.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Interpleader Summons.*]

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of the said [*execution creditor*], and for damages arising out of the said execution, and which the said E. F. claims against the said [*execution creditor*] and the high bailiff of this court, and in respect of which damages the said [*execution creditor*] [*or* the said high bailiff] has paid into court the sum of £ , that the said goods and chattels [*or* proceeds of sale] [*or* value] [*or* part of the said goods and chattels *or* proceeds of sale *or* value], to wit, [*specifying them or it*] are the property of the said E. F., but that the said sum paid into court is sufficient to satisfy all damages arising out of the said execution which the said E. F. is entitled to recover against the said [*execution creditor*] [*or* the said high bailiff] (*as the case may be*): *Order* 27, *Rule* 14.

And it is ordered that the said [*execution creditor*] do pay the sum of £ for costs to the registrar of this court for the use of the said E. F., on or before the day of 19 :

And that the said E. F. do pay the sum of £ for costs to the registrar of this court, for the use of the high bailiff of this court, on or before the day of 19 , [*or such other order as the judge shall think fit to make as to costs*].

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court are to be disposed of; see Form* 214].

To E. F. [*the claimant*],
and to [*execution creditor*],
and to the high bailiff.

220.

Order on Interpleader Summons where both Goods and Damages are claimed, and Money is paid into Court in respect of the latter, and the Claim to the Goods is established, and the Money paid into Court is adjudged insufficient.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Interpleader Summons.*]

Order 27, Rule 14. It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* the proceeds of sale] [*or* value] of certain goods and chattels taken in execution under process issuing out of this court at the instance of the said [*execution creditor*], and for damages arising out of the said execution, and which E. F. claims against the said [*execution creditor*] and the high bailiff of this court, and in respect of which damages the said [*execution creditor*] [*or* the said high bailiff] has paid into court the sum of £ , that the said goods and chattels [*or* proceeds of sale] [*or* value] [*or* part of the said goods and chattels *or* proceeds of sale *or* value], to wit, [*specifying them or it*] are the property of the said E. F., and that the said sum of £ paid into court is not sufficient to satisfy the damages arising out of the said execution, and that the said E. F. is entitled to recover the further sum of £ for damages against the said [*execution creditor*] and the high bailiff of this court:

[*Or*, and that the said E. F. is entitled to recover the further sum of £ for damages against the said [*execution creditor*], but is not entitled to recover any further damages against the high bailiff of this court:]

[*Or*, and that the said E. F. is entitled to recover the further sum of £ for damages against the high bailiff of this court, but is not entitled to recover any further damages against the said [*execution creditor*]:]

And it is ordered that the said [*execution creditor*] and the high bailiff of this court do pay the said further sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E. F., on or before the day of 19 :

[*Or*, that the said [*execution creditor*] do pay the said further sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E. F., on or before the day of 19 , and that the said E. F. do pay the sum of £ for costs to the registrar of this court, for the use of the high bailiff of this court, on or before the day of 19 :]

[*Or*, that the high bailiff of this court do pay the said further sum of £ for damages, and the sum of £ for costs, and that the said [*execution creditor*] do pay the sum of £ for costs to the registrar of this court, for the use of the said E. F., on or before the day of 19 :]

[*Insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court are to be disposed of; see Form* 214.]

To E. F. [*the claimant*],
and to [*execution creditor*],
and to the high bailiff.

221.

Warrant of Execution against Goods of Claimant.

[*Heading as in Interpleader Summons.*]

Whereas at a court holden at on the day of 19 the plaintiff, by the judgment of the said court, recovered against the defendant the sum of £ for debt [*or* damages] and for costs:

And whereas the defendant, by an order of the court, was ordered to pay the same to the registrar of the court:

And whereas default having been made in payment according to the said order, an execution issued against the goods of the defendant, under which certain goods and chattels were seized, in respect of which E. F.,

of [*address and description*] made claim, and which claim was heard and decided upon at a court holden at on the day of , 19 , and it was adjudged that the goods so seized under the said execution were not the property of the said E. F. [*or* that certain rent alleged by the said E. F. to be due to him in respect of and issuing out of certain premises on which the said goods and chattels were seized was not so due] :

And it was ordered that the said E. F. should pay the sum of £ for costs to the registrar of the court, for the use of the said [*plaintiff*], on or before the day of 19 :

And whereas default has been made in payment according to the said last-mentioned order :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said E. F., wheresoever they may be found within the district of this court (except the wearing apparel and bedding of the said E. F. or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, together with the costs of this execution ; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for the money of the said E. F., which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	*s.*	*d.*
Costs adjudged			
Paid into court			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant as indorsed hereon]			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said E. F.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

222.

Claim by Execution Creditor for Damages against High Bailiff.

[*Not to be printed.*]

[*Heading as in Interpleader Summons, adding thereto*]— *Order* 27, *Rule* 9.

and between

A. B., execution creditor claimant,

and

The high bailiff of this court respondent.

Take notice that I, A. B., the execution creditor in the above action, claim the sum of £ from you the high bailiff of this court, for

damages arising out of the execution in this action, and that the grounds of my claim are as follows: [*here state the grounds of the claim, e.g.*, for that you having seized certain goods and chattels of and belonging to C. D., the execution debtor, under process issued from this court at my instance, wrongfully, and without lawful excuse, withdrew from the possession of the said goods and chattels, whereby I was deprived of the fruits of the said execution].

[And further take notice, that I shall apply to the judge at the hearing of the interpleader summons herein to adjudicate upon such claim].

Dated this day of 19 .

To the high bailiff of this court.

Execution creditor.

223.

Order on Claim for Damages by Execution Creditor against High Bailiff where the Claim is established.

[*Not to be printed.*]

[*Heading as in Form* 222.]

Order 27, *Rule* 14.

It is this day adjudged, touching the claim of , the execution creditor in this action, against the high bailiff of this court, for damages arising out of an execution in this action, in which process issued from this court at the instance of the said , the execution creditor, directing the high bailiff to levy the sum of £ of and from the goods and chattels of [*the execution debtor*], that the said , the execution creditor, is entitled to recover from the high bailiff of this court the sum of £ for damages arising out of the said execution:

And it is ordered that the high bailiff of this court do, on or before the day of 19 , pay to the registrar of this court the said sum of £ , and also the further sum of £ for costs, for the use of the said , the execution creditor.

To the high bailiff of this court.

224.

Order on Claim for Damages by Execution Creditor against High Bailiff where the claim is not established.

[*Not to be printed.*]

[*Heading as in Form* 222.]

Order 27, *Rule* 14.

It is this day adjudged, touching the claim of , the execution creditor in this action, against the high bailiff of this court, for damages arising out of an execution in this action, in which process issued from this court at the instance of the said , the execution creditor, directing the high bailiff to levy the sum of £ of and from the goods and chattels of [*the execution debtor*], that the said , the execution creditor, is not entitled to recover from the high bailiff of this court any damages in respect of or in any way arising from the said execution:

And it is ordered that the said , the execution creditor, do on or before the day of 19 , pay to the registrar of this court the sum of £ for costs, for the use of the said high bailiff of this court.

To , the execution creditor.

225.

Order on Claim for Damages by Execution Creditor against High Bailiff where the High Bailiff pays Money into Court.

[*Not to be printed.*]

[*Title as in Form* 222.]

It is this day adjudged, touching the claim of , the execution creditor in this action, against the high bailiff of this court, for damages arising out of an execution in this action, in which process issued from this court at the instance of the said , the execution creditor, directing the high bailiff to levy the sum of £ of and from the goods and chattels of [*the execution debtor*], and in respect of which damages the high bailiff has paid into court the sum of £ , that the sum paid into court is sufficient to satisfy all damages arising out of the said execution [*or* that the sum paid into court is not sufficient to satisfy the damages arising out of the said execution, and that the said , the execution creditor, is entitled to recover the further sum of £ for damages from the high bailiff :] *Order 27, Rule 14.*

And it is ordered that the said , the execution creditor, do pay to the registrar of this court, on or before the day of 19 , the sum of £ for costs, for the use of the high bailiff [*or* that the high bailiff do pay to the registrar of this court, on or before the day of 19 , the said further sum of £ for damages, and also the sum of £ for costs, for the use of , the execution creditor].

To , the execution creditor.

[*or* To the high bailiff of this court.]

226.

Affidavit by Defendant sued by an Assignee who has had Notice that the Assignment is disputed by the Assignor, or by Defendant in Action for Debt, Chose in Action, or Chattel, who has had Notice of any opposing or conflicting Claim.

[*Not to be printed.*]

In the county court of holden at . *Order 27, Rule 15 2).*

No. of Plaint.

Between A. B., plaintiff,
and
C. D., defendant.

I, C.D., of , the above-named defendant, make oath and say as follows :—

1. The summons in this action was issued on the day of , and was served on me on the day of .

2. The action is brought to recover the sum of £ , which is alleged to be due from me to of , but which sum is alleged to have been assigned by the said to the plaintiff.

[*or* 2. The action is brought to recover [*state what*].

3. The said sum of £ [or the sum of £ , part of the sum of £] is due from me, [*or* the said is in my possession, but I claim no interest therein, except for charges and costs].

4. I have received notice from the said [*assignor*] [*or* from], who claims under the said [*assignor*], that he disputes the assignment of the said sum of £ [*or* of £ , part of the said sum of £ ,] to the plaintiff.

or 4. I have received notice from of that the right to the said subject-matter of this action [*or* to part of the said subject-matter of this action] is claimed by him.

5. I admit the claim of the plaintiff to £ , part of the said sum of £ , which is not claimed by the said [*or* I admit the claim of the plaintiff to part of the said subject-matter of this action, which is not claimed by the said].

6. I do not in any manner collude with the said [*opposing claimant*] or with the above-named plaintiff, but I am ready to bring into court the said , or to pay or dispose of the same in such manner as the court may order or direct.

Sworn, &c.

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227 instead of 227.

Interpleader Summons to Assignor or other Person disputing Assignment, or Person making opposing or conflicting Claim to Debt, Chose in Action, or Chattel sued for.

[*Title of Action.*]

Order 27, *Rule* 15 (4). Whereas the defendant in this action (copy of the summons and particulars wherein is hereto annexed) has filed an affidavit (copy whereof is also hereto annexed) stating that he has received notice from you that you dispute the assignment of the subject-matter of this action [*or* of £ , part of the subject-matter of this action] [*or* that you claim the subject-matter of this action] [*or* , part of the subject-matter of this action]:

You are therefore summoned to appear at a court to be holden at on the day of , at in the noon, when the dispute or claim to the subject-matter of this action will be determined, and judgment will be given determining the rights and claims of the plaintiff, the defendant, and yourself.

If the plaintiff appears and withdraws or abandons his claim, and you request the judge to make an order in your favour against the defendant, the hearing fee must be paid before such order is made.

Dated this day of 19 .

Registrar.

To E. F., of, &c. [*here insert name, address, and description of the person to be summoned*].

NOTE.—*You are called upon, five clear days at least before the day of hearing, to leave at the office of the registrar either three copies of a notice that you relinquish your claim, or three copies of particulars stating the grounds on which you dispute the assignment or found your claim to the subject-matter of the action; and the registrar is required to forthwith send by post one of such copies to the plaintiff, and one other of such copies to the defendant.*

228.

Notice to Plaintiff where Interpleader Summons issued to Assignor or other Person disputing Assignment, or Person making opposing or conflicting Claim to Debt, Chose in Action, or Chattel sued for.

[*Title of Action.*]

Order 27, *Rule* 15 (4). Whereas the defendant in this action has filed an affidavit (copy whereof is hereto annexed) stating that he has received notice from , of , that he disputes the assignment of the subject-matter in this action [*or* of £ , part of the subject-matter of this action] [*or* that he claims the subject-matter in this action *or* , part of the subject-matter of this action]:

Take notice, that a summons has been issued to the said to appear at a court to be holden at , on the day of , at in the noon, and that the hearing of this action has been adjourned to the same place, day, and hour, when the dispute or claim to the subject-matter in this action will be determined, and judgment will be given

determining the rights and claims of yourself, the defendant, and the said .

Dated this day of 19 .

Registrar.

To the above-named plaintiff.

NOTE.—*The claimant is called upon, five clear days at least before the day of hearing, to leave at the office of the registrar either three copies of a notice that he relinquishes his claim, or three copies of particulars stating the grounds on which he disputes the assignment or founds his claim to the subject-matter of the action; and the registrar is required to forthwith send by post one of such copies to the plaintiff, and one other of such copies to the defendant.*

229.

Notice to Defendant of Issue of Interpleader Summons.

[*Title of Action.*]

Whereas you have filed an affidavit stating that you have received notice from , of , that he disputes the assignment of the subject-matter in this action [*or* of £ , part of the subject-matter of this action] [*or* that he claims the subject-matter in this action *or* , part of the subject-matter of this action]: *Order* 27, *Rule* 15 (4).

Take notice, that a summons has been issued to the said to appear at a court to be holden at on the day of , at in the noon, and that the hearing of this action has been adjourned to the same place, day, and hour, when the dispute or claim to the subject-matter in this action will be determined, and judgment will be given determining the rights and claims of the plaintiff, yourself, and the said .

Dated this day of 19 .

Registrar.

To the above-named defendant.

NOTE.—*The claimant is called upon, five clear days at least before the day of hearing, to leave at the office of the registrar either three copies of a notice that he relinquishes his claim, or three copies of particulars stating the grounds on which he disputes the assignment or founds his claim to the subject-matter in the action; and the registrar is required to forthwith send by post one of such copies to the plaintiff, and one other of such copies to the defendant.*

230.

Particulars of Grounds on which Assignment is Disputed or Subject-Matter Claimed.

[*Not to be printed*].

[*Heading as in Form* 231.]

Take notice, that I dispute the assignment of the subject-matter in this action [*or* of £ , part of the subject-matter of this action], to the plaintiff, and that the grounds on which I dispute the same are *Order* 27, *Rule* 15 (5).

[*state grounds*].

[*or* Take notice, that I claim to be entitled to the subject-matter in this action [*or* to , part of the subject-matter of this action], and that the grounds of my claim are

[*state grounds*].

[*or* Take notice, that I relinquish my claim to the subject-matter of this action].

Dated this day of 19 .

E. F.

To the registrar of the court
and
To the plaintiff, A. B.,
and the defendant, C. D.

231.

Order where Assignment is adjudged Invalid, or Opposing Claim is Sustained.

In the county court of , holden at .

No. of Plaint.

Between A. B., plaintiff,
and
C. D., defendant,
and
E. F., made party by summons, dated the day of 19 .

Order 27, *Rule* 15 (7). It is this day adjudged, touching the dispute as to the assignment of the subject-matter of this action to the plaintiff, that there is no such assignment as alleged [*or* touching the claim of the plaintiff to the subject-matter of this action, that he has no claim thereto], and that the above-named E. F. do recover against the plaintiff the sum of £ for costs, and that the defendant do recover against the plaintiff the sum of £ for costs :

And it is further adjudged that the said E. F. do recover against the defendant the sum of £ for debt, and the sum of £ for costs, amounting together to the sum of £ :

And it is ordered that the plaintiff do pay the said sums of £ and £ to the registrar of this court on the day of :

And it is further ordered that the defendant do pay the said sum of £ to the registrar of this court on the day of [*or* by instalments of £ for every days, the first instalment to be paid on the day of 19].

[*If the subject-matter of the action is a chose in action or chattel, the order is to be framed accordingly.*]

232.

Order where Assignment is adjudged Valid, or Opposing Claim is not Sustained.

[*Heading as in last Form.*]

Order 27, *Rule* 15 (7). It is this day adjudged, touching the dispute as to the assignment of the subject-matter of this action to the plaintiff, that the said assignment is good [*or* touching the claim of the plaintiff to the subject-matter of this action, that such claim is valid], and that the plaintiff do recover against the above-named E. F. the sum of £ for costs ; and that the defendant do recover from the said E. F. the sum of £ for costs :

And it is further adjudged that the plaintiff do recover against the defendant the sum of £ for debt, and £ for costs, amounting together to the sum of £ :

And it is ordered that the said E. F. do pay the said sums of £ and £ to the registrar of this court on the day of

And it is further ordered that the defendant do pay the said sum of £ to the registrar on the day of [*or* by instalments of for every days, the first instalment to be paid on the day of 19].

[*If the subject-matter of the action is a chose in action or chattel, the order to be framed accordingly.*]

233.

Order where Assignment is adjudged Invalid, or Opposing Claim is Sustained, and Defendant files a Counter-claim against Plaintiff.

[*Title as in Form* 231.]

Order 27, *Rule* 15 (7). It is this day adjudged, touching the dispute as to the assignment of the subject-matter of this action to the plaintiff, that there is no such

assignment as alleged [*or* touching the claim of the plaintiff to the subject-matter of this action, that he has no claim thereto], and that the counter-claim of £ by the defendant against the plaintiff is sustained [*or* is not sustained]:

And it is adjudged that the said E. F. do recover against the plaintiff the sum of £ for costs:

And it is further adjudged that the above-named E. F. do recover against the defendant the sum of £ for debt, together with the sum of £ for costs, amounting together to the sum of £ :

And it is further adjudged that the defendant do recover against the plaintiff the sum of £ in respect of his counter-claim, and the sum of £ for costs, amounting together to the sum of £ [*or* that judgment be entered for the plaintiff upon the counter-claim with costs].

And it is ordered that the defendant do pay the said sum of £ to the registrar of this court on, &c.

And it is further ordered that the plaintiff do pay the said sums of £ and £ to the registrar on, &c. [*or* that the plaintiff do pay the said sum of £ to the registrar on the day of for the costs of the said E. F., and that the defendant do pay to the registrar on the day of the further sum of £ for the plaintiff's costs of the defendant's counter-claim].

[*If the subject-matter of the action is a chose in action or chattel, the order to be framed accordingly.*]

234.

Certificate of Deposit.

I hereby certify that the plaintiff [*or* defendant] has paid into my hands the sum of £ [*here state the proceeding which has rendered the deposit necessary*]. 51 & 52 Vict. c. 43, s. 109.

Dated this day of , 19 .

Registrar.

235.

Notice of Proposed Sureties.

[*Not to be printed.*]

Take notice, that the sureties whom I propose as my security in the above action [*here state the proceeding which has rendered the sureties necessary*] are [*here state the full names and additions of the sureties, whether householders or freeholders, and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any*]. *Order 29, Rule 1.*

Dated this day of 19 .

To the

236.

Affidavit of Justification.

[*Not to be printed.*]

I, , of , one of the sureties for the defendant, make oath and say: *Order 29, Rule 2.*

1. That I am a householder [*or* freeholder, *as the case may be*], residing at [*describe particularly the county or city, the street or place, and the number of the house, if any*].

2. That I am worth property to the amount of £ [*the amount required by the practice of the court*] over and above what will pay my just debts [*if security in any other action or for any other purpose, add* and every other sum for which I am now security].

3. That I am not bail or security in any other action or proceeding or for any other person [*if security in any other action or actions, add*, except for C. D., at the suit of E. F., in the court of in the sum of £ for G. H., at the suit of I. K., in the court of in the sum of £ *specifying the several actions, with the courts in which they are brought and the sums in which he has become bound*].

4. That this my property, to the amount of the said sum of £ [*if security in any other action, &c., add* over and above all other sums for which I am now security as aforesaid], consists of [*here specify the nature and value of the property in respect of which the deponent proposes to become bondsman, as follows*, stock in trade in my business of , carried on by me at , of the value of £ , good book debts owing to me to the amount of £ , furniture in my house at of the value of £ , a freehold [*or* leasehold] farm of the value of £ , situate at , occupied by [*or* a dwelling-house of the value of £ , situate at occupied by] [*or other property, particularising each description of property, with the value thereof*].

5. That I have for the last six months resided at [*describing the place of such residence, or if he has had more than one residence during that period, state in the same manner as above directed*].

237.

Notice by Registrar of Day and Hour upon which Bond to be Executed.

Order 29, Rule 1.

Take notice, that I have appointed the day of 19 , at o'clock in the forenoon, at my office situate at for the and his sureties to execute the bond proposed to be given in the above action.

[*To be added to notice to obligee:*—And further take notice, that if you have any valid objection to make to the sureties, or either of them, such objection must then be made.]

Dated this day of 19 .

To the plaintiff [*or* defendant].

Registrar.

238.

Judgment against an Executor who has wasted Assets.

No. of Plaint.

In the county court of holden at .

Between A. B., plaintiff,

and

C. D., defendant, executor [*or* administrator] of , deceased.

Order 30, Rule 4.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for , and £ for costs:

And it is ordered that the defendant do pay the same to the registrar of this court, on or before the day of 19 , [*or* by instalments of for every days, the first instalment to be paid on the day of , 19]:

It is also adjudged that the defendant, being the executor [*or* administrator] of the said deceased, has made away with, wasted, and put to his own use divers goods and chattels [*or* moneys, *as the case may be*], to the amount of the said sum, which were the property of the said deceased, and which came to the hands of the defendant as executor [*or* administrator] as aforesaid, to be administered:

Wherefore it is ordered, that if the defendant shall make default in the payment of the said sums, the same shall be levied by distress and sale of the goods and chattels which were of the said deceased, and which came to the

hands of the defendant as executor [*or* administrator] if the defendant has so much thereof in his hands to be administered; and if he has not, then that the said sums shall be levied of the proper goods and chattels of the defendant.

238A.

Judgment against an Executor or Administrator who does not appear, or appears and admits his Representative Character and Plaintiff's Demand, and does not deny Assets.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for , and £ for costs. *Order* 30, *Rule* 4a.

And it is ordered that the defendant do pay the same to the registrar of this court forthwith [*or* on or before the day of] [*or* by instalments of for every days, the first instalment to be paid on the day of]:

And the defendant not having appeared at the trial [*or* having appeared and admitted his representative character and the plaintiff's demand, and not having denied that he has assets of the said deceased which came to his hands to be administered],

It is ordered that if the defendant shall make default in the payment of the said sums the same shall be levied as follows: The sum of £ [*the debt or damages and costs*] of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands to be administered; and if he has not, then that the sum of £ [*the costs*] shall be levied of the proper goods and chattels of the defendant.

239.

Judgment against an Executor or Administrator who admits his Representative Character and denies the Demand.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for , and £ for costs: *Order* 30, *Rule* 5.

And it is ordered that the defendant do pay the same to the registrar of this court on or before the day of , 19 [*or* by instalments of for every days, the first instalment to be paid on the day of 19]:

And the defendant having admitted his representative character, but denied the plaintiff's demand, and the plaintiff having proved the same, it is further ordered, that if the defendant shall make default in payment of the said sums, the same shall be levied as follows: The sum of £ [*the debt or damages and costs*] of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands to be administered; and if he has not, then that the sum of £ [*the costs*] be levied of the proper goods and chattels of the defendant.

240.

Judgment against an Executor or Administrator where he admits his Representative Character, but denies the Demand, and alleges total or partial Administration of Assets, and the Plaintiff proves his Demand, and the Defendant proves Administration.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for , and £ for costs: *Order* 3 *Rule* .

And it is ordered that the defendant do pay the same to the registrar of this court, on or before the day of 19 [*or* by instalments of for every days, the first instalment to be paid on the day of 19]:

And the defendant having admitted his representative character, but

denied the plaintiff's demand, and having also alleged a total [*or* partial] administration of the goods of the said deceased, which came to the hands of the defendant as executor [*or* administrator] to be administered, it appears to the court that the plaintiff has proved to the court his demand, and also that the defendant has proved the administration alleged:

Wherefore it is ordered that in default of such payment the sum of £ , being the costs incurred by the plaintiff in proving his demand, shall be levied on the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands to be administered; and if he has not, then that the said sum be levied of the proper goods and chattels of the defendant; and as to the sum of £ the plaintiff's demand, it is ordered that it be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or* administrator] as aforesaid to be administered.

And it is further ordered, that the plaintiff do pay to the registrar of the court, on or before the day of 19 , the sum of £ , being the costs incurred by the defendant in proving the administration alleged.

[*N.B.—If the defendant is shown to have some assets, the judgment must be for that amount de bonis testatoris, and for the residue quando acciderint.*]

241.

Judgment against an Executor or Administrator where he admits his Representative Character, but denies the Demand, and alleges total or partial Administration of Assets, and the Plaintiff proves his Demand, and the Defendant does not prove the Administration.

Order 30, *Rule* 7.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs:

And it is ordered that the defendant do pay the same to the registrar of this court on or before the day of 19 [*or* by instalments of for every days, the first instalment to be paid on the day of 19]:

And the defendant having admitted his representative character, but denied the plaintiff's demand, and having also alleged a total [*or* partial] administration of the goods of the said deceased which came to the hands of the defendant as executor [*or* administrator] to be administered, it appears to the court that the plaintiff has proved to the court his demand, and also that the defendant has not proved the administration alleged:

Wherefore it is ordered, that if the defendant shall make default in payment of the said sums, the same shall be levied as follows: The sum of £ [*debt and costs*] of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands to be administered; and he has not, then that the residue of the sum of £ [*debt*] be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or* administrator] as aforesaid to be administered; and that the sum of £ [*the costs*] be levied of the proper goods and chattels of the defendant.

242.

Judgment against an Executor or Administrator who admits his Representative Character and the Plaintiff's Demand, but alleges a total or partial Administration of Assets, and proves the Administration.

Order 30, *Rule* 8.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for , and £ for costs:

And it is ordered that the defendant do pay the same to the registrar of this court on or before the day of 19 , [*or* by instalments of for every days, the first instalment to be paid on the day of 19]:

And the defendant having admitted his representative character and also the plaintiff's demand, and having alleged a total [*or* partial] administration of the goods of the said deceased, which came to the hands of the defendant as executor [*or* administrator] to be administered, it appears to the court that the defendant has proved to the court the administration alleged:

Wherefore it is ordered, that in default of such payment the said sums of £ and £ shall be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or* administrator] as aforesaid to be administered.

And it is further ordered that the plaintiff do pay to the registrar of this court, on or before the day of 19 , the sum of £ , being the costs incurred by the defendant in proving the administration alleged.

243.

Judgment against an Executor or Administrator who admits his Representative Character and the Plaintiff's Demand, but alleges a total or partial Administration of Assets, and does not prove the Administration.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for , and £ for costs: *Order 30, Rule 9.*

And it is ordered that the defendant do pay the same to the registrar of this court on or before the day of 19 [*or* by instalments of for every days, the first instalment to be paid on the day of 19]:

And the defendant having admitted his representative character, and also the plaintiff's demand, and having alleged a total [*or* partial] administration of the goods of the said deceased which came to the hands of the defendant as executor [*or* administrator] to be administered, it appears to the court that the defendant has not proved to the court the administration alleged.

Wherefore it is ordered, that if the defendant shall make default in payment of the said sums, the same shall be levied as follows: The sum of £ [*debt and costs*] of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands to be administered; and if he has not, then that the residue of the sum of £ [*debt*] be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or* administrator] as aforesaid to be administered; and that the sum of £ [*the costs*] be levied of the proper goods and chattels of the defendant.

244.

Summons to an Executor where Plaintiff intends to apply to the Court where Assets have come to Defendant's Hands since Judgment.

In the county court of holden at

Between A. B., plaintiff.
[*Address.*]
[*Description.*]
and
C. D., executor [*or* administrator] of deceased, defendant.
[*Address.*]
[*Description.*]

The plaintiff, having learned that property of the deceased has come to your the above-named (*defendant's*) hands as executor [*or* administrator] since the judgment recovered in this action to be administered [*if the plaintiff alleges waste, add* and that you have withholden and wasted the same], intends to apply to the judge at a court to be holden at on the day of , at the hour of in the noon, for an order that the debt [*or* damages] and costs adjudged to be recovered *Order 30, Rule 10.*

in this action shall be levied of the goods and chattels of the said deceased, if you have so much thereof in your hands to be administered; and if you have not, then that the costs shall be levied of your proper goods and chattels [*or if the plaintiff alleges waste*, and if you have not, then that the said debt [*or* damages] and costs shall be levied of your proper goods and chattels].

You are therefore hereby summoned to appear at the said court at the time and place aforesaid, to answer touching the matters aforesaid.

To the defendant C. D., executor [*or* administrator] of deceased.

245.

Warrant of Execution against Goods of Testator or Intestate.

Whereas at a court holden at on the day of 19 , the plaintiff obtained a judgment against the defendant, as executor [*or* administrator] of deceased, for the sum of for due and owing to the plaintiff by the said deceased in his lifetime, and the sum of for costs of action:

And thereupon it was ordered by the court that the defendant should pay the same to the registrar of the court, on or before the day of 19 [*or* by instalments of for every days]:

And whereas default has been made in payment according to the said order:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels which were the property of the said deceased in his lifetime, in the hands of the defendant to be administered, wheresoever they may be found within the district of this court, the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, which were the property of the said deceased in his lifetime, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, if the defendant has so much thereof in his hands to be administered; and if he has not so much thereof in his hands to be administered, then these are to require and order you to make and levy of the proper goods and chattels, money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum of £ for the costs of action above mentioned, together with the costs of this execution and of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court, and others the bailiffs thereof.

	£	*s.*	*d.*
Debt or damages adjudged			
Costs			
Paid into court			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon].			

NOTICE.—*The goods and chattels are not to be sold until after the end of*

five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

[*Warrants of execution upon judgments according to Forms* 238 *to* 243 *may be drawn from this form, altered accordingly from those forms.*]

246.

Judgment against an Executor on a Devastavit since Judgment.

Upon hearing the plaintiff's application in this action at a court holden this day, it is adjudged that property of deceased has come to the hands of the defendant, as his executor [*or* administrator] since the judgment recovered in this action, to be administered, and that the defendant has wasted the same property, whereby the judgment recovered herein remains unsatisfied: It is therefore ordered that the defendant do pay the sum of £ recovered by [*or* remaining due upon] the said judgment, together with the sum of £ for the costs of this order, to the registrar of this court on or before [*or as the case may be*]. *Order* 30, *Rule* 10.

And it is further adjudged that if the defendant make default in payment thereof, execution may issue to make and levy the above-mentioned sums of the goods and chattels of the said deceased, if the defendant has so much thereof in his hands to be administered, and if he has not, then to make and levy the same of the proper goods and chattels of the defendant.

247.

Summons for Recovery of Possession of Tenement against Tenant or other Person holding over.

[*Heading as in Form* 22.]

[(*a*) Issued by leave of the judge [*or* registrar.]

You are hereby summoned to appear at a county court to be holden at on the day of 19 , at the hour of in the noon, to answer the plaintiff, wherefore you neglect or refuse to deliver up to him possession of a certain [*messuage, with appurtenances,* or *part of a house, &c., or as the case may be,*] situate at . *Order* 5, *Rule* 3. (*a*) Insert this when necessary.

And take notice, that the plaintiff claims of you for rent [*or* mesne profits] [*or* for rent and mesne profits] the sum of for a period from the day of 19 to the day of 19 .

And further take notice, that if you do not appear at the said court, and show cause why you do not deliver up possession as aforesaid, the court may order that possession of the said premises be given by you to the plaintiff forthwith, or on or before such day as it shall name, and that if such order be made and be not obeyed a warrant may issue to give possession to the plaintiff.

Dated the day of 19 .

Registrar.

To the defendant.

	£	*s.*	*d.*
Claim for			
Costs of this summons			
Solicitor's costs			

At bottom of Summons.

51 & 52 Vict. c. 43, s. 140. TAKE NOTICE.—If the plaintiff in this action be not your immediate landlord, YOU MUST upon your being served with this summons, or if this summons shall come to your KNOWLEDGE, forthwith GIVE NOTICE thereof to your IMMEDIATE LANDLORD, and if you do NOT give such notice you will be liable, under sect. 140 of the County Courts Act, 1888, to forfeit to your immediate landlord THREE YEARS' RACKRENT of the premises held by you of him, in respect of which the summons shall have issued.

See BACK.

[*Indorsement as on Form* 22, *substituting for the words* "as to the amount due and the mode of payment" in paragraph 2, *the words* "as to the time when possession shall be given, and the amount due for rent and mesne profits, and the mode of payment."]

248.

Summons for Recovery of Possession of Tenement for Non-payment of Rent.

(*Heading as in Form* 22.)

Order 5, *Rule* 3. You are hereby summoned to appear at a court to be holden at on the day of 19 , at the hour of in the noon, to answer the plaintiff why possession of a certain situate at should not be given up to the plaintiff, by reason of the rent payable in respect thereof by you being half a year in arrear, and the plaintiff having right by law to re-enter for the non-payment thereof.

If you pay to the registrar the rent in arrear, and the costs of this action, as stated at the foot of this summons, five clear days before the day on which you are required to appear to this summons, this action will cease.

And take notice, that if you do not pay such rent in arrear and costs, or appear at the said court, and show cause why possession of the said should not be recovered against you, you may be ordered by the court to give possession of such premises to the plaintiff, and that if such order be not obeyed a warrant may issue to give possession to the plaintiff.

Dated this day of 19 .

Registrar.

	£	*s.*	*d.*
Rent in arrear			
Costs of this summons			
Solicitor's costs			

At bottom of Summons.

51 & 52 Vict. c. 43, s. 140. TAKE NOTICE.—If the plaintiff in this action be not your immediate landlord YOU MUST upon being served with this summons, or if this summons shall come to your KNOWLEDGE, forthwith GIVE NOTICE thereof to your IMMEDIATE LANDLORD, and if you do NOT give such NOTICE you will be liable, under sect. 140 of the County Courts Act, 1888, to forfeit to your immediate landlord THREE YEARS' RACKRENT of the premises held by you of him, in respect of which the summons shall have issued.

See BACK.

[*Indorsement as on Form* 22, *adding after the words* "as to the amount due and the mode of payment" in paragraph 2, *the words* "and as to the time when possession shall be given."]

249.

Order for Recovery of Possession of Tenement against Person holding over.

Upon the trial of this action at a court holden this day, it is ordered that the defendant do give to the plaintiff possession of a certain house [*or* messuages with appurtenances, *or* part of a certain house, *or as the case may be*], situate at forthwith [*or* on the day of]: *Order 5, Rule 3.*

And it is adjudged that the plaintiff do recover against the defendant the sum of £ for rent [*or* mesne profits] [*or* for rent and mesne profits] and £ costs, making together the sum of £ :

And it is ordered, that the defendant do pay to the registrar of the court the sum above mentioned on or before the day of 19 , [*or as may be ordered*].

To the defendant.

TAKE NOTICE.—That if you do not give such possession a warrant may issue requiring the bailiff of the court to give possession of the said to the plaintiff, and to levy the sum of £ above mentioned, together with further costs.

250.

Order for Recovery of Possession of Tenement for Non-payment of Rent.

Upon the trial of this action at a court holden this day, it is ordered that the defendant do give to the plaintiff possession of a certain situate at on or before the day of , 19 , unless the rent in arrear for the said premises, amounting to £ , and the costs of this action, be paid into court before such day of , 19 . *Order 5, Rule 3.*

And it is adjudged that the plaintiff do recover against the defendant the sum of £ for costs of this action.

And it is ordered that the defendant do pay the same to the registrar of this court on or before the day of 19 .

To the defendant.

TAKE NOTICE.—That if you do not pay the said rent and costs, or give such possession, a warrant may issue requiring the bailiff of the court to give possession of the said to the plaintiff, and to levy the sum of £ above mentioned, together with further costs.

251.

Warrant for Recovery of Possession of Tenement.

Whereas at a court holden at on the day of 19 , it was ordered by the court, that the defendant should give the plaintiff possession of a certain [*as in the order*] situate at [*and that the plaintiff should recover against the defendant*] the sum of £ for rent [*or* mesne profits] [*or* rent and mesne profits] and costs: *Order 5, Rule 3.* *Order 25, Rule 64.*

And whereas the defendant has not obeyed the said order:

These are therefore to authorise and require you to forthwith give possession of the said hereinbefore mentioned premises to the plaintiff:

And these are therefore further to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (except the wearing apparel and bedding of the defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, together with the costs of this warrant and execution; and also to seize and take any money or bank-notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the defendant

which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay the amount so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court, this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court;
and others the bailiffs thereof.

	£	s.	d.
Rent [*or* mesne profits] [*or* rent and mesne profits] .			
Costs			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon].			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

252.

Summons in Action of Ejectment.

(*Heading as in Form* 22.)

Order 5, *Rule* 3. You, the above-named defendants, and all persons entitled to defend the possession of the property described in the particulars hereunto annexed, situated in the parish of within the district of this court, to the possession whereof the above-named plaintiffs, some or one of them, claim to be [*or* to have been on and since the day of 19] entitled, and to eject all other persons therefrom, are hereby summoned to appear at a county court to be holden at on the day of 19 , at the hour of in the noon, to defend the said property, or such part thereof as you may be advised.

And take notice, that unless you appear judgment may be given, and you may be turned out of possession.

Dated this day of 19 .

Registrar.

To the defendants.

	£	s.	d.
Costs of this summons			
Solicitor's costs			
Total			

At bottom of Summons.

TAKE NOTICE.—If you, the defendants, or any of you, be only tenants of the property or some part thereof, YOU MUST, upon being served with this summons, or if this summons shall come to your KNOWLEDGE, forthwith GIVE NOTICE thereof to your IMMEDIATE landlord or his bailiff or receiver, and if you do not give such notice you will be liable, under sect. 209 of 15 & 16 Vict. c. 76, to FORFEIT to your landlord THREE YEARS' RACKRENT

15 & 16 Vict. c. 76, s. 209.

of the premises demised to you or holden in your possession of him, in respect of which this summons has issued.

See BACK.

[*Indorsement as on Form* 22.]

253.

Notice of Withdrawal of Action of Ejectment as to the Whole or Part of the Property.

[*Not to be printed.*]

Take notice, that I, the above-named plaintiff, will not proceed in this action [*if so*, in respect of the portion of the property hereinafter described, that is to say, *here describe the said portion of the property*]. *Order* 9, *Rule* 1.

Plaintiff.

254.

Notice in Action of Ejectment or for Recovery of Possession that a Person not originally made a Defendant will appear and defend.

Take notice, that M. N. has filed the affidavit, a copy of which is hereunto annexed, and that by leave of the court he will appear at the trial as a defendant. *Order* 10, *Rule* 4.

To the plaintiff.

255.

Notice in Action of Ejectment or for Recovery of Possession that Defendant will Limit his Defence to Part of the Property.

[*Not to be printed.*]

Take notice, that the above-named defendant K. L. will at the trial of this action limit his defence to a part only of the property mentioned in the particulars annexed to the summons; that is to say [*here describe the part to which the defence is limited, with reasonable certainty*]. *Order* 10, *Rule* 5.

To the registrar of the court,
and to the plaintiff.

256.

Confession in Ejectment by Defendant of Plaintiff's Title to the Property.

[*Not to be printed.*]

I, the above-named defendant, hereby confess and admit the plaintiff's title to the property mentioned in the particulars annexed to the summons in this action, and sought to be recovered therein, and that the plaintiff is entitled to the immediate possession thereof. *Order* 9, *Rule* 7.

Dated this day of , 19 .

Defendant.

Signed by the defendant in the presence of .

To the registrar of the court.

[*To be altered as required, in case of confession in action for recovery of tenement; see Form* 65.]

257.

Judgment in Ejectment for all the Plaintiffs for the Whole Property.

* The day on which the summons issued, or the day stated in the summons as that on which the title of plaintiffs accrued.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiffs were, on the * day of 19 , and still are entitled to the possession of the property mentioned in the particulars annexed to the summons in this action; that is to say, [*describe the property as set out in the particulars*].

And it is ordered that the defendants do give the plaintiffs possession of the said above-mentioned property forthwith [*or* on the day of]:

And it is adjudged that the plaintiffs do recover against the defendants the sum of £ for costs.

And it is ordered that the defendants do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

To the defendants.

TAKE NOTICE.—That if possession be not given, and payment made as above ordered, a warrant may issue requiring the bailiff of the court to give possession of the said property to the plaintiffs, and to levy the sum above mentioned, together with further costs.

258.

Judgment in Ejectment for all the Plaintiffs for Part of the Property against one of the Defendants, and for the other Defendants as to the Residue of the Property.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiffs were, on the day of 19 , and still are entitled to the possession of part of the property mentioned in the particulars annexed to the summons in this action; that is to say [*describe the part the plaintiffs are adjudged entitled to*], and for which part the defendant G. H. defended separately; but that the plaintiffs were not nor are entitled to the possession of the residue of the property described in the particulars annexed to the summons, for which the defendants I. J. and K. L. defended:

And it is ordered that the defendant G. H. do give the plaintiffs possession of the said part of the said property, for which the said G. H. defended separately, forthwith [*or* on the day of 19]:

And it is adjudged that the plaintiffs do recover against the defendant G. H. the sum of £ for costs, and that the defendants I. J. and K. L. do recover against the plaintiffs the sum of £ for costs.

And it is ordered that the defendant G. H. do pay the said sum of £ and the plaintiffs do pay the said sum of £ to the registrar of this court, on or before the day of 19 .

To the defendant G. H. and to the plaintiffs.

TAKE NOTICE.—That unless possession be given and payment made as above ordered, a warrant or warrants may issue, requiring the bailiff of the court to give possession of the said property to the plaintiffs, and to levy the sums above mentioned from the parties ordered to pay the same respectively, together with further costs.

259.

Judgment in Ejectment for one of the Plaintiffs for all the Property against all the Defendants.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff A. B. was, on the day of 19 , and still is entitled to the possession of the property mentioned in the particulars annexed

to the summons in this action; that is to say [*describe the property as set out in the particulars annexed to the summons*];

And it is ordered that the defendants do give the said plaintiff A. B. possession of the said above-mentioned property forthwith, [*or* on the day of];

And it is adjudged that the said plaintiff A. B. do recover against the defendants the sum of £ for costs.

And it is ordered that the defendants do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

To the defendants.

TAKE NOTICE.—That unless possession be given, and payment made as above ordered, a warrant may issue, requiring the bailiff of the court to give possession of the said property to the plaintiff A. B. , and to levy the sum above mentioned, together with further costs.

260.

Judgment in Ejectment for Plaintiff whose Title has Expired before Trial.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff was on the day of 19 , and thence until and at the time of the entry of the plaint and of the service of the summons in this action, entitled to the possession of the property mentioned in the particulars annexed to the summons in this action; that is to say [*here describe the property as set out in the particulars*], but his title to the same has since that time and before this day expired; *Order 23, Rule 16.*

And it is further adjudged that the plaintiff do recover against the defendant the sum of £ for costs:

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

261.

Judgment in Ejectment for Defendant.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff was not on the day of 19 , nor thence hitherto hath been nor is he now entitled to the possession of the property, or of any part of the property mentioned in the particulars annexed to the summons in this action; that is to say [*here describe the property as set out in the particulars*];

And it is adjudged that judgment be entered for the defendant, and that the defendant do recover against the plaintiff the sum of £ for costs.

And it is ordered that the plaintiff do pay the same to the registrar of this court on or before the day of 19 .

To the plaintiff.

262.

Order in Ejectment for Defendant's Costs, where Plaintiff does not Appear.

Whereas the plaintiff has not appeared, either by himself or his solicitor at the court holden this day, being the day appointed for the trial of this action, and the defendant has appeared in person [*or* by his solicitor]:

It is therefore ordered that the action be struck out, and that the defendant do recover against the plaintiff the sum of £ for costs:

And it is ordered that the plaintiff do pay the same to the registrar of this court on or before the day of 19 .

To the plaintiff.

263.

Warrant of Possession.

Order 25, *Rule* 64.

Whereas, according to the tenor and true meaning of an order, bearing date the day of 19 , made in this action, the said defendant, C. D. was ordered to deliver up possession to A. B. in the said order named of all that, &c. [*as in order*] :

And whereas a copy of such order was duly served upon the said C. D., yet nevertheless he the said C. D. and other ill-disposed persons, his accomplices, have refused to pay obedience thereto, and detain and keep the possession of the said messuage [*or* tenement and premises] :

These are therefore to authorise and require you to forthwith enter into and upon the said messuage [*or* tenement and premises], and to remove, eject, and expel the said C. D. his tenants, servants, and accomplices, each and every of them, out of and from the said messuage [*or* tenement and premises], and every part and parcel thereof, and to place and put the said A. B. and his assigns into the full, peaceable, and quiet possession thereof, and to defend and keep him and his said assigns in such peaceable and quiet possession when and as often as any interruption may or shall from time to time be given or offered to them or any of them, according to the true intent and meaning of the said order ; and herein you are not in anywise to fail.

Given under the seal of the court, this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

NOTE.—*The above form is given as an example of a warrant of possession issued pursuant to an order in an action other than an action of ejectment.*

264.

Warrant of Possession in Ejectment for Possession and Costs.

Order 25, *Rule* 64.

Whereas at a court holden at on the day of 19 it was adjudged that the plaintiffs on the day of 19 , and at the date of the judgment were entitled to the possession of the property mentioned in the particulars annexed to the summons in this action ; that is to say [*describe the property as set out in the particulars*] ; and it was ordered that the defendants should give the plaintiffs possession of the said above-mentioned property forthwith [*or* on the day of] ; and it was adjudged that the plaintiffs should recover against the defendants the sum of £ for costs ; and it was ordered that the defendants should pay the said sum to the registrar of this court forthwith [*or* on the day of] :

And whereas the defendants have not obeyed the said order :

These are therefore to authorise and require you to forthwith give possession of the said hereinbefore-mentioned property to the plaintiff :

[And these are therefore further to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendants, wheresoever they may be found within the district of this court (except, as regards each defendant, the wearing apparel and bedding of such defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, together with the costs of this warrant and execution ; and also to seize and take any money

or bank notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the defendants, which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay the amount so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof].

Given under the seal of the court, this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Costs adjudged			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon] . . .			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendants.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

NOTE.—*When separate warrants are required for possession and costs pursuant to Ord. XXV. r.* 66, *the words in brackets should be omitted, and Form* 163, *so far as it relates to costs, used. Form* 165 *should be used for defendant's costs.*

265.

Special Warrant of Possession in Ejectment for Possession and Costs, where one of Several Plaintiffs has Died after Judgment and before Execution executed.

Whereas at a court holden at on the day of 19 ; it was adjudged that the plaintiffs on the day of 19 , and at the date of the judgment, were entitled to the possession of the property mentioned in the particulars annexed to the summons in this action, that is to say [*describe the property as set out in the particulars*] ; and it was ordered that the defendants should give the plaintiffs possession of the said above-mentioned property forthwith [or *as in the judgment*] ; and it was adjudged that the plaintiff should recover against the defendants the sum of £ for costs ; and it was ordered that the defendants should pay the said sum to the registrar of this court forthwith [or *as in the judgment*] : *Order* 25, *Rule* 64.

And whereas the defendants have not obeyed the said order :

And whereas C. D., one of the plaintiffs, has died since judgment was given and before execution executed :

These are therefore to authorise and require you to forthwith give possession of the said hereinbefore-mentioned premises to the surviving plaintiffs, A. B. and E. F. on behalf of themselves and of the legal representatives of the deceased plaintiff C. D.

And these are therefore further, &c. [*conclude as in last form*].

266.

Judgment in Ejectment for Plaintiff, where Defendant is Joint Tenant, Tenant in Common, or Coparcener with Plaintiff, and an actual Ouster is proved.

51 & 52 Vict. c. 43, s. 59.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff and defendant were on the day of 19 , and still are entitled to the joint possession of the property mentioned in the particulars annexed to the summons in this action as joint tenants [*or* as tenants in common *or* as coparceners] ; that is to say, [*describe the property as set out in the particulars*] :

And it having been proved to the satisfaction of the court that the defendant did before the commencement of this action actually oust the plaintiff from the possession of the said property, and thence hitherto hath kept and still keeps the plaintiff ousted therefrom, it is adjudged and ordered that judgment be entered for the plaintiff, and that the defendant do give the plaintiff jointly with him the defendant possession of the said above-mentioned property forthwith [*or* on the day of], and that the plaintiff do recover against the defendant the sum of £ for costs :

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

To the defendant.

TAKE NOTICE.—That if possession be not given and payment made as above ordered, a warrant may issue, requiring the bailiff of the court to give possession of the said property to the plaintiff jointly with the defendant, and to levy the sum above mentioned, together with further costs.

267.

Judgment in Ejectment for Defendant, where Defendant is Joint Tenant, Tenant in Common, or Coparcener with the Plaintiff, and no actual Ouster is proved.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff and the defendant were on the day of 19 , and still are entitled to the joint possession of the property mentioned in the particulars annexed to the summons in this action as joint tenants [*or* as tenants in common *or* as coparceners] ; that is to say [*describe the property as set out in the particulars*] :

And it not having been proved to the satisfaction of the court that the defendant has actually ousted the plaintiff from the possession of the said property or of any part thereof, it is adjudged and ordered that judgment be entered for the defendant, and that the defendant do recover against the plaintiff the sum of £ for costs.

And it is ordered that the plaintiff do pay to the registrar of this court the sum above mentioned on or before the day of , 19 .

To the plaintiff.

268.

Order in Ejectment for Substitution of Personal Representative of sole Plaintiff who dies before the Return Day for such deceased Plaintiff, and for continuation of Action in Name of such Representative.

Upon reading the affidavit of E. F. , and upon hearing the solicitors of the said E. F. and of the defendant, and it appearing to the court that the plaintiff A. B. died on the day of now last past, and since the commencement of this action, and that the said E. F. is the personal representative of the said A. B. and as such is

entitled to whatever estate or interest the said A. B. had in the property sought to be recovered in this action [*or as the case may be*],

It is ordered that the name of the said E. F. as personal representative [*or as the case may be*] of A. B. deceased be substituted in the proceedings in this action for the name of the said A. B. deceased as plaintiff in this action, and that the said E. F. be at liberty to continue this action in his own name as plaintiff, and to proceed therein as if he had been originally the plaintiff therein, and that the said E. F. do pay to the registrar of this court, on or before the day of 19 , the sum of £ for the costs occasioned to the defendant by this application, and that the trial of this action be forthwith proceeded with [*or* be adjourned to the day of 19].

To the defendant.

N.B.—In explanation of this form it may be mentioned that after the amendment the title of the action will stand thus :—

Between E. F. (the personal representative of A. B., the original plaintiff, deceased) Plaintiff,

and

C. D. Defendant.

269.

Order in Ejectment for Substitution of Personal Representative of one of several Plaintiffs who dies before the Return Day for such deceased Plaintiff, and for continuation of Action in Names of surviving Plaintiff and Personal Representative of deceased Plaintiff.

Upon reading the affidavit of K. L., and upon hearing the solicitor of the said K. L. and of the defendants, and it appearing to the court that the plaintiff C. D. died on the day of now last past, and since the commencement of this action, and that the said K. L. is the personal representative [*or as the case may be*] of the said C. D., and as such is entitled to whatever estate or interest the said C. D. had in the property sought to be recovered in this action,

It is ordered that the name of the said K. L. as personal representative [*or as the case may be*] of C. D. deceased be substituted in the proceedings in this action for the name of the said C. D. deceased as one of the plaintiffs, and that the action be continued and proceeded with in the names of A. B. and K. L. as plaintiffs as if the said A. B. and K. L. had been originally the plaintiffs therein, and that the said K. L. do pay to the registrar of this court on or before the day of 19 , the sum of £ for the costs occasioned to the defendants by this application, and that the trial of this action be forthwith proceeded with [*or* be adjourned to the day of 19].

To the defendants.

270.

Judgment in Ejectment for substituted Plaintiff.

No. of plaint.

In the county court of holden at .

Between E. F., the personal representative of A. B. [*the original plaintiff*] deceased Plaintiff,

and

C. D. Defendant.

Whereas the plaintiff A. B. died after the commencement of this action, and before the return day of the summons therein, and by an order of the court made this day [*or* on the day of last], it was ordered, amongst other things, that the name of the said E. F., as per-

sonal representative of A. B. deceased, should be substituted in the proceedings in this action for the name of the said A. B. deceased as plaintiff, and that the action should be continued in the name of the said E. F. as plaintiff as aforesaid:

Now, upon the trial of this action at a court holden this day, it is adjudged that the said A. B., on the day of 19 , and thence until the day of his death, was entitled to the possession of the property mentioned in the particulars annexed to the summons in this action; that is to say [*describe the property as set out in the particulars*]; and that the said plaintiff E. F. is the personal representative of the said A. B., and as such became on the death of the said A. B. and still is entitled to the possession of the said above-mentioned property;

And it is ordered that the defendant do give the plaintiff E. F. possession of the said above-mentioned property forthwith [*or* on the day of 19]:

And it is adjudged that the plaintiff E. F. do recover against the defendant the sum of £ for costs:

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the defendant.

TAKE NOTICE.—That if possession be not given and payment made as above ordered, a warrant may issue, requiring the bailiff of the court to give possession of the said property to the plaintiff, and to levy the sum above mentioned, together with further costs.

271.

Judgment in Ejectment for surviving and substituted Plaintiffs.

No. of plaint.

In the county court of holden at .

Between A. B. and K. L., the personal representative of C. D. (one of the original plaintiffs) deceased Plaintiffs,

and

E. F. and G. H. Defendants.

Whereas one of the plaintiffs, C. D., died after the commencement of this action and before the return-day of the summons therein, and by an order of this court made this day [*or* on the day of last] it was ordered, amongst other things, that the name of the said K. L. as personal representative of C. D. deceased, should be substituted in the proceedings in this action for the name of the said C. D. deceased, as one of the plaintiffs, and that the action should be continued in the names of the said A. B. and K. L. as plaintiffs as aforesaid:

Now upon the trial of this action at a court holden this day, it is adjudged that the said A. B. and C. D. deceased were on the day of 19 ; and thence until the day of the death of the said C. D. entitled to the possession of the property mentioned in the particulars annexed to the summons in this action, that is to say [*describe the property as set out in the particulars*]; and that the said plaintiff K. L. is the personal representative of the said C. D. deceased, and that on the death of the said C. D., the said A. B. and K. L. became and still are entitled to the possession of the property in the said particulars mentioned;

And it is ordered that the defendants do give the plaintiffs A. B. and K. L. possession of the property above mentioned and described forthwith [*or* on the day of 19].

And it is adjudged that the plaintiffs A. B. and K. L. do recover against the defendants the sum of £ for costs:

And it is ordered that the defendants do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the defendants

TAKE NOTICE, &c. [*as in Form* 270].

272.

Order in Ejectment, giving Leave to a Party claiming the Property on death of Defendant, who dies before the Return Day, to appear and defend in Place of such deceased Defendant.

Upon reading the affidavit of E. F. and upon hearing the solicitors of the said E. F. and of the plaintiff, and it appearing to the court that the defendant has died since the commencement of this action, and that upon the death of the defendant the said E. F. became entitled to whatever estate or interest the defendant C. D. had in the property sought to be recovered in this action,

It is ordered that the said E. F. be at liberty to appear and defend the said property above mentioned and described in the place of the said C. D., deceased, and that the name of the said E. F. be substituted for that of the said C. D. deceased, as defendant in the proceedings in this action, and that this action be continued as if the said E. F. had been originally made defendant therein; and that the said E. F. do pay to the registrar of this court on or before the day of 19 , the sum of £ for the costs occasioned to plaintiff by this application, and that the trial of this action be forthwith proceeded with [*or* be adjourned to the day of 19 .].

To the plaintiff.

[N.B.—In explanation of this form it may be mentioned that after the amendment the title of the action will stand thus:

Between A. B., plaintiff,
and
E. F. (substituted for C. D., deceased), defendant,

and all subsequent proceedings will be against E. F. as if he had been originally defendant.]

273.

Judgment in Ejectment for Plaintiff who has withdrawn the Action as to Part of the Property.

Whereas the plaintiff has withdrawn this action as to part of the property mentioned in the particulars annexed to the summons in this action; that is to say [*describe the part of the property as set out in plaintiff's notice*], and the action has proceeded for the recovery of the remainder of the said property:

Now upon the trial of this action at a court holden this day, it is adjudged that the plaintiff was on the day of 19 , and still is entitled to the possession of the remainder of the property mentioned in the particulars annexed to the summons in this action; that is to say [*describe the remainder of the property*]:

And it is ordered that the defendant do give the plaintiff possession of the said lastly above-mentioned property forthwith [*or* on the day of]:

And it is adjudged that the plaintiff do recover against the defendant the sum of £ for costs:

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

To the defendant.

TAKE NOTICE, &c. [*as in Form* 270].

[*N.B.—If the judgment be that plaintiff recover part only of the remainder of the property, or be for the defendant, this form must be altered accordingly.*]

274.

Confession in Ejectment by Defendant defending separately for Part of the Property of Plaintiff's Title to such Part.

[*Not to be printed.*]

Order 9, Rule 7.

I, C. D., one of the above-named defendants, defending separately for [*here describe the part for which C. D. defends*], being part of the property mentioned in the particulars annexed to the summons in this action ,and for which no other person defends, do hereby confess and admit the plaintiff's title to the above-mentioned part of the said property, and that he is entitled to the immediate possession thereof.

Dated this day of 19 .

C. D., one of the defendants.

Signed by C. D., one of the defendants, in the presence of

To the registrar of the court.

275.

Judgment in Ejectment for Plaintiff where Defendant defending separately for Part of the Property admits Plaintiff's Title to such Part, and Action proceeds for Recovery of Remainder of the Property.

Order 9, Rule 7.

Whereas C. D., one of the defendants, defending separately for [*here describe the part for which C. D. defends*], being part of the property mentioned in the particulars annexed to the summons in this action, and for which no other person defends, has confessed and admitted the plaintiff's title to the said part of the said property, and that the plaintiff is entitled to the possession thereof;

And whereas the action has proceeded for the recovery of the remainder of the said property:

Now, upon the trial of this action at a court holden this day, it is adjudged that the plaintiff was on the day of 19 , and still is entitled to the possession of the remainder of the property mentioned in the particulars annexed to the summons in this action;

And it is ordered that the defendant C. D. do give the plaintiff possession of the said [*describe the part defended by C. D.*] forthwith [*or* on the day of 19], and that the defendant E. F. do give the plaintiff possession of the said [*the remainder of the property*] forthwith [*or* on the day of 19];

And it is adjudged that the plaintiff do recover against the defendant C. D. the sum of £ for costs, and against the defendant E. F. the sum of £ for costs :

And it is ordered that the defendants do respectively pay the said sums above mentioned to the registrar of this court on or before the day of 19 .

To the defendants.

TAKE NOTICE.—That unless possession be given and payment made as above ordered, a warrant or warrants may issue, requiring the bailiff of the court to give possession of the said property to the plaintiff, and to levy the sums above-mentioned, together with further costs.

[*N.B.—If the judgment be that plaintiff recover part only of the remainder of the property, or be for the defendant, the above form must be altered accordingly.*]

276.

Notice in Ejectment by Mortgagee against Mortgagor that Defendant has paid into Court a Sum of Money for Principal, Interest, and Costs.

Take notice, that the defendant has paid into court the sum of £ as being all that is due for principal and interest upon the mortgage upon which this action is brought, and for costs ; and further take notice, that if you are willing to accept the said sum so paid into court you need not appear on the return day of the summons ; but if you do not agree to accept the said sum so paid in as aforesaid, you should appear at the court on that day, as the court will then proceed to determine whether the said sum of £ so paid into court as aforesaid is sufficient to satisfy all such principal, interest, and costs as aforesaid, and will in either case make such order in the matter as to the court shall seem fit.

Dated this day of 19 .

Registrar.

To the plaintiff.

277.

Order in Ejectment by Mortgagee against Mortgagor (all Money due for Principal, Interest, and Costs having been paid into Court) upon Plaintiff to reconvey to Defendant the Mortgaged Property.

Whereas this action is brought to recover possession of certain property mortgaged by the defendant to the plaintiff, and the defendant has paid into court the sum of £ for principal, interest, and costs due upon or in respect of the said mortgage :

Now upon the trial of this action at a court holden this day, the plaintiff not appearing, [*or* the plaintiff agreeing to accept the said sum of £ for such principal, interest, and costs as aforesaid, *or* the plaintiff, alleging that the said sum of £ is not sufficient to satisfy such principal, interest, and costs as aforesaid,] it is adjudged that the said sum is sufficient to satisfy such principal, interest, and costs, as aforesaid :

And it is ordered that within days from this day the plaintiff do, at the costs and charges of the defendant, reconvey to the defendant the mortgaged property for the recovery of which this action is brought, and do deliver up to the defendant all title deeds and writings relating thereto.

To the plaintiff and to the defendant.

278.

Order in Ejectment by Mortgagee against Mortgagor (a certain Sum having been paid into Court for Principal, Interest, and Costs), that Defendant shall pay a further Sum into Court, and that upon such Payment being made Plaintiff shall reconvey the Mortgaged Property to Defendant.

Whereas this action is brought to recover possession of certain property mortgaged by the defendant to the plaintiff, and the defendant has paid into court the sum of £ for principal, interest, and costs due upon or in respect of the said mortgage:

Now upon the trial of this action at a court holden this day, the plaintiff refusing to accept the said sum so paid into court as aforesaid, it is adjudged that the said sum of £ is not sufficient to satisfy the principal, interest, and costs due upon or in respect of the said mortgage, and that the further sum of £ is due from the defendant to the plaintiff for the same:

And it is ordered that the defendant do on or before the day of 19 , pay to the registrar of this court the said last-mentioned sum, together with £ for the plaintiff's costs in this action, and that upon the said sums of £ and £ , amounting together to the sum of £ , being paid into court on or before the said day of 19 , the plaintiff do, within days from the said last-mentioned day, at the costs and charges of the defendant, reconvey to the defendant the mortgaged property for the recovery of which this action is brought, and deliver up to him all title deeds and writings relating thereto:

And it is further ordered that if the defendant shall not, on or before the said day of 19 , pay the said last-mentioned sum, then execution shall forthwith issue on the application of the plaintiff for the recovery of the possession of the property described in the particulars annexed to the summons in this action, and for the sum of £ [*the costs of this action*], together with the costs of the execution; and the registrar shall return the money paid into court to the defendant.

To the plaintiff and to the defendant.

279.

Particulars or Statement of Cause of Action under Section 60 of the County Courts Act, 1888.

[*Not to be printed.*]

51 & 52 Vict. c. 43, s. 60. *Order* 6, *Rule* 4.

Interruption of right of way.

A. The plaintiff is possessed of a cottage, and by reason thereof is entitled to a right of way from and to the said cottage, over and through a certain inclosed yard of the defendant, to a certain spring of water, for the purpose of getting water from the said spring, and the defendant has prevented the plaintiff from using the said way and having thereby access to the said spring, and still hinders and prevents him therefrom; and neither the annual value nor the yearly rent of the lands, tenements, or hereditaments, in respect of which or on, through, or over which such easement is claimed exceeds the sum of 50*l.*; and the plaintiff claims £ damages.

Interruption of drainage.

B. The plaintiff is possessed of a cottage and premises, and by reason thereof is entitled to have all the sewage and waste water arising on and from the said cottage and premises flow along and through a drain through and under the surface of a garden in the occupation of defendant into a cesspool there, and the defendant, by stopping up the said drain, has prevented and still prevents such sewage and waste water from flowing through and along the said drain into the said cesspool; and neither, &c. [*as in the last Form*], and the plaintiff claims £2 damages.

Obstruction of light and air.

C. The plaintiff was possessed of a house, in which there were divers windows, and by reason thereof was entitled to the free access of air and light into the said house through the said windows, and the defendant by building a wall close to and in front of the said windows has darkened the plaintiff's house, and prevented and still prevents the access of light and

air into the plaintiff's house as the plaintiff before enjoyed the same; and neither the annual value nor the yearly rent of either plaintiff's house, or of the land on which the defendant has built the said wall, exceeds the sum of £50; and the plaintiff claims £ damages.

[*The above Forms are given merely as examples, and the statement in all cases must be in accordance with the right claimed, and be as concise as possible.*]

280.

Particulars of Plaintiff's Demand or Cause of Action in Action of Contract ordered to be tried in a County Court.

[*Not to be printed.*]

In the county court of holden at

Between A. B., plaintiff,

[*Address and Description.*]

and

C. D., defendant.

[*Address and Description.*]

Being an action of contract commenced in the High Court of Justice, and sent by order of a judge [*or* master *or* district registrar] thereof under section 65 of the County Courts Act, 1888, to be tried in this court. 51 & 52 Vict. c. 43, s. 65. *Order* 33, *Rule* 1.

This action is brought for [*state the particulars of the plaintiff's demand or cause of action according to the facts, adding*]

Above are the particulars of the plaintiff's demand [*or* cause of action].

Dated this day of 19 .

A. B., plaintiff,
or
E. F., plaintiff's solicitor.

To the registrar of the court
and to the defendant.

281.

Notice of Trial of Action of Contract ordered to be tried in a County Court.

[*Heading as in Form* 280.]

Being an action of contract commenced in the High Court of Justice, and sent by order of a judge [*or* master *or* district registrar] thereof under section 65 of the County Courts Act, 1888, to be tried in this court. 51 & 52 Vict. c. 43, s. 65. *Order* 33, *Rule* 1.

Take notice, that this action will be tried at a court to be holden on the day of at o'clock in the noon

Dated this day of 19 .

The hearing fee must be paid before the case is called on.

Registrar.

To the plaintiff and defendant.

[*N.B.—To the notice sent to the defendant the registrar must annex a copy of the plaintiff's particulars of demand or cause of action, where given.*]

282.

Statement of Plaintiff's Cause of Action in Action of Tort remitted for Trial in a County Court.

[*Not to be printed.*]

[*Heading as in Form* 280.]

Being an action of tort commenced in the High Court of Justice, and remitted by order of a judge [*or* master *or* district registrar] thereof, under section 66 of the County Courts Act, 1888, to be tried in this court. 51 & 52 Vict. c. 43, s. 66. *Order* 33, *Rule* 1.

A. The defendant maliciously and without reasonable or probable cause laid an information before E. F., a justice of the peace for the county of against the plaintiff for having feloniously stolen a bushel of Malicious prosecution.

wheat belonging to the defendant, upon which charge the plaintiff was committed to the county gaol at , and was there imprisoned for two months, and the defendant afterwards maliciously and without reasonable or probable cause caused the plaintiff to be prosecuted, indicted, and tried at the last assizes for the said county upon the said charge, when the plaintiff was acquitted, and the prosecution came to an end, by reason whereof the plaintiff was injured in his person and character, and was put to expense in defending himself against the said charges; and the plaintiff claims £100 damages.

Illegal arrest.

B. The defendant wrongfully and unlawfully gave the plaintiff into the custody of a policeman, and caused him to be handcuffed, and to be imprisoned in a police station, and thence to be taken in custody to a police office, and there to be further imprisoned, whereby the plaintiff was put to expense in procuring his liberation from such imprisonment and in finding bail for his subsequent appearance before a justice of the peace; and the plaintiff claims £30 damages.

Illegal distress.

C. The defendant, under a certain distress for rent due from the plaintiff to him, seized and sold more goods and chattels of the plaintiff both in quantity and value than were reasonably sufficient to satisfy the arrears of rent due, and the costs of the distress; and the plaintiff claims £20 damages.

Assault.

D. The defendant assaulted, beat, and wounded the plaintiff, in consequence whereof the plaintiff suffered much pain, and was confined to his bed, and put to expense in obtaining medical advice and attendance to cure him of the injuries inflicted by such beating and wounding; and the plaintiff claims £100 damages.

Libel.

E. The defendant falsely and maliciously wrote and published of and concerning the plaintiff the words following: "*he is a liar, a blackguard, and a scoundrel;*" and the plaintiff claims £200 damages.

Libel of plaintiff in the way of his trade.

F. The defendant falsely and maliciously caused to be printed and published of and concerning the plaintiff in the way of his trade as a grocer, the words following: "*Mr. A. B. sands his sugar and dusts his pepper,*" whereby the plaintiff was injured in his trade, and lost the custom of several persons, particularly X., Y., and Z., who had before dealt at the plaintiff's shop; and the plaintiff claims £50 damages.

Slander.

G. The defendant falsely and maliciously spoke and published of and concerning the plaintiff the words following: "*A. B. is a thief, and stole Mr. Brown's ducks;*" and the plaintiff claims £30 damages.

Slander of plaintiff in the way of his calling.

H. The defendant falsely and maliciously spoke and published of and concerning the plaintiff, in the way of his business and calling as a ratcatcher, the words following: "*A. B. is a great rogue, and instead of doing his best to kill the rats he encourages the breed, so that he may have more employment from the farmers,*" whereby the plaintiff was injured in his business, and several farmers, particularly X., Y., and Z., who had usually employed him to kill the rats on their farms, ceased to do so; and the plaintiff claims £20 damages.

Seduction.

J. The defendant debauched and carnally knew M. G. then being the daughter and servant of the plaintiff, whereby the said M. G. became pregnant, and was delivered of a child; and the plaintiff thereby lost her services, and incurred expense in nursing and obtaining medical assistance and attendance for her; and the plaintiff claims £100 damages.

Above is the statement of the plaintiff's cause of action.

Dated this day of 19 .

A. B. plaintiff,
or
E. F. plaintiff's solicitor.

To the registrar of the court
and to the defendant.

[*N.B.—The above Forms are only given as examples; and the statement of the plaintiff's cause of action must in all cases be in accordance with the facts and be as concise as possible.*]

283.

Notice of Trial of Action of Tort remitted for Trial in a County Court

[*Heading as in Form* 280.]

Being an action of tort commenced in the High Court of Justice, and remitted by order of a judge [*or* master *or* district registrar] thereof, under section 66 of the County Courts Act, 1888, to be tried in this court. 51 & 52 Vict. c. 43, s. 66.

Take notice, that this action will be tried at a court to be holden on the day of at o'clock in the noon. *Order* 33, *Rule* 1.

The hearing fee must be paid before the case is called on.

[*N.B.—To the notice sent to the defendant the registrar must annex a copy of the statement of the plaintiff's cause of action, where given.*]

283A.

Application to Paymaster-General or District-Registrar for transmission to County Court of Money paid into High Court in Action or Matter remitted or transferred to County Court.

In the county court of holden at .

(*Seal.*) *Order* 33, *Rule* 3A.

In the matter of an action [*or* matter] remitted [*or* transferred] from the High Court of Justice.

19 . (Letter) No. .

Between

A.B. Plaintiff,

and

C.D. Defendant.

The above action [*or* matter] having been remitted [*or* transferred] from the High Court of Justice to and entered for trial in this court, pursuant to an order of dated the day of 19 , I hereby request that the sum of £ paid into the High Court in the said action [*or* matter] may be transmitted to this court by cheque payable to my order and crossed to the account of the county court of holden at at the bank.

Dated this day of .

Registrar.

To the Paymaster-General,
Royal Courts of Justice,
London, W.C.

[*or* To the District Registrar
High Court of Justice.
District Registry,
.]

284.

Statement to be delivered by Claimant when Interpleader transferred from High Court.

[*Not to be printed.*]

[*Heading as in Form* 280.]

The following are the names and addresses of the parties and solicitors to the interpleader proceeding directed to be transferred to this court by an order of the High Court of Justice dated— *Order* 23, *Rule* 9.

Viz.:—of the claimant, A. B., of (*address and description*).
of his solicitor, C. D., of „ „
of the execution creditor, E. F., of „ „
of his solicitor, G. H., of „ „

The proceeding transferred is an issue to try whether certain goods seized by the sheriff of Middlesex, under an execution from the High Court in an

action in which the said E. F. was plaintiff and I. K. was defendant are the property of the said A. B., the claimant, or of the said E. F., the execution creditor.

I request that the said issue may be entered for hearing.

Claimant.

To the registrar.

285.

Notice of Hearing of Interpleader transferred from High Court.

[*Commence as in Form* 280.]

Order 33, *Rule* 9. Being a proceeding by way of interpleader directed to be transferred to this court by an order of the High Court of Justice dated the day of 19 .

Take notice, that this proceeding will be heard at a court to be holden at on the day of 19 , at o'clock in the noon.

The hearing fee must be paid before the case is called on.

Dated this day of 19 .

Registrar of the county court of holden at .

To the claimant and the execution creditor and to Messrs. the London agents of the sheriff of .

Order 33, *Rule* 10. NOTE.—*The claimant is called upon five clear days at least* [*or, if the time has been reduced under Order XXXIII. Rule* 13 (2) (*a*), *clear days at least*] *before the day of hearing, to lodge with the registrar of this court, at his office situate at two copies of the particulars of the goods and chattels alleged to be the property of the claimant, and of the grounds of his claim; and the registrar is required to forthwith send by post to the execution creditor one of the copies of such particulars; Order XXXIII. Rule* 10.

286.

Notice to Distrainer of Goods or Cattle intended to be Replevied.

In the county court of holden at .

Take notice, that A. B. of, &c., whose goods [*or* cattle] you have distrained, intends to replevy the same, and has proposed as his sureties for the due prosecution of an action of replevin against you in the [*here mention the court in which the action is to be brought*], E. F. of, &c., and G. H. of, &c., and that if you have any valid objection to make to the proposed sureties, or either of them, you must attend at [*here insert place of office of registrar*], on the day of 19 , at the hour of , when the bond will be submitted to me for approval.

J. K.,

To Registrar.

of .

287.

Bond in Replevin where Action to be commenced in High Court.

[*Not to be printed.*]

51 & 52 Vict. c. 43, s. 135. Know all men by these presents, that we, A. B. of, &c., C. D. of, &c., and E. F. of, &c., are held and firmly bound unto G. H. (*a*) of, &c., in the sum of £ to be paid to the said G. H. or his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

(*a*) The distrainer.

I approve of this bond. *I.K.*, Registrar. (L.S.) *This bond does not require a stamp.*

Sealed with our seals, and dated this day of one thousand nine hundred and .

Whereas the above-named C. D. and E. F., at the request of the said A. B., have agreed to enter into the above-written obligation, and this security has

been approved of by , the registrar of the county court of holden at , as appears by his allowance in the margin hereof:

Now the condition of this obligation is such, that if the above-bounden A. B. do and shall within one week from the date of the said obligation commence an action of replevin against the above-named G. H. in the High Court of Justice, for taking and unjustly detaining certain goods and chattels of the said , to wit, [*here insert the description of the goods and chattels*], and prosecute such action with effect and without delay, and unless judgment be obtained thereon by default, do and shall prove before the said court that he the said had good ground for believing that the title to the hereditament in respect of which the distress was made was in question [*or*, that the title to a toll *or* market *or* fair *or* franchise was in question], [*or*, that the alleged rent or damage in respect of which the distress was made exceeded twenty pounds], and do and shall also make return of the said goods and chattels, if return thereof shall be adjudged, then this obligation shall be void and of no effect, otherwise the same shall be and remain in full force.

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of

NOTE.—*If a deposit of money be made, the memorandum thereof should follow the terms of the conditions of the bond, and will not require a stamp.* 51 & 52 Vict. c. 43, s. 109.

288.

Bond in Replevin where Action to be commenced in County Court.

[*Not to be printed.*]

Know all men by these presents, that we, A. B. of, &c., C. D. of, &c., and E. F. of, &c., are held and firmly bound unto G. H. (*a*) of, &c., in the sum of £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

(*a*) The distrainer.

Sealed with our seals, and dated this day of one thousand nine hundred and .

Whereas the above-named C. D. and E. F., at the request of the said A. B., have agreed to enter into the above-written obligation, and this security has been approved of by , the registrar of the county court of holden at , as appears by his allowance in the margin hereof:

I approve of this bond.
I.K.,
Registrar.
(L.S.)
This bond does not require a stamp.

Now the condition of this obligation is such, that if the above-bounden A. B. do and shall within one month from the date of the said obligation commence an action of replevin against the above-named G. H. in the county court of holden at for taking and unjustly detaining certain goods and chattels of the said , to wit, [*here insert the description of the goods and chattels*], and prosecute such action with effect and without delay, and do and shall also make return of the said goods and chattels, if return thereof shall be adjudged, then this obligation shall be void and of no effect, otherwise the same shall be and remain in full force.

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of .

NOTE.—*If a deposit of money be made, the memorandum thereof should follow the terms of the conditions of the bond, and will not require a stamp.* 51 & 52 Vict. c. 43, s. 109.

289.

Warrant to High Bailiff to Replevy.

In the county court of }
holden at }

Whereas hath given security as well to commence his action of replevin against for taking and unjustly detaining certain goods and chattels [*or* cattle] of the said that is to say (*insert description of the goods and chattels*); and prosecute such action with effect and without delay, as also to make return of the said goods and chattels if return thereof shall be adjudged:

Now, as registrar of the above-mentioned county court, and by virtue of the provisions of the County Courts Act, 1888, I hereby authorise and direct you without delay to replevy and deliver the said goods and chattels [*or* cattle] to the said , and forthwith to return to me this warrant and what you shall have done under the same.

Dated the day of 19 .

Registrar.

To the high bailiff of the court.

In obedience to this warrant, I have replevied and caused to be delivered to the within-named the within-mentioned goods and chattels [*or* cattle].

Dated this day of 19 .

High bailiff.

(*For judgment for plaintiff in replevin, see Form* 151 (1).)

290.

Judgment for Defendant in Replevin for Rent.

Order 34, *Rules* 3, 4.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do return to the defendant the goods and chattels, [*or* cattle] hereinafter mentioned, that is to say [*stating the particulars thereof*], and do pay to the registrar of the court, forthwith [*or* on the day of] the sum of £ for costs of action [*or*, It is adjudged that the amount due for rent in arrear from the plaintiff to the defendant is £ , and that the goods and chattels [*or* cattle] of the plaintiff taken and detained by the defendant, were of the value of £ and that the plaintiff do forthwith [*or* on the day of] pay to the registrar of this court, the said sum of £ , and also the sum of £ for the defendant's costs].

291.

Judgment for Defendant in Replevin of Cattle Damage feasant.

Order 34, *Rules* 3, 5.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do return to the defendant the cattle hereinafter mentioned, that is to say [*here specify the cattle*], [*or* do pay to the registrar of this court, forthwith] [*or* on the day of 19], the sum of £ which is now adjudged to be the amount of damage sustained by the defendant]:

It is also adjudged that the plaintiff do pay to the registrar of this court forthwith [*or* on the day aforesaid] the sum of £ for the defendant's costs.

292 instead of 292.

Judgment for Delivery of Goods.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the following goods and chattels of the plaintiff wrongfully detained by the defendant: that is to say, [*here enumerate the chattels which the court decides to have been detained*] of the value of £ , and also the sum of £ for damages for the detention of the said goods and chattels, and the sum of £ for costs. *Order 23, Rule 3a.*

[And it is ordered that the defendant do return the said goods and chattels to the plaintiff, or do pay the said sum of £ their value to the registrar of this court on the day of 19 .]

And it is further ordered that the defendant do pay the said sums of £ and £ for damages and costs to the registrar of this court on the day of 19 .

If the judge makes an order at the trial for a return of the goods and chattels without giving the defendant the option of returning them, omit the words in brackets and substitute the following :—

And it is ordered that the defendant do return the said goods and chattels to the plaintiff on the day of 19 , and that in default of his so doing a warrant of delivery do issue. *Order 25, Rule 69.*

293.

Warrant of Delivery of Goods.

Whereas a court holden at on the day of 19 , the plaintiff obtained a judgment against the defendant for the recovery of [*here enumerate the goods and chattels which the court has ordered to be recovered of the defendant*], and thereupon it was ordered by the court that the defendant should return the said goods and chattels to the plaintiff on the day of 19 , and that in default of his so doing a warrant of delivery should issue : *Order 25, Rules 69, 7.*

And whereas the defendant did not on the said day of 19 , return the said goods and chattels to the plaintiff :

These are therefore to require and order you forthwith to seize the said goods and chattels so not returned as aforesaid, wheresoever they may be found within the district of this court, and to deliver the same to the plaintiff :

And if the same cannot be found by you within such district, you are required and ordered to distrain all the lands and chattels of the defendant wheresoever they may be found within the district of this court, and them hold until the defendant shall deliver the said goods and chattels to you, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

294.

Warrant of Delivery of Goods, and of Execution for Damages and Costs.

Order 25, Rules 69, 70.

Whereas at a court holden at on the day of 19 , the plaintiff obtained a judgment against the defendant for the recovery of [*here enumerate the goods and chattels which the court has ordered to be recovered of the defendant*], and for the payment of £ for damages for the detention of the said goods and chattels, and of £ for costs: and thereupon it was ordered by the court, that the defendant should return the said goods and chattels to the plaintiff on the day of , and that in default of his so doing, a warrant of delivery should issue; and it was further ordered that the defendant should pay the said sums of £ and £ for damages and costs to the registrar of this court on the day of :

And whereas the defendant did not on the said day of 19 , return the said goods and chattels to the plaintiff, and default has been made in payment according to the said order:

These are therefore to require and order you forthwith to seize the said goods and chattels so not returned as aforesaid, wheresoever they may be found within the district of this court, and to deliver the same to the plaintiff:

And if the same cannot be found by you within such district, you are required and ordered to distrain all the lands and chattels of the defendant, wheresoever they may be found within the district of this court, and them hold until the defendant shall deliver the said goods and chattels to you:

And these are further to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant wheresoever they may be found within the district of this court, (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	*s.*	*d.*
Damages for detention of goods			
Costs			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon] . . .			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

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295 instead of 295.

Warrant of Delivery where, if Goods are not Returned, Levy is to be made for their Value.

Order 25, *Rules* 69, 70.

Whereas at a court holden at on the day of 19 , the plaintiff obtained a judgment against the defendant for the recovery of [*here enumerate the goods and chattels which the court has ordered to be recovered of the defendant*], of the value of £ , and for the payment of £ for damages for the detention of the said goods and chattels, and of £ for costs ; and thereupon it was ordered by the court, that the defendant should return the said goods and chattels to the plaintiff or pay the said sum of £ their value to the registrar of this court, on the day of 19 ; and it was further ordered that the defendant should pay the said sums of £ (*damages for the detention*) and £ (*costs*) to the registrar of this court on the day of :

And whereas the defendant did not on the said day of 19 , return the said goods and chattels to the plaintiff, and default has been made in payment according to the said order :

These are therefore to require and order you forthwith to seize the said goods and chattels so not returned as aforesaid, wheresoever they may be found within the district of this court, and to deliver the same to the plaintiff :

And if the same cannot be found by you within such district, you are required and ordered to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of £ (*the assessed value of the goods and chattels*) :

And you are further required and ordered to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (except, as hereinbefore excepted, the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sums of £ (*damages for detention*) and £ (*costs*), together with the costs of this execution :

And also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court, and others the bailiffs thereof.

	£	s.	d.
Assessed value of the goods and chattels			
Damages for detention of goods			
Costs			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon] . . .			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

296.

Order for Specific Performance of Contract to deliver Specific or Ascertained Goods, under Sect. 52 of the Sale of Goods Act, 1893.

56 & 57 Vict. c. 71, s. 52.

Upon the trial of this action (the same being for breach of contract to deliver specific goods for a price in money) at a court holden this day, it being adjudged that the plaintiff is entitled to recover, it is, upon the application of the plaintiff, found and adjudged that the goods in respect of the non-delivery of which the plaintiff is entitled to recover, and which remain undelivered, are as follows; (that is to say,) [*here enumerate the goods undelivered*]; and that the plaintiff would have been liable to pay the sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] for the delivery thereof; and that the plaintiff will have sustained damages to the amount of £ [*here insert the sum assessed for damages if the goods be delivered*] if the said goods shall be delivered as hereinafter mentioned, and to the amount of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*] if the said goods shall not be so delivered: And thereupon judgment being now given for the plaintiff, it is, upon the application of the plaintiff, ordered that the said goods be delivered by the defendant to the plaintiff on the payment by the plaintiff of the said sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] on or before the day of now next ensuing, and that in default thereof execution do issue for the delivery to the plaintiff, on payment by the plaintiff of the said sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] of the said goods; and that the defendant shall not have the option of retaining the same upon payment of the damages lastly assessed in the event of the non-delivery of the goods; and that the plaintiff do recover against the defendant the said sum of £ [*here insert the sum assessed for damages if the goods be delivered*] for damages and for costs:

And it is ordered that the defendant do pay the said last-mentioned sums of £ and £ to the registrar of this court on or before the day of 19 :

And it is further ordered that if the said goods or any part thereof cannot be found within the district of this court, the bailiff of this court shall distrain the defendant by all his lands and chattels within the district of this court till the defendant deliver the said goods, or, at the option of the plaintiff, the said bailiff shall cause to be made of the defendant's goods the said sum secondly above assessed for damages, or a due proportion thereof.

297.

Distringas for Delivery of Goods, and Warrant of Execution against Defendant's Goods for the Amount of Damages (supposing the Goods delivered under the Distringas), and Costs, under Sect. 52 of the Sale of Goods Act, 1893.

56 & 57 Vict. c. 71, s. 52. *Order* 25, *Rules* 69, 70.

Whereas at a court holden at on the day of 19 , the plaintiff obtained a judgment against the defendant for the delivery to the plaintiff upon payment by the plaintiff of the sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] of the following goods: that is to say [*here enumerate the goods enumerated in the judgment*]: and by the said judgment it was found and adjudged that the plaintiff would have sustained damages to the amount of £ [*here insert the sum assessed for damages if the goods be delivered*] if the said goods should be delivered to the plaintiff, and to the amount of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*] if the said goods should not be so delivered; and judgment being then given for the plaintiff, it was thereupon ordered that the said goods should be delivered by the defendant to the plaintiff, on payment by the plaintiff of the said sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] on or before the day of 19 , and that in default thereof execution should issue for delivery to the plaintiff, on payment by the plaintiff of the said sum of £ [*here insert the sum to be paid by the plaintiff for the delivery*], of the said goods, and that the defendant should not have the option of retaining the said goods upon payment of the said sum of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*], and that the plaintiff should recover against the defendant the said sum of £ [*here insert the sum assessed for damages if the goods be delivered*] for damages, and £ for costs; and that the defendant should pay the said last-mentioned sums of £ and £ to the registrar of this court on or before the day of 19 :

And it was further ordered that if the said goods or any part thereof should not be found within the district of this court, the bailiff of this court should distrain the defendant by all his lands and chattels within the district of this court till the defendant should deliver the said goods, or, at the option of the plaintiff, the said bailiff should cause to be made of the defendant's goods the said sum of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*], or a due proportion thereof:

And whereas the said goods have not been delivered according to the said order, and the said sum of £ so payable by the plaintiff as aforesaid has been paid to the registrar of this court, and the plaintiff has not expressed his option to have the said sum of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*], or a due proportion thereof, made of the goods of the defendant:

These are therefore to require and order you forthwith to seize the said goods so not delivered as aforesaid, wheresoever they may be found within the district of this court, and to deliver the same to the plaintiff, and to pay over to the defendant upon seizure of the said goods the said sum of £ [*here insert the sum to be paid by the plaintiff for the delivery*] which is delivered to you together with this warrant:

And if the said goods cannot be found by you within such district, you are required and ordered to distrain all the lands and chattels of the defendant, wheresoever they may be found within the district of this court, and them hold until the defendant shall deliver the said goods to you:

And you are further required and ordered to make and levy, by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under

the said order, together with the costs of this execution ; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court, this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Amount assessed for damages if the goods be delivered .			
Sum adjudged for costs			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon] . . .			

NOTICE.—The goods and chattels seized for damages and costs are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

[N.B.— *When a plaintiff sues out this warrant, he must pay to the registrar the amount found by the judgment to be payable by the plaintiff for the delivery of the goods, and the registrar must hand over such amount to the bailiff with this warrant, for the bailiff to pay to the defendant, if either the defendant delivers the goods to the bailiff or the bailiff obtains possession of them under this warrant.*]

298.

Warrant of Execution against Defendant's Goods, under Sect. 52 of the Sale of Goods Act, 1893, where Plaintiff exercises the Option of having the Damages assessed for the Non-delivery of the Goods (where the Goods are not delivered pursuant to the Order) levied by Distress and Sale of Defendant's Goods.

Whereas at a court holden at on the day of 19 , the plaintiff obtained a judgment against the defendant for the delivery to the plaintiff, upon payment by the plaintiff of the sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] of the following goods, that is to say [*here enumerate the goods enumerated in the judgment*] ; and by the said judgment it was found and adjudged that the plaintiff would have sustained damages to the amount of £ [*here insert the sum assessed for damages if the goods be delivered*] if the said goods should be delivered to the plaintiff, and to the amount of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*] if the said goods should not be so delivered ; and judgment being then given for the plaintiff, it was thereupon ordered that the said goods be delivered by the defendant to the plaintiff, on payment by the plaintiff of the said sum of [*here insert the sum to be paid by the plaintiff for the delivery*], on or before

the day of and that in default thereof execution should issue for the delivery to the plaintiff on payment by the plaintiff of the said sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] of the said goods, and that the defendant should not have the option of retaining the said goods upon payment of the said sum of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*], and that the plaintiff should recover against the defendant the said sum of £ [*here insert the sum assessed for damages if the goods be delivered*], for damages, and £ for costs; and that the defendant should pay the said last-mentioned sums of £ and £ to the registrar of this court on or before the day of 19 :

And it was further ordered that if the said goods or any part thereof should not be found within the district of this court, the bailiff of this court should distrain the defendant by all his lands and chattels within the district of this court till the defendant should deliver the said goods, or, at the option of the plaintiff, the said bailiff should cause to be made of the defendant's goods the said sum of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*], or a due proportion thereof:

And whereas the said goods have not been delivered according to the said order, and the plaintiff has expressed his option to have the said sum of £ [*here insert the sum assessed for damages in the event of non-delivery of the goods*] made of the goods and chattels of the defendant:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	*s.*	*d.*
Amount assessed for damages if the goods be not delivered			
Sum adjudged for costs			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon] . . .			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

299.

Order appointing Receiver of Real and Personal Estate.

[*Not to be printed.*]

Order 13, *Rule* 1. Upon the application of and upon reading an affidavit of and upon hearing

It is ordered that of be appointed [*if so ordered*, without giving security] to receive the rents and profits of the real and leasehold estates of and to get in the outstanding personal estate of the testator [*or* intestate] named in the particulars annexed to the summons in this action; and the tenants of the real and leasehold estates are to attorn and pay their rents in arrear and growing rents to such receiver.

And it is ordered that the defendants, the executors of the testator [*or* administrators of the intestate], do deliver over to such receiver all securities in their hands for such outstanding personal estate, together with all books and papers relating thereto.

[And it is ordered that the said do on or before the day of 19 , give security pursuant to Order XIII. Rule 2, of the County Court Rules in the sum of £ .]

[*Add, if so ordered*, And the plaintiff undertaking to be responsible for the acts and defaults of the said receiver until such security is given, it is further ordered that the said receiver be at liberty to act at once.]

300.

Order appointing Receiver of Partnership.

[*Not to be printed.*]

Order 13, *Rule* 1. Upon the application of and upon reading an affidavit of and upon hearing

It is ordered that of be appointed [*if so ordered*, without giving security] to collect, get in, and receive the debts now due and outstanding and other assets and property belonging to the partnership business of at and out of the first moneys received to pay the debts due from the said business:

And it is further ordered that the plaintiff and defendant respectively do deliver over to the said all the stock-in-trade and effects of the said partnership, and also all securities in their or either of their hands for such outstanding partnership estate, together with all books and papers relating thereto.

[And it is ordered that the said do on or before the day of 19 , give security pursuant to Order XIII. Rule 2, of the County Court Rules in the sum of £ .]

[*Add, if so ordered*, And the plaintiff undertaking to be responsible for the acts and defaults of the said receiver until such security is given, it is further ordered that the said receiver be at liberty to act at once.]

300A.

Interim Order for Appointment of Receiver.

Order 13, *Rule* 15. In the county court of holden at .

No. of Plaint.

Between A. B., of &c., plaintiff,

and

C. D., of &c., defendant

Upon the application of Mr. , solicitor for the plaintiff, and the

plaintiff by his undertaking to be answerable for all sums to be received by the receiver hereinafter named,

It is ordered that be appointed without security until the day of next inclusive or further order to receive the rents and profits of the following property, that is to say,

but without prejudice to the rights of any prior incumbrancer or his possession (if any), and the tenants of the said premises are (without prejudice as aforesaid) to attorn and pay their rents in arrear and growing rents to the said so long as he shall continue to be such receiver;

and that all questions as to passing his accounts and payments thereunder and all further questions be reserved until further order.

Defendant to be at liberty to apply in the meantime.

Dated the day of , 19 .

Registrar.

300B.

Final Order for Appointment of Receiver.

Order 13, *Rule* 15.

In the county court of holden at .

No. of Plaint.

Between A. B., of &c., plaintiff,

and

C. D., of &c., defendant.

Upon hearing Mr. , solicitor for the plaintiff, and upon reading the affidavits of filed the day of , 19 , and upon hearing Mr. , solicitor for the defendant [*or* the defendant in person] [*or* the defendant not appearing in person or by solicitor],

It is ordered as follows:—

1. That of be and he is hereby appointed [*if so ordered*, without giving security] to receive the rents, profits and moneys receivable in respect of the following property, that is to say:

But this appointment is to be without prejudice to the rights of any prior incumbrancers upon the said premises who may think proper to take possession of or receive the same by virtue of their respective securities, or, if any prior incumbrancer is in possession, then without prejudice to such possession.

2. That the tenants of the said premises do (without prejudice as aforesaid) attorn and pay their rents in arrear and growing rents to such receiver.

3. That the receiver be at liberty, if he shall think proper (but not otherwise), out of the rents, profits, and moneys to be received by him, to keep down the interest upon the prior incumbrances, according to their priorities, and be allowed such payments (if any) in passing his accounts.

4. That the allowance to the receiver be

5. That the total amount to be allowed for fees and costs (exclusive of the allowance to the receiver) shall be the amount provided by Order XIII. Rule 14, of the County Court Rules.

6. That the receiver shall not without leave of the judge receive more than the amount required to keep down the interest upon prior incumbrances, and to provide for the allowance to the receiver and the allowed fees and costs of obtaining this order, and to pay to the plaintiff what shall be due to him in respect of the debts and costs due to him, amounting to £ for debt and £ for costs, making together the sum of £ .

7. That the receiver shall submit his accounts and pay over to the registrar the balance in his hands in pursuance of Rules 4 to 7 of Order XIII. aforesaid within 12 calendar months from the date of this order, or so soon as the

amount receivable by him under the preceding clause of this order has been received, whichever shall first happen, or whenever he may be called upon by the registrar so to do.

8. That the sums paid into court by the receiver shall be applied in or towards satisfaction of the allowance to the receiver, and the fees and costs of obtaining this order, and the amount due to the plaintiff in respect of debt and costs as aforesaid; but if there shall be no sums received or the amount shall be insufficient to satisfy such fees and costs as aforesaid, then upon the certificate of the registrar being given stating the amount of the deficiency (such certificate to be given after passing the final account) the amount of the deficiency so certified shall be paid by the defendant to the registrar for the use of the plaintiff.

9. That the balance (if any) remaining after making the several payments aforesaid shall be paid by the receiver into court to the credit of this action, subject to further order.

10. *Where the judgment is against a married woman, a widow, or a divorced woman, under Form* 151A, *paragraph* 1, 2, *or* 3, *add*—

Provided that nothing in this order shall authorise the receiver to receive any portion of the above-mentioned property of the defendant which consists of separate estate of the defendant which she is [*or* was during her coverture] restrained from anticipating, unless by reason of section 19 of the Married Women's Property Act, 1882, such property shall be available to satisfy the judgment obtained in this action notwithstanding such restriction.

11. *If security is ordered, add*—

And it is ordered that the receiver do on or before the day of give security pursuant to Order XIII. Rule 2, of the County Court Rules in the sum of £ .

[*Add if so ordered*, and the plaintiff undertaking to be answerable for the acts and defaults of the said receiver until such security is given, it is further ordered that the receiver be at liberty to act at once.]

12. And lastly it is ordered that any of the parties are to be at liberty to apply to the court as there may be occasion.

Dated this day of

Registrar.

301.

Notice to Receiver to produce his Accounts for Audit.

Order 13, *Rule* 6.

You are hereby required, on or before the day of 19 to leave at my office your accounts as receiver in this action [*or* matter], duly verified by affidavit, and to attend at my office aforesaid on the day of 19 , at o'clock in the noon for the purpose of having such accounts audited; and you are required to bring with you all receipts, papers, and vouchers necessary for verifying such accounts.

To E. F.,
Receiver in this action [*or* matter].

302.

Order on Receiver to Pay to Beneficiary.

[*Not to be printed.*]

Order 13, *Rule* 10.

Upon the application of it is ordered that E. F., of , appointed by an order of this court dated the day of the

receiver in this action [*or* matter], do pay at the end of each quarter to the moneys received by him during the quarter as such receiver after deducting his own remuneration and all other proper disbursements; and that he be allowed such payments in passing his accounts.

[NOTE.—*Where the court at the time of appointing the receiver adds a direction to this effect, it can be prepared from this form.*]

303.

Bond to be Given by Receiver.

[*Not to be printed.*]

Know all men by these presents, that we, E. F., of, &c., and I. K., of, &c., and L. M., of, &c., are jointly and severally held and firmly bound to G. H. registrar of the county court of holden at , in the sum of £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made we bind ourselves, and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. *Order* 13, *Rule* 2.

Sealed with our seals, and dated this day of one thousand nine hundred and .

Whereas an action has been commenced in this court by A. B. against C. D. for the purpose of [*here insert object of action*]:

And whereas the said E. F. has been appointed, by order of the above-mentioned court, to receive the rents and profits of the real [*or* freehold, *or* copyhold, *or* leasehold] estate [*or* estates] [and to get in the outstanding personal estate] of N. O., the testator in the said action named:

Now the condition of this obligation is such, that if the above-bounden E. F. do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estates, and in respect of the personal estate, of the said N. O. [*or as may be*] at such periods as the said court shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said court has directed or shall hereafter direct, then this obligation shall be void and of none effect, otherwise the same shall remain in full force and virtue.

E. F. (L.S.)
I. K. (L.S.)
L. M. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of .

NOTE.—*If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.*

304.

Order for Accounts and Inquiries.

[*Not to be printed, but to be used as a precedent.*]

This court doth order that the following accounts and inquiry be taken and made; that is to say, *Order* 12, *Rule* 5.

1. An account of the personal estate not specifically bequeathed of N. O. deceased, the testator in the particulars in this action named, come to the hands of the defendants C. D. and X. Y., the executors of his will, or of

either of them, or to the hands of any other person by the order or for the use of the said defendants or either of them.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the legacies and annuities (if any) given by the testator's will.

5. An inquiry what parts (if any) of the testator's personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(*If ordered.*)

And it is ordered that the following further inquiries and accounts be made and taken; that is to say,

6. An inquiry what real estate the testator was seised of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate received by the defendants C. D. and X. Y., the executors of his will, or either of them, or by any other person by the order or for the use of the said defendants or either of them.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(*If sale ordered.*)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's real estate be sold with the approbation of the judge, free from incumbrances (if any) of such of the incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent, and that the money to arise by the sale of the testator's real estate be paid into court to the credit of this action, to an account entitled "Proceeds of sale of the testator's real estate," subject to further order; and if such money shall arise from real estate sold with the consent of incumbrancers, the money so arising is to be applied in the first place in payment of what shall appear to be due to such incumbrancers according to their priorities.

11. And it is ordered that shall have the conduct of the sale of the said real estate, and shall prepare the conditions and contracts of sale, and the abstract of title, subject to the approval of the registrar, and that in case any doubt or difficulty shall arise the papers shall, with the like approval, be submitted to , Esquire, to settle.

12. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the registrar shall advertise in the newspapers according to the practice of the court, or shall make such inquiries in any other way which shall appear to the registrar to give the most useful publicity to such inquiries.

13. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the registrar do certify the result of the inquiries and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply to the court as they may be advised.

[*Such part only of this order is to be used as is applicable to the particular case.*]

305.

Order for Sale of Personal Estate.

[*Not to be printed.*]

It appearing to me that it will be for the benefit of the estate that the remaining outstanding debts be sold, I do order that the debts now due to the estate of N. O., the testator [*or* intestate] mentioned in the plaintiff's particulars of claim, be sold as soon as conveniently may be by [the receiver] by private contract [*or* public auction] for the highest price that can be obtained for the same. *Order 23, Rule 23.*

Dated this day of 19 .

Judge.

306.

Order for Sale of Real Estate.

[*Not to be printed.*]

It appearing to me that it is necessary for carrying out the objects of this action that the real estate [*or* part of the real estate] of the deceased be sold, I do order that all that freehold [copyhold *or* leasehold] messuage or tenement, &c. [*setting out parcels as in last conveyance*], being the real [*or* part of the real] estate of N. O., late of in the county of , deceased, the testator [*or* intestate] mentioned in the plaintiff's particulars of claim, be offered for sale by public auction at the Hotel at by Mr. , auctioneer, and be then and there sold, subject to a reserved price to be fixed by the court [*or* to the highest bidder without reserve]. *Order 23, Rule 18.*

Dated this day of 19 .

Judge.

307.

Order for Reference in Foreclosure Action by Mortgagee.

[*Not to be printed.*]

It is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest under or by virtue of the indenture of mortgage dated the day of mentioned in the particulars in this action (making allowance on one side or the other for any rents or profits received by the plaintiff and for any sums of money lawfully expended by the plaintiff about the mortgaged premises), and to tax the plaintiff's costs of this action, and that the registrar do certify to the court on the day of what he shall find to be due for principal and interest as aforesaid and for costs: And upon the defendant paying into court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months after the registrar shall have presented his certificate, it is ordered that the plaintiff do reconvey the said mortgaged premises, free and clear from all incumbrances made by him, or any person or persons claiming by, from, or under him, to the defendant, or as he shall direct, and do deliver up to the registrar, on oath if required, all deeds and writings in his custody or power relating thereto; and that upon such reconveyance being made, and deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant paying into court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the defendant do thenceforth stand absolutely debarred and foreclosed of and from all right, title, interest, and equity of redemption of, in, and to the

said premises, and that after the expiration of the said six months the plaintiff shall be at liberty to apply to the court for a judgment for the foreclosure of the said mortgage [*add, if neither the value nor the rent of the property exceeds 50l. a year, and delivery of possession is asked for and ordered by the court*, and for an order directing the defendant to deliver up possession to the plaintiff of the hereditaments comprised in the said indenture of mortgage]: And either of the parties is to be at liberty to apply to the court as he may be advised.

[N.B.—*Where the state of the account is ascertained at the first hearing, instead of the order of reference to the registrar, begin*, It is declared that the sum of £ is now due to the plaintiff for principal and interest on the indenture of mortgage mentioned in the particulars in this action, and it is ordered that the registrar do tax the plaintiff's costs of this action, and that the registrar do certify, &c.]

308.

Order for Sale in Action by Mortgagee or Person entitled to a Lien.

[*Not to be printed.*]

It is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage [*or* equitable mortgage *or* lien], dated the day of , mentioned in the particulars in this action, and to tax the plaintiff's costs of this action, and that the registrar do certify to the court on the day of what he shall find to be due for principal and interest as aforesaid, and for costs: And upon the defendant paying into court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months after the registrar shall have presented his certificate, it is ordered that the plaintiff [do reconvey the said mortgaged premises, free and clear from all incumbrances made by him, or any person or persons claiming by, from, or under him, to the defendant, or as he shall direct, and] do deliver up to the registrar, on oath if required, all deeds and writings in his custody or power relating to the premises, subject to the said mortgage [*or* equitable mortgage *or* lien]; and that upon such [reconveyance being made, and] deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid, for principal, interest, and costs; but in default of the defendant paying into court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [*or* the premises subject to the said equitable mortgage *or* lien] be sold with the approbation of the judge: And it is ordered that the money to arise by such sale be paid into court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid, and that the balance (if any) shall be paid to the defendant.

309.

Judgment for Foreclosure.

[*Not to be printed.*]

Whereas it appears to the court that the defendant has not paid into court the sum of , which was on the day of certified by the registrar to be due to the plaintiff for principal and interest upon the indenture of mortgage dated the day of , mentioned in the particulars in this action, and for costs, pursuant to the order made in this action on the day of last, and that the period of six months has elapsed since the said day of :

It is ordered that the defendant do stand absolutely debarred and foreclosed of and from all right, title, interest, and equity of redemption of, in, and to the said mortgaged premises [*add, if neither the value nor the rent of the property exceeds 50l. a year, and delivery of possession is asked for and ordered by the court*, and that the defendant do deliver up possession to the plaintiff of the hereditaments comprised in the said indenture of mortgage, the particulars of which are set forth in the schedule hereto].

310.

Order in Action for Foreclosure or Sale where an Immediate Sale is directed under sect. 25 of the Conveyancing and Law of Property Act, 1881.

[*Not to be printed.*]

This action coming on for trial this day, upon hearing, &c., this court doth declare that the plaintiff is entitled to an equitable mortgage for the sum of £ and interest at per cent. upon the premises mentioned in the particulars; and the plaintiff requesting that an immediate sale of the said mortgaged hereditaments may be directed, and it appearing by the evidence of that the rents of the said mortgaged hereditaments are insufficient to keep down the interest on the said mortgage debt, and that the said hereditaments are an insufficient security for payment of the said mortgage debt and interest, and that it is therefore proper that an immediate sale of the property be ordered without giving the mortgagor the usual time to redeem, it is ordered that the said mortgaged hereditaments be sold, with the approbation of the judge [*add directions for sale, &c.*]; and it is ordered that an account be taken of what is due to the plaintiff for principal and interest on his said mortgage, and for his costs of this action, to be taxed by the registrar: and it is ordered that the money to arise from the sale hereinbefore directed be applied in payment of what shall appear to be due to the plaintiff for principal, interest, and costs as aforesaid, and be in the meantime paid into court to the credit of this action; and it is ordered that the further hearing of this action be adjourned till ; and either of the parties is to be at liberty to apply to the court as he may be advised. 44 & 45 Vict. c. 41, s. 25.

311.

Particulars in Foreclosure Action where the Debt is under £50, and Plaintiff claims that Defendant may be ordered personally to Pay the Debt.

[*Not to be printed.*]

1. By an indenture dated the 10th day of May, 1897, made between the defendant of the one part and the plaintiff of the other part, the defendant, in consideration of £40 advanced to him by the plaintiff, conveyed to the plaintiff and his heirs a house and premises situate at Hastings, in the county of Sussex, by way of mortgage to secure the repayment of the said sum of £40 and interest at 5 per cent., and the defendant covenanted with the plaintiff to repay him the said sum of £40, together with interest as aforesaid, on the 10th day of November, 1897. *Order 6, Rule 1.*

2. The said sum of £40, together with an arrear of interest amounting in the whole to £45, remains due and owing to the plaintiff.

3. The defendant is in occupation of the said mortgaged premises.

4. Neither the value nor the rent of the mortgaged premises exceeds £50 a year.

5. The plaintiff claims that the defendant may be ordered personally to pay to the registrar of this court the said sum of £45, together with the plaintiff's costs of this action, and that in default the defendant may be foreclosed of his equity of redemption of the mortgaged premises [and ordered to deliver up possession thereof to the plaintiff].

312.

Judgment in Foreclosure Action where the Debt is under £50, and Plaintiff claims that Defendant may be Ordered personally to pay the Debt.

[*Not to be printed.*]

It is this day adjudged that the plaintiff do recover against the defendant the sum of £ for debt and £ for costs of this action up to and including the hearing; and it is ordered that the defendant do pay the same to the registrar of this court on the day of ; and in case the defendant do pay the same as aforesaid, it is ordered [*usual directions for reconveyance of the mortgaged property, &c., see Form* 307] ; but in default of payment it is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage of the house in the plaintiff's particulars mentioned, and to tax the plaintiff his costs of this action, regard being had in taking the said account to the amount (if any) which may be paid by the defendant or recovered by the plaintiff under the judgment hereinbefore contained; and it is ordered that the registrar do certify to the court on the day of what he shall find to be due to the plaintiff for principal, interest, and costs; and upon the defendant paying into court what shall be certified, &c., &c. within six months after the registrar shall have presented his certificate [*usual directions for reconveyance, &c., see Form* 307] ; but in default [*usual directions for foreclosure and delivery of possession, with liberty to apply, see Form* 307.]

313.

Particulars in Action for Specific Performance.

[*Not to be printed.*]

Order 6, Rule 1.

1. By an agreement in writing the plaintiff agreed to sell to the defendant, and the defendant agreed to purchase of the plaintiff, a freehold house situate at , to which the plaintiff is entitled in fee simple, for the sum of £400.

2. The said agreement is contained in two letters, dated respectively the 4th and 5th days of March, 19 , the former of such letters, which was addressed to the defendant, being signed by the plaintiff, and the latter, which was addressed to the plaintiff, being signed by the defendant.

3. The defendant has refused to perform the said agreement.

4. The purchase money does not exceed the sum of £500.

5. The plaintiff claims that the said agreement be specifically performed by the defendant.

6. The plaintiff has always been ready and willing, and hereby offers, specifically to perform the said agreement on his part.

7. The plaintiff claims £50 damages from the defendant for breach of the said agreement.

or,

1. The defendant by an agreement in writing dated the 7th day of March, 19 , and signed by him, agreed to grant to the plaintiff a lease of a cottage and ten acres of land, situate at , and called or known as Whitehouse, at the yearly rent of £20, for the term of seven years, commencing from the 25th day of March, 19 .

2. The defendant has refused to perform the said agreement.

3. The plaintiff has always been ready and willing, and hereby offers, specifically to perform the said agreement on his part.

4. The plaintiff claims to have the said agreement specifically performed, and to have a lease granted to him accordingly.

5. The value of the said cottage and land does not exceed the sum of £500.

314.

Judgment in Action for Specific Performance.

[*Not to be printed.*]

The court doth adjudge that the agreement in the plaintiff's particulars mentioned ought to be specifically performed and carried into execution, provided a good title can be made to the house therein mentioned, and doth order the same accordingly.

And it is ordered that the following inquiries be made, that is to say, (1) An inquiry whether a good title can be made to the house in the said agreement mentioned :

(2) And in case it shall appear that a good title can be made to the said house, an inquiry when it was first shown that such good title could be made.

And it is ordered that the further hearing of this action be adjourned to , and that either of the said parties be at liberty to apply to the court as he may be advised.

Further Order after Inquiry and Certificate of good Title.

It is ordered

(1) That interest be computed at the rate of £5 per cent. per annum from the day of 19 on the sum of £400, the purchase money for the house comprised in the agreement in the plaintiff's particulars mentioned ; and

(2) That an account be taken of the rents and profits of the said house received by the plaintiff or by any other person by his order or for his use, from the said day of 19 ; [*in case the plaintiff is in occupation of the house, then add*—and if it shall appear that the plaintiff has occupied the said house, then it is ordered that an annual value by way of rent be set thereon, and that the plaintiff be charged therewith in the account of rents and profits].

And it is ordered that what shall appear to be due on the said account of rents and profits be deducted from the said sum of £400, and what shall appear to be due to the plaintiff for interest thereon as aforesaid, and that the balance be certified by the registrar.

Add, if the court so directs, And it is ordered that it be referred to the registrar to tax the plaintiff's costs of this action.

And upon the plaintiff executing to the defendant at the defendant's expense a proper conveyance of the said house (such conveyance to be settled by the judge in case the parties differ), and delivering to the defendant, upon oath if required, all deeds and writings in his custody or power relating to the said house, it is ordered that the defendant pay into court the balance payable in respect of the said purchase money and interest, together with the amount of the plaintiff's costs when so taxed.

And either of the said parties is to be at liberty to apply to the court as he may be advised.

or,

Adjudge specific performance of the agreement (*as in previous form omitting proviso as to title*).

And it is ordered that the defendant do execute a lease of the cottage and land comprised in the said agreement for the term therein mentioned to the plaintiff, the said lease to contain the usual covenants [*where a question is raised as to any special covenant being inserted*, and also a covenant on the part of the plaintiff to], and it is ordered that such lease be settled by the judge in case the parties differ, and it is ordered that the plaintiff do execute to the defendant a counterpart of the said lease.

Directions as to costs. Liberty to either party to apply to the court as he may be advised.

315.

Order.—Dissolution of Partnership.

[*Not to be printed.*]

It is declared and adjudged that the partnership mentioned in the plaintiff's particulars between the plaintiff and defendant ought to stand dissolved as from the date of this judgment [*or* the day of]; and it is ordered that the dissolution thereof as from that day be advertised in the *London Gazette*, and in [*state name of newspaper*]:

And it is ordered that be the receiver of the partnership estate and effects in this action, and do get in all the outstanding book debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property, and effects now belonging to the said partnership.

2. An account of the debts and liabilities of the said partnership.

3. An account of all dealings and transactions between the plaintiff and defendant from the foot of the settled account exhibited in this action and marked (A.), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the particulars mentioned, and the property and effects belonging thereto, be sold under the direction of the registrar, and that the registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties are to be at liberty to bid at the sale, and that the moneys to arise from such sale be paid into court to the credit of this action.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the registrar do certify the result of the accounts, and the balance (if any) due to either of the parties to this action by the partnership, for advances as distinguished from capital, and in respect of capital, and the balance (if any) due by either of the parties to the partnership, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

And, lastly, it is ordered that this action do stand adjourned for giving judgment to the day of , and that either of the parties is to be at liberty to apply to the court as he may be advised.

316.

Partnership.—Judgment.

Not to be printed.]

It is ordered that the fund now in court to the credit of this action, amounting to the sum of £ , with any interest thereon, be applied as follows:—

1. In payment of the debts due by the partnership set forth in the registrar's certificate, amounting to £ ,

2. In payment to the plaintiff [*or* defendant] of the sum of £ being the amount found by the registrar's certificate to be due to the plaintiff [*or* defendant] by the partnership for advances as distinguished from capital.

And it is ordered that it be referred to the registrar to tax the costs of the plaintiff and the defendant in this action.

And it is ordered that out of the balance of the said sum of £ and interest, after payment of the said debts and of the said sum of £ so found due to the plaintiff [*or* defendant], the said costs of the plaintiff and defendant, or any such apportionment in respect thereof as hereinafter mentioned, be paid to the plaintiff and defendant respectively.

And it is ordered that the residue (if any) of the said sum of £ and interest be applied in payment to the plaintiff and defendant respectively and rateably *inter se*, of the respective sums of £ and £ found by the registrar's certificate to be due to the plaintiff and defendant respectively in respect of capital, and that the ultimate balance (if any) of the said sum and interest be apportioned between and paid to the plaintiff and defendant respectively in the following proportions, viz. [*according to the shares in which profits were divisible*].

But if the balance of the said sum of £ and interest shall be insufficient to pay the said costs in full, then it is ordered that such balance be apportioned rateably between the plaintiff and the defendant in proportion to the amounts of their said costs when taxed, and that the amounts so apportioned be certified and paid to the plaintiff and defendant respectively.

And either of the parties is to be at liberty to apply to the court as he may be advised.

[*If any sum be found due from either partner to the partnership in respect of capital withdrawn or otherwise, order payment of that sum by him into court. If the sum in court is insufficient to pay the balance found due to the plaintiff or defendant, as the case may be, order the other party to pay to the party to whom such balance is found due a proportionate part of the deficiency, and insert directions as to costs, in accordance with the rules in force in the Chancery Division of the High Court—Hamer* v. *Giles*, 11 *Ch. D.* 942; *Potter* v. *Jackson*, 13 *Ch. D.* 845; *Ross* v. *White*, 1894, 3 *Ch.* 326.]

317.

Notice of Judgment or Order to Party directed to be Served with Notice thereof.

Take notice, that on the day of the judgment [*or* order] of which a copy is hereunto annexed was made in this action [*or* matter], and that from the time of the service of this notice on you you will be bound by the proceedings in this action [*or* matter] in the same manner as if you had been originally made a party to it, and that you may attend the proceedings under the said judgment [*or* order], and that you may apply to the court to discharge, vary, or add to the said judgment [*or* order]. *Order 3, Rules 27, 28.*

Dated this day of , 19 .

Registrar.

To .

318.

Summons to Parties to attend upon taking Accounts.

Let all parties concerned attend me at my office at on the day of 19 , at o'clock in the noon, to proceed with the accounts and inquiries directed by the judgment [*or* order] herein, dated the day of 19 . *Order 2. 4 Rule 2.*

Dated this day of , 19 .

Registrar.

319.

Notice to Creditor to prove his Claim.

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me, on or before the day of next, and by attending at my office at on the day of 19 , at o'clock in the noon, being the time appointed for adjudicating on the claim. *Order 24, Rules 18, 19.*

Dated this day of , 19 .

Registrar.

To .

320.

Notice to Creditor of Allowance of Claim.

Order 24, Rule 19.

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of , with interest thereon at per cent. per annum, from the day of 19 , and for costs.

[*If part only allowed, add*—If you claim to have a larger sum allowed, you are hereby required to prove such further claim, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me on or before the day of next, and by attending at my office at on the day of 19 , at o'clock in the noon.]

Dated this day of 19 .

Registrar.

321.

Registrar's Certificate.

[*Not to be printed.*]

Order 24, Rule 27.

In obedience to the order of this court made in the above action [*or* matter] I hereby certify that the result of the accounts and inquiries [*or* of the sale and apportionment] which have been taken and made in pursuance of the judgment [*or* order] given [*or* made] in this action [*or* matter] dated the day of 19 , is as follows :—

The plaintiffs and defendants have attended by themselves or by their respective solicitors.

Notice of order.

Notice of the said judgment [*or* order] of the day of 19 , has been served upon .

The persons so served include all the now living, and the personal representatives of such of them as are dead, except such as are parties to this action [*or* matter], and except hereinafter named.

Service of notice of the said judgment [*or* order] upon the said was dispensed with.

Personal estate account.

The defendants the executors [*or* administrators] of the testator [*or* intestate] named in the said judgment [*or* order] have received personal estate to the amount of £ , and they have paid or are entitled to be allowed on account thereof sums to the amount of £ , leaving a balance due from [*or* to] them of £ , on that account.

References to account.

The particulars of the above receipts and payments appear in the account marked A. verified by the affidavit of the said defendant filed the day of , and the account marked B. verified by the affidavit of filed the day of , and which accounts are to be filed with this certificate.

Variations from accounts.

Except that in addition to the sums appearing in such account to have been received, the said defendants [*or* plaintiff] are [*or* is] charged with the following sums ; (that is to say,) £ , and except that of the items of disbursement in the said account I have disallowed those numbered and I have deducted from the item numbered the sum of £ and from the item numbered the sum of £ , and in addition to the disbursements appearing in such account the said defendants [*or* plaintiff] have [*or* has] paid and been allowed the sum of £ .

Special allowances in accounts.

The payments allowed to the said defendants [*or* plaintiff] in the said account include the sum of £ paid into court to the credit of this action, on the day of 19 .

Reference to transcript of account.

The before-mentioned account marked A. has been altered, and the account marked A. B., and which is also to be filed with this certificate, is a transcript of the said account marked A. as altered and passed.

No personal estate received.

The defendants the executors [*or* administrators] of the testator [*or* intestate] named in the said judgment [*or* order] have not, nor hath any or either of them, or any person by their or any or either of their order, or for their or any or either of their use, received any part of the personal estate of the said testator [*or* intestate].

Funeral expenses.

The funeral expenses of the testator [*or* intestate], amounting to the sum of £ , have been paid and are allowed the defendant [*or* plaintiff] the executor [*or* administrator] of the said testator [*or* intestate] in the said account of personal estate.

Debts.

The debts of the testator [*or* intestate], including the plaintiff's which have been allowed, are set forth in the schedule hereto, and, with the interest thereon, and costs mentioned in the said schedule, are due to the plaintiff and the other persons named therein, and amount altogether to . No other person has been allowed or come in and proved any debt against the estate of the said testator [*or* intestate], and the time fixed by advertisement for that purpose has expired.

Such of the said debts as are specialty are set forth in the first part of the said schedule, and amount to £ ; such as are simple contract are set forth in the second part of said schedule, and amount to £ .

Interest on debts.

The interest on such debts is computed down to the date of this certificate, at and after the rate of £4 per centum per annum, from the day of 19 , the date of the said judgment [*or* order], unless otherwise specified in the said schedule.

Legacies and annuities.

The legacies given by the testator, other than annuities, are set forth in the first part of the schedule hereto, and, with the interest therein mentioned, remain due to the persons therein named, and amount altogether to £ .

The annuities given by the testator, with the arrears due thereon, are set forth in the second part of the said schedule. Such arrears amount to £ .

Interest on legacies.

The interest on such legacies is computed down to the date of this certificate, at and after the rate of £4 per centum per annum, from the day of 19 , the end of one year after the testator's death, unless otherwise specified in the said schedule.

The arrears of the annuities are computed to the date of this certificate, and from the testator's death, unless otherwise specified in the said schedule.

Outstanding estate.

The personal estate of the said testator [*or* intestate] [not specifically bequeathed] outstanding or undisposed of consists of the particulars set forth in the schedule hereto.

Real estate.

The real estate which the said testator [*or* intestate] was seised of or entitled to consists of the particulars set forth in the schedule hereto.

Incumbrances on real estate.

The incumbrances affecting the said testator's [*or* intestate's] real estate are specified in the schedule hereto.

Rents and profits account.

The defendants [*or* plaintiff] the trustees named in the said judgment [*or* order], have received rents and profits of the testator's real estate to the amount of £ , and they have paid or are entitled to be allowed on account thereof sums to the amount of £ , leaving a balance due from [*or* to] them of £ on that account.

No rents and profits received.

The defendants [*or* plaintiff] , the trustees named in the said judgment [*or* order], have not, nor hath any or either of them, or any person by their or any or either of their order, or for their or any or either of their use, received any sum of money on account of the rents and profits of the testator's [*or* intestate's] real estate.

Sale of real estate.

The real estates of the testator [*or* intestate] directed to be sold have been sold, and the purchase moneys, amounting altogether to £ , have been paid into court.

Next of kin.

The next of kin, according to the statutes for the distribution of the effects of intestates, of , the intestate named in the said judgment [*or* order], living at the time of his death were , of whom the said have since died.

The legal personal representative of the said is .
The legal personal representative of the said is .
The legal personal representative of the said is .

[*If there is no legal personal representative, this fact must be stated.*]

Dated day of , 19 .

Registrar.

N.B.—*The paragraphs are to be numbered with numbers corresponding to those in the judgment or order. After each statement the evidence produced is to be stated as follows*:—

The evidence produced on this account [*or* inquiry] consists of the probate of the testator's will, the affidavit of filed the day of , and paragraph of the affidavit of filed the day of .

322.

Notice that Registrar's Certificate may be inspected.

Order 24, *Rule* 31. Take notice, that the certificate of the result of the inquiries made and accounts taken by me under the judgment [*or* order] of this court made on the day of in this action [*or* matter] lies in my office, and can be inspected by you up to and inclusive of the day of [*here insert the day before that on which the action or matter is to be further heard*].

To .

Registrar.

323.

Administration Action.—Order on further Consideration.

[*Not to be printed.*]

Order 24, *Rules* 33, 34. This action coming on this day to be heard on further consideration, now upon reading the judgment [*or* order] of this court given [*or* made] on the day of 19 [*original order for accounts and inquiries*], and the certificate of the registrar, dated the day of 19 , made in pursuance of the said judgment [*or* order], and the orders of this court dated the day of 19 , and the day of 19 ; and upon hearing the solicitors for [*names of parties appearing*] [no one appearing for though served with notice of the said judgment [*or* order]]:

It is ordered that the costs of all parties to this action be taxed, including in the costs of the defendant G. H. any costs, charges, and expenses properly incurred by him as executor and trustee of the will of the testator, not being costs of action.

And it is ordered that the defendant G. H. be at liberty, out of the sum of £ by the said certificate found due from him on account of the personal estate of the testator, to retain the amount of his said costs when taxed. If balance in hands of G. H. not paid into court.

And it is ordered that the said defendant G. H. do pay the balance of the said sum of £ found due from him as aforesaid remaining after such retainer as aforesaid into court to the credit of this action, the account of the testator's personal estate.

And it is ordered that the costs of all other parties when taxed be paid out of any moneys in court to the credit of this action, the account of the testator's personal estate.

And it is ordered that out of any moneys standing to the last-mentioned account remaining after providing for the said costs, the debts of the testator included in the schedule to the registrar's certificate, with interest at 4 per cent. from the foot of the registrar's certificate, the amount to be verified [*state mode of verification*], be paid to the creditors to whom such debts are certified to be due, and that out of any moneys to the credit of the last-mentioned account, after providing for payment of the costs and the debts as aforesaid, the two legacies by his said certificate found due be paid, together with interest at 4 per cent. from the foot of the certificate [*state mode of verification*], to the said legatees respectively.

And the court doth declare that according to the true construction of the testator's will the ultimate balance of the testator's personal estate, and the proceeds of the sale of the testator's real estate, are divisible as follows :—

[*Order for distribution amongst parties entitled, and payment, the shares of infants being carried over to accounts intituled according to circumstances.*]

And it is ordered that any of the parties are to be at liberty to apply to the court as they may be advised.

Dated this day of 19 .

For Forms 324—330 ("The Partition Acts, 1868 and 1876"), see Part V., *post*, pp. 2176—2178.

331.

Order for Transfer of Action or Matter to High Court.

[*Not to be printed.*]

Whereas it appears that the subject-matter of this action [*or* matter] exceeds in amount the sum of £500 : It is ordered that this action [*or* matter] be transferred to the High Court of Justice, together with the annexed certificate of the registrar of this court, showing the state of the action [*or* matter] and the proceedings that have been had therein in this court. *Order* 33, *Rules* 5, 6.

Dated this day of 19 .

By the court,

Registrar.

332.

Consent to act as Trustee.

[*Not to be printed.*]

Order 19, *Rule* 13.

I, A. B., of hereby consent to act as a trustee of the [*here describe the instrument*].

(Signed) A. B.

I, C. D., of solicitor, hereby certify that the above written signature is the signature of A. B., the person mentioned in the above written consent.

Dated this day of 19 .

C. D.,

Solicitor for the said A. B.

333.

Affidavit under Section 70 of the County Courts Act, 1888.

[*Not to be printed.*]

In the county court of , holden at .

In the matter of The County Courts Act, 1888, and .

51 & 52 Vict. c. 43, s. 70. *Order* 38, *Rules* 9, 10.

In the matter of [*add the title of the particular trust, as* "the trusts of a certain indenture of mortgage, dated the day of , and made between A. B. and C. D."]

I. C. D., of [*address and description*], make oath and say as follows:—

1. *State place for service, as*—My house being is the place where I am to be served with any notice or application relating to the trust fund hereinafter mentioned.

2. *State the amount of money or stock proposed to be paid or transferred, or security deposited in trust to attend the orders of the court, as*—Under the provisions of the above-mentioned Act, I desire to pay into the Post Office Savings Bank the sum of hereinafter mentioned.

3. *Set out a short description of the trust and of the instrument creating it, as*—By the indenture before mentioned a certain messuage situate at , with the appurtenances, was mortgaged by the said A. B. to me, my heirs and assigns, for securing to me the repayment on the day of 19 , of the sum of £ , with interest for the same at the rate of £ per cent. per annum, and the said indenture contained a power of sale in case of default in payment, and it was by the said indenture declared that the moneys to arise from any such sale should, after retaining thereout the expenses of executing the said power, and the said principal money and interest, be paid to the said A. B., his heirs or assigns.

The said A. B. died on or about the day of , and by his will, dated the day of , appointed E. F. of *, executor thereof, and devised the said hereditaments, subject to the said mortgage, unto G. H. of * and J. K. of * in trust for the said E. F., for his life, and after his death upon certain trusts for sale, and for the division of the proceeds amongst the following persons, namely, the testator's son M. N., of *, and his children or child, and the testator's daughter O., the wife of P. Q. of *, and her children or child.

* Here insert present address and description. If the address of any person interested be unknown to the trustee, this fact must be set forth in the affidavit.

The said E. F. proved the said will in [*state in what court*], and is still living.

The said G. H. never acted in the trusts of the said will, &c.

On or about the day of , I sold the said hereditaments by public auction to X. Y., of [*address and description*], at the price of £ .

After retaining out of the said £ the costs of sale, and the sum of , being the total amount of principal moneys and interest due upon the said mortgage, and the sum of £ being the costs of paying the above-mentioned fund into court, a balance of £ now remains in my hands, and the sum of £ , which I desire to pay into the Post

Office Savings Bank, in trust to attend the orders of this court, is the said balance of £

4. *State the names of the persons interested in, or entitled to, the fund, to the best of the trustee's knowledge or belief, as—*

To the best of my knowledge and belief, the said G. H. and J. K., as such trustees as aforesaid, and the said E. F., M. N., and his children or child [*stating, if known, their names*], and O. P. and her children or child [*stating, if known, their names*], are the only persons interested in the said fund.

5. *Add submission to answer inquiries, as—*

I submit to answer all such inquiries relating to the application of the said fund of £ as the court may think proper to make or direct.

Sworn at, &c.

334.

Certificate in case of Money.

In the county court of holden at .

In the matter of the County Courts Act, 1888; and 51 & 52 Vict. c. 43, s. 70.

In the matter of the trusts of [*as the case may be*].

I hereby certify that [*state name, address, and description of party making the application*] has this day filed with me, the registrar of this court, an affidavit intituled as above mentioned, with reference to a trust fund or sum of therein mentioned, which sum, as therein stated, he desires to pay into my name as such registrar as aforesaid into a Post Office Savings Bank, as provided by the above Act. *Order* 38, *Rules* 15, 16.

Dated this day of 19 .

Registrar.

335.

Certificate in case of Transfer of Stock.

In the county court of holden at .

In the matter of the County Courts Act, 1888; and 51 & 52 Vict. c. 43, s. 70.

In the matter of the trusts of (*as the case may be*).

I hereby certify that [*state name, address, and description of party making application*] has this day filed with me, the registrar of this court, an affidavit intituled as above mentioned, with reference to a trust fund of £ Bank £2 15*s.* per Cent. Consolidated Annuities in the books of the governor and company of the Bank of England, which, as therein stated, he desires to transfer into the names of the treasurer [*or* superintendent of the county court department of the Treasury] and of the registrar of this court, as provided by the above Act. *Order* 38, *Rules* 16, 17.

Dated this day of 19 .

Registrar.

336.

Acknowledgment of Filing of Receipt or Transfer Ticket.

In the county court of holden at .

In the matter of the County Courts Act, 1888; and 51 & 52 Vict. c. 43, s. 70.

In the matter of the trusts of (*as the case may be*).

I hereby acknowledge that [*state the name, address, and description of the party giving to the registrar the receipt of the Post Office Savings Bank, in the case of money, or the transfer ticket in the case of stock*] has this day delivered to me, the registrar of the court, a receipt dated the day of 19 , and signed by [*name of officer of the Post Office Savings Bank*], for the sum of £ , stating that [*state receipt*] [*or* a transfer ticket of the governor and company of the Bank of England], stating that [*state as in ticket*]. *Order* 38, *Rule* 21.

Dated this day of 19 .

Registrar.

337.

Certificate of Deposit of Security.

In the county court of , holden at .

51 & 52 Vict. c. 43, s. 70. In the matter of the County Courts Act, 1888; and

In the matter of the trusts of the will of A.B., deceased, so far as rega one moiety of his residuary estate bequeathed to C.D. and her children.

Order 38, *Rule* 21. I hereby certify that [*state the name, address, and description of the party depositing with the registrar the security*] has this day deposited with me, the registrar of this court, in the name of myself and the treasurer [*or* superintendent of the county court department of the treasury] [*here state the nature of the security deposited*].

Dated this day of 19 .

Registrar.

338.

Notice to Treasurer.

In the county court of holden at .

51 & 52 Vict. c. 43, s. 70. In the matter of the County Courts Act, 1888; and

In the matter of the trusts of the will of A. B., deceased, so far as regards one moiety of his residuary estate bequeathed to C. D. and her children.

Order 38, *Rule* 19. Take notice, that on the day of [*state name, address, and description of party who has deposited the security*] under the said Act deposited with the registrar of this court, in the names of yourself and myself, in trust to attend the orders of this court [*here describe security*].

Dated this day of 19 .

Registrar.

To E. F., treasurer
[*or as the case may be*].

339.

Notice of Payment into Post Office Savings Bank, or of Transfer of Stock or Deposit of Security.

In the county court of holden at .

1 & 52 Vict. c. 43, s. 70. In the matter of the County Courts Act, 1888; and

In the matter of the trusts of the will of A. B., deceased, so far as regards one moiety of his residuary estate bequeathed to C. D. and her children.

Order 38, *Rule* 22. Take notice, that on the day of [*state name, address, and description of party who has paid in the money*] under the above-mentioned Act paid into the Post Office Savings Bank at in the name of me, the registrar of this court, the sum of £ in trust to attend the orders of this court [*or* transferred into the names of of and of me, the registrar of this court, in the books of the governor and company of the Bank of England, the sum of £ Bank £2 15*s.* per cent. Consolidated Annuities, in trust to attend the orders of this court, *or* deposited with me in the names of of and of me the registrar of this court, in trust to attend the orders of this court [*here describe security*], and in his affidavit filed in this court on the day of shortly described the instrument creating the trust, and stated the names of the persons interested in or entitled to the said fund [*or* security], to the best of his knowledge and belief, as follows: that is to say [*state from the affidavit the paragraph containing the names of the persons interested or entitled*].

And further take notice, that any person interested in or entitled to the said fund [*or* security] may apply to this court respecting the investment, payment out, or distribution of the said fund [*or* security], or of the income thereof, according to the practice of the court.

Dated this day 19 .

Registrar.

340.

Petition.

[*Not to be printed.*]

In the county court of , holden at .

In the matter of the County Courts Act, 1888; and 51 & 52 Vict, c. 43, s. 70.

In the matter of the trusts of the will of A. B., deceased, so far as regards one moiety of his residuary estate bequeathed to C. D. and her children. *Order 38, Rule 22.*

To his honour the judge of the said court.

The petition of E. F., of

Sheweth—

1. That G. H. of , under the provisions of the above-mentioned Act, on the day of , 19 , paid into the Post Office Savings Bank situate at in the name of the registrar of this court, in trust to attend the orders of this court, the sum of £ .

2. On the occasion of his making the said payment the said G. H. made an affidavit, intituled as aforesaid, and sworn the day of , 19 , pursuant to the rules and orders of the court. Your petitioner to save expense has not set forth the contents of the said affidavit, but your petitioner craves leave to refer thereto.

3. In addition to the matters stated in the said affidavit, your petitioner sheweth that [*state any material facts not set forth in the affidavit, or which it is necessary to state in correction or qualification of the statements in the affidavit*].

4. Your petitioner is the same person as C. D. in the paragraph of the said affidavit named as one of the persons interested in the said trust fund.

5. Your petitioner, under the trusts of the said will of the said A. B., is entitled to the income of the said trust fund during her life.

Your petitioner prays that the dividends and income to accrue due on the said trust fund during the life of your petitioner may be ordered to be paid to her during her life or until further order.

Note.—It is not intended to serve this petition on the persons interested in the capital of the said trust fund,

or, where petition is by remainder-man after death of tenant for life,

1. That G. H., of , under the provisions of the above-mentioned Act, on the day of , 19 , paid into the Post Office Savings Bank, situate at in the name of the registrar of this court, in trust to attend the orders of the court, the sum of £ .

2. On the occasion of his making the said payment, the said G. H. made an affidavit, intituled as aforesaid, and sworn the day of , 19 , pursuant to the rules and orders of the court. Your petitioner to save expense has not set forth the contents of the said affidavit, but your petitioner craves leave to refer thereto.

3. Your petitioner is the same person as in the paragraph of the said affidavit named as one of the persons interested in the said trust fund, *If named in the affidavit.*

or,

Your petitioner is one of the children of C. D. in the paragraph of the said affidavit mentioned as being interested in the said trust fund. *If not named in the affidavit.*

4. By an order of the court made in the above matters on the day of , 19 , upon the petition of the said C. D., it was, amongst other things, ordered that the dividends and income thereafter to accrue due during the life of the said C. D., in respect of the said sum of £ should be paid to the said C. D. during her life or until further order.

5. The said C. D. died on the day of , 19 , having duly received all the dividends and income payable to her under the said order, but an apportioned part of the interest accrued on the said sum of £ , since the day of , 19 , will be payable to the representative of the said C. D.

6. There were four children of the said C. D. entitled, subject to her life interest, to the said trust fund, viz. [*state persons interested in principal moneys*], and your petitioner, as one of such children, is entitled to one-fourth share of the said trust fund and the interest accrued in respect thereof since the day of , 19 , other than the apportioned part payable to the representative of the said C. D. deceased.

[*Add statement as to whether any duty payable to the revenue has or has not been paid.*]

Your petitioner prays that the costs of your petitioner and of all other parties to this application may be taxed as between solicitor and client and paid out of the said trust fund, and that the residue of the said trust fund and the interest accrued due thereon, other than the apportioned part of such interest payable to the representative of the said C. D., deceased, may [*add, if so*, after payment of any duties payable to the revenue] be divided into equal parts, and that one of such parts may be paid to your petitioner.

Note.—It is proposed to serve this petition on the said G. H., and on [*other persons interested in the trust fund*].

341.

Notice of Day upon which Petition will be Heard.

Order 38, *Rule* 3.

In the county court of , holden at .
In the matter of the County Courts Act, 1888; and
In the matter of the trusts of [*as the case may be*].

Take notice, that the petition, a sealed copy of which is served herewith, will be heard at a county court to be holden at on the day of 19 , at the hour of o'clock in the noon, and that if you do not attend either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just.

Dated this day of 19 .

Registrar.

To .

342.

Order on Petition.

[*Not to be printed.*]

In the county court of , holden at .

51 & 52 Vict. c. 43, s. 70.

In the matter of the County Courts Act, 1888; and

In the matter of the trusts of the will of A. B., deceased, so far as regards one moiety of his residuary estate bequeathed to C. D. and her children.

Order 38, *Rules* 8, 27.

Upon the petition of E. F., of , and upon reading the affidavit of G. H. [*trustee or other person paying money into court*], and the several affidavits of , filed in the above matters and sworn respectively on the day of and day of [and the order of this court dated], and upon hearing the solicitor for the petitioner and the solicitor for I. K., L. M., N. O., infants under the age of 21 years, appearing as respondents to the said petition by their guardian *ad litem*;

Any previous order on the above matters.

And it appearing that according to the true construction of the will of the said A. B., and in the events that have happened, the moiety of the residuary estate of the said testator bequeathed to C. D. and her children has become vested in the petitioner, and in the said I. K., L. M., and N. O., in equal shares as tenants in common:

It is ordered that the costs of all parties appearing on the said petition

be taxed, and that the said costs when taxed be paid out of the sum of £ standing in the name of the registrar of this court in the Post Office Savings Bank, at , to the credit of the above matters;

And it is ordered that out of the accrued interest on the said sum of £ the sum of £ , being the apportioned part of the said interest from the day of to the day of , the day of the death of the said C. D. , be paid to the representative of the said C. D., and that the residue of such accrued interest and the residue of the said sum of £ remaining after payment of the said costs be [*if so*, after payment of the duties payable to the revenue in respect of the said sum] divided by the registrar into four equal parts, and that one of such fourth parts be paid to the petitioner, and that the registrar do carry over one other of such fourth parts to the separate account of I. K., an infant, his share of the moiety of the residuary estate of A. B., deceased, bequeathed to C. D. and her children [*similar directions as to the remaining two other fourth parts*];

And it is ordered that the said I. K., L. M., N. O. be at liberty to apply to the court for payment to them respectively of their said shares on their respectively attaining the age of 21 years.

And any of the parties are to be at liberty to apply to the court as they may be advised.

343.

Letter to Commissioners of Treasury as to Drawing out Money.

(*Seal.*)

County Court Office, .

My lords,

I have the honour to request that an authority may be addressed to the Postmaster-General to allow me to draw out of the Post Office Savings Bank the sum of £ [*here insert the sum desired to be drawn out, adding, where the sum is not to pay interest*] being the sum I am directed to draw out by order of court dated the day of 19 . *Order 37, Rule 3.*

I am, my lords,

Your obedient servant,

Registrar of the county court of , holden at

344.

Notice of Application for Interlocutory Order in the Nature of an Injunction.

[*Not to be printed.*]

Take notice, that I, A. B., intend to apply at the sitting of the court to be held at [*or* to his honour the judge at] on the day of 19 , at o'clock in the noon for an order in the nature of an injunction to restrain C. D., of from receiving and giving discharges for any of the debts due to the partnership between us, for the winding up of which this action was commenced [*or* from digging the turf from the land which was agreed to be sold by him to me by the agreement the specific performance of which this action is commenced to enforce, *or as the case may be*]. *Order 12, Rules 6, 8.*

Dated this day of 19 . A. B.

To the registrar of the court

and (*if the application is not made ex parte*)

To C. D., of .

345.

Interlocutory Order in the Nature of an Injunction.

Order 12, *Rules* 6, 8.

The plaintiff undertaking [by his counsel *or* solicitor] to abide by any order this court may make as to damages, in case this court shall hereafter be of opinion that the defendant shall have sustained any, by reason of this order, which the plaintiff ought to pay: Now, therefore, C. D., the defendant in this action, his servants, agents, and workmen, are hereby strictly enjoined and restrained from pulling down or suffering to be pulled down the house being Number Street, in the county of , and from selling the materials whereof the said house is composed [*or* from entering into any contract or contracts, and from accepting, drawing, indorsing, or negotiating any bills or bill of exchange, notes, or note, or written securities or security, in the name of the partnership firm of , and from contracting any debts or debt, and buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing or causing to be done any acts or act in the name or on the credit of the said partnership firm, or whereby the said partnership firm can or may in any manner become or be made liable to or for the payment of any sums or sum of money, or for the performance of any contract, promise or undertaking, *or, as the case may be,*] until the day after the day upon which this action shall be tried, or until further order [*or* until the day of , upon which day this court will consider whether this order shall be further continued].

Dated this day of 19 .

Judge.

If you, the said C. D., [your servants, agents, or workmen,] act in disobedience to this order, you, the said C. D., will be liable to be committed to prison by this court.

346.

Notice to be Indorsed on Order under Order XXIII. Rule 9, and Order XXV. Rule 58.

[*Not to be printed.*]

To C. D., of .

Order 23, *Rule* 9. *Order* 25, *Rules* 58, 71 (2).

Take notice, that, unless you obey the directions contained in this order, you will be guilty of a contempt of court and will be liable to be committed to prison.

Dated this day of 19 .

Registrar.

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347 instead of 347.

Notice of Application for Committal.

[*Not to be printed.*]

Order 25, *Rule* 59.

Take notice, that the plaintiff A. B. will on the day of 19 , at the hour of in the noon, apply to this court for an order for your committal to prison for having disobeyed the order of this court made on the day of 19 , enjoining and restraining you [*here set out the terms of the injunction*] [*or* for having neglected to obey the order made on the day of 19 , requiring you] [*here set out the mandatory part of the order*]; and further take notice that you are hereby required to attend the court on the first-mentioned day to show cause why an order for your committal should not be made.

Dated this day of 19 .

Registrar.

To C. D., the defendant.

348.

Order of Committal for Breach of or Neglect to obey Order.

[*Not to be printed.*]

Whereas by an order of this court, dated the day of 19 [*here recite the order*]: Now, upon the application of the plaintiff, and upon hearing the defendant [*or, if the defendant does not appear*, reading the affidavit of X. Y., *or where service has been by a bailiff*, the indorsement of L. M., a bailiff of this court, [*or* the county court of holden at], showing, [*or* being satisfied on oath] that a copy of the said order and notice of this application have been severally served upon the defendant C. D.], and upon reading the affidavit of, &c. [*or enter such other evidence as may have been given*], the court being of opinion, upon consideration of the facts disclosed by the said affidavit [*or such other evidence as may have been given*], that the said defendant C. D. has been guilty of a contempt of this court by a breach of [*or* by neglecting to obey] the said order, that is to say, by [*here set out the particular matter of contempt*], doth order that the said defendant C. D. do stand committed to [*here insert prison used by the court*] for his said contempt, and that a warrant of attachment for the arrest of the said C. D. be forthwith issued. *Order 25, Rule 60.*

[And it is ordered that the said defendant C. D. do pay the costs of the plaintiff of this application and of the said attachment, such costs to be taxed by the registrar and paid by the said defendant to the registrar within fourteen days from the date of the certificate of taxation.]

[*Add, if so ordered*—And it is further ordered that any application for the release of the said C. D. from custody shall be made to the judge.]

349.

Warrant of Attachment.

To the high bailiff and others the bailiffs of the said court and all peace officers within the jurisdiction of the said court, and to the governor of the [*here insert prison used by the court*]. *Order 25, Rule 57.*

Whereas by an order bearing date the day of it was ordered that the defendant C. D. should stand committed to prison for contempt of this court:

These are therefore to require you forthwith to arrest and apprehend the defendant C. D., and him safely convey and deliver to the governor of the [*prison used by this court*], and you, the said governor, to receive the defendant C. D. until the further order of this court.

Dated this day of 19 .

Registrar.

350.

Notice of Application for Discharge from Custody.

[*Not to be printed.*]

Take notice, that I intend on the day of 19 , to apply to the judge of this court [*or* the registrar of this court] to discharge me from custody, I being desirous of clearing my contempt. *Order 25, Rules 62, 63.*

Dated this day of 19 .

To A. B., plaintiff. C. D. defendant.

351.

Order of Discharge from Custody.

Order 25, *Rules* 62, 63.

Upon application made this day of by for the defendant, who was committed to prison for contempt, by order of this court, dated the day of 19 , and upon reading the affidavit of the defendant filed the day of 19 , showing that he is desirous of clearing his contempt, and upon hearing for the plaintiff [*or if no one appears for plaintiff, then* upon being satisfied that the notice of this application has been duly served upon the plaintiff],

It is ordered that the said defendant be discharged out of the custody of the governor of [*here insert name of prison*] as to the said contempt.

[*Add, if so ordered*—And it is ordered that the said defendant do pay the costs of the plaintiff of this application, such costs to be taxed by the registrar and paid by the defendant to the registrar within fourteen days from the date of the certificate of taxation.]

Dated this day of 19 .

Registrar.

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352 instead of 352.

Notice of Change of Solicitor.

[*Not to be printed.*]

To the registrar of the court.

Order 54, *Rule* 6.

Take notice, that I, A. B. [*or* C. D.], who have hitherto employed G. H. of as my solicitor in the above-mentioned action [*or* matter], have ceased to employ him, and that my present solicitor is I. K. of .

A. B. [*or* C. D.]

Dated this day of 19 .

To the registrar of the court,
and to the above-named plaintiff
[*or* defendant], or his solicitors.

[*or*

Take notice, that [*name and address of new solicitor*] has [*or* have] been appointed to act as solicitor [*or* solicitors] for the above-named plaintiff [*or* defendant] in the place of [*original solicitor*].

Dated this day of 19 .

Yours, etc.,
[*Signature of new solicitor*].

To the registrar of the court,
and to the above-named plaintiff
[*or* defendant], or his solicitors.

353.

Notice to High Bailiff of Foreign Court of Complaint against him.

[*Not to be printed.*]

Order 2, *Rule* 29.

Take notice, that, unless you show cause to the contrary, his honour the judge of this court will on the day of 19 , make an order directing you to pay to the plaintiff such sum as the judge may think reasonable as compensation for loss of time and expense incurred by him owing to your neglect to return the copy of the summons in this action within due time.

Dated this day of 19 .

Registrar.

To the high bailiff of
the county court of holden at .

354.

Notice to High Bailiff of Foreign Court of Order against him for Neglect.

[*Not to be printed.*]

Take notice, that on the application of the above-named plaintiff made the day of , and you not having shown good cause to the contrary, it was ordered by the judge of this court that within days of the service of this order upon you, you should pay to me for the use of the said plaintiff the sum of £ as compensation for loss of time and expense incurred by him owing to your neglect to return to me the copy of the summons in this action within due time. *Order 2, Rule 29.*

Dated this day of 19 .

Registrar.

To the high bailiff of
the county court of , holden at

355.

Summons under Section 48 of the County Courts Act, 1888, for Assaulting a Bailiff whilst in the Execution of his Duty. 51 & 52 Vict. c. 43, s. 48.

In the county court of holden at
In the matter of a complaint made by C. D. of , one of the bailiffs of the county court of holden at , and section 48 of the County Courts Act, 1888. *Order 52, Rule 1.*

To A. B., of

You are hereby summoned to appear at a county court to be holden at on the day of 19 , at o'clock in the noon to answer a complaint made against you by C. D., one of the bailiffs of the said court, and to show cause why an order should not be made against you under section 48 of the County Courts Act, 1888, for payment of a sum not exceeding 5*l.*, for an assault committed by you on the day of upon the said bailiff whilst in the execution of his duty as such bailiff [and also for that you did on the same day rescue [*or* attempt to rescue] certain goods levied by the said bailiff under process of this court].

Dated this day of 19 .

Registrar.

To be served personally two clear days before the return day.

356.

Order under Section 48 of the County Courts Act, 1888, imposing a fine for Assaulting a Bailiff. 51 & 52 Vict. c. 43, s. 48.

In the county court of , holden at .
In the matter of a complaint made by C. D. of , one of the bailiffs of the county court of , holden at , and section 48 of the County Courts Act, 1888. *Order 52, Rule 3.*

It is this day adjudged that A. B. of , do forfeit and pay a sum of £ , for an assault committed by him on the day of upon the said bailiff whilst in the execution of his duty as such bailiff [and also for that the said A. B. did on the same day rescue [*or* attempt

to rescue] certain goods levied by the said bailiff under process of this court], and the sum of £ for costs, amounting together to the sum of £ ;

And it is ordered that the said A. B. do pay the said sum of £ to the registrar of this court on the day of [*or* by instalments of for every days, the first instalment to be paid on the day of].

And that in default of payment of the said sums according to this order, payment thereof may be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said A. B. under warrant of execution, or, in default or in lieu of distress, by imprisonment of the said A. B. for any period not exceeding the period which under the Summary Jurisdiction Acts may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction.

Given under the seal of the court this day of , 19

By the court,

Registrar.

357.

Warrant of Execution against Goods for Fine under Section 48.

Order 52, *Rule* 3.

In the county court of holden at

In the matter of a complaint made by C. D. of , one of the bailiffs of the county court of holden at , and section 48 of the County Courts Act, 1888.

Whereas at a court holden on the day of it was adjudged that A. B. of should forfeit and pay a sum of £ for an assault committed by him on the day of upon the said bailiff whilst in the execution of his duty as such bailiff [and also for that the said A. B. did on the same day rescue [*or* attempt to rescue] certain goods levied by the said bailiff under process of this court], and the sum of £ for costs, amounting together to the sum of £

And it was ordered that the said A. B. should pay the said sum of £ to the registrar of the court on the day of [*or* by instalments of for every days, the first instalment to be paid on the day of , 19]:

And that in default of payment of the said sums according to the said order, payment thereof might be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said A. B. under warrant of execution:

And whereas the said sums have not been paid according to the said order, and the judge of this court has ordered them to be levied as hereinafter mentioned:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said A. B. wheresoever they may be found within the district of this court [except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds], the sum stated at the foot of this warrant, being the amount remaining unpaid under the said order, together with the costs of this execution; and also to take and seize any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money belonging to the said A. B. which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay

what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof; and if no sufficient distress can be found to certify the same to the registrar of this court.

Given under the seal of the court this day of 19

By the court,

Registrar.

To the high bailiff of the said court, and others the bailiffs thereof.

	£	s.	d.
Amount of fine and costs adjudged			
Paid			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon]			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said A. B.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

358.

Return of Insufficient Distress to be Indorsed on Warrant.

I, high bailiff [*or* bailiff] of the county court of holden at , hereby certify that by virtue of the within written warrant I have made diligent search for the goods of the within-named A. B., and that I can find no sufficient goods of him whereon the sums within mentioned can be levied.

Dated the day of 19 .

X. Y.

359.

Commitment in Default of Distress for Fine under Section 48.

Order 52, Rule 3.

In the county court of holden at .

In the matter, &c. [*as in Form* 355].

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and

To the governor of [*prison used by the court*].

Whereas at a court holden on the day of it was adjudged that A. B. of should forfeit and pay a sum of £ for an assault committed by him on the day of upon the said bailiff whilst in the execution of his duty as such bailiff [and also for that the said A. B. did on the same day rescue [*or* attempt to rescue] certain goods levied by the said bailiff under process of this court], and the sum of £ for costs, amounting together to the sum of £

And it was ordered that the said A. B. should pay the said sum of £ to the registrar of the court on the day of [*or* by instalments of for every days, the first instalment to be paid on the day of 19]:

And that in default of payment of the said sums according to the said order, payment thereof might be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said A. B. under warrant of execution, or, in default or in lieu of distress, by imprisonment of the said A. B. for any period not exceeding the period which under the Summary Jurisdiction Acts may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction:

* And whereas default having been made in payment of the sums due under the said order the high bailiff and others the bailiffs of this court were by warrant of execution dated the day of , and issued by order of the judge, required to levy the sum of £ by distress and sale of the goods and chattels of the said A. B.:

And whereas it appears that no sufficient distress whereon to levy the said sum could be found [and that a balance of £ is due under the said order]:

For scale of imprisonment, *see* 42 & 43 Vict. c. 49, ss. 5, 21 (4). (Appendix, Part III.)

It is hereby ordered by the judge that the said A. B. be imprisoned in His Majesty's prison at , and there kept for the space of , unless the said sum of £ remaining due under the said order, and the costs of the said distress and the costs of this warrant, be sooner paid:

And these are therefore to require you, the said high bailiff, bailiffs, and others to take the said A. B. and to deliver him to the governor of the above-named prison, together with this warrant, and you the said governor to receive the said A. B. into your custody, and him safely to keep in the said prison for the space of , unless the sum stated at the foot of this warrant, being the amount remaining due under the said order, and the costs of the said distress and the costs of this warrant, be sooner paid.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

	£	*s.*	*d.*
Amount remaining due under order			
Costs of warrant of execution			
Poundage for issuing this warrant			
Total sum upon payment of which the prisoner is to be discharged			

360.

Commitment in lieu of Distress for Fine under Section 48.

In the county court of holden at .

Order 52, *Rule* 3. In the matter, &c. [*as in Form* 355].

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and

To the governor of [*prison used by the court*].

Whereas at a court holden on the day of it was adjudged that A. B. of should forfeit and pay a sum of £ for an assault committed by him on the day of upon the said bailiff whilst in the execution of his duty as such bailiff [and also for that the said

A. B. did on the same day rescue [*or* attempt to rescue] certain goods levied by the said bailiff under process of this court], and the sum of £ for costs, amounting together to the sum of £ ;

And it was ordered that the said A. B. should pay the said sum of £ to the registrar of the court on the day of [*or* by instalments of £ for every days, the first instalment to be paid on the day of 19] :

And that in default of payment of the said sums according to the said order, payment thereof might be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said A. B. under warrant of execution, or, in default or in lieu of distress, by imprisonment of the said A. B. for any period not exceeding the period which under the Summary Jurisdiction Acts may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction :

* And whereas default has been made in payment of the sums due under the said order, and the sum of £ remains due under the said order :

And whereas it appears to the judge that the said A. B. has no [sufficient] goods whereon to levy a distress [*or* that the levy of a distress will be more injurious to the said A. B. and his family than imprisonment] : 42 & 43 Vict. c. 49, s. 21(3), Summary Jurisdiction Rules, 1886, Form 29.

It is hereby ordered by the judge that the said A. B. be imprisoned in His Majesty's prison at , and there kept for the space of unless the said sum of £ remaining due under the said order, and the costs of his commitment, be sooner paid. *See* 42 & 43 Vict. c. 49, ss. 5, 21 (4). (Appendix, Part III.)

And these are therefore to require you the said high bailiff, bailiffs, and others to take the said A. B., and to deliver him to the governor of the above-named prison, together with this warrant, and you the said governor to receive the said A. B. into your custody, and him safely to keep in the said prison for the space of , unless the sum stated at the foot of this warrant, being the amount remaining due under the said order, and the costs of this warrant, be sooner paid.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

	£	*s.*	*d.*
Amount remaining due under order			
Poundage for issuing this warrant			
Total sum upon payment of which the prisoner is to be discharged			

361.

Summons under Section 49 of the County Courts Act, 1888, for Neglect to levy Execution. 51 & 52 Vict. c. 43, s. 49.

In the county court of holden at *Order* 52, *Rule* 4.

Between A. B., plaintiff,

and

C. D., defendant,

and in the matter of a complaint made by of and section 49 of the County Courts Act, 1888.

To E. F. of , bailiff of the said court.

You are hereby summoned to appear at a county court to be holden at on the day of at o'clock in the forenoon,

to answer a complaint made against you by of that you being employed to levy an execution against the goods and chattels of did by neglect [*or* connivance *or* omission] lose the opportunity of levying such execution, and to show cause why an order should not be made against you under section 49 of the County Courts Act, 1888, for payment of such damages as it shall appear that the said has sustained by such your neglect [*or* connivance *or* omission].

Dated this day of 19 .

Registrar.

[*To be served personally ten clear days before the return day.*]

362.

51 & 52 Vict. c. 43, s. 49. **Order under Section 49 of the County Courts Act, 1888, awarding Damages for neglect to levy Execution.**

[*Heading as in last preceding Form.*]

Order 52, Rule 5. It is this day adjudged that E. F. of , bailiff of this court, do pay the sum of £ for damages sustained by of by reason of the said E. F. having by neglect [*or* connivance *or* omission] lost the opportunity of levying an execution against the goods and chattels of , and the sum of £ for costs, amounting together to the sum of £ ;

And it is ordered that the said E. F. do pay the said sum of to the registrar of this court on the day of [*or* by instalments of for every days, the first instalment to be paid on the day of].

363.

51 & 52 Vict. c. 43, s. 50. **Summons under Section 50 of the County Courts Act, 1888, for Extortion or Misconduct.**

Order 52, Rule 4. In the county court of holden at ,

Between A. B., plaintiff,

and

C. D., defendant,

and in the matter of a complaint made by of , and section 50 of the County Courts Act, 1888.

To E. F. of , bailiff [*or* other officer] of the said court.

You are hereby summoned to appear at a county court to be holden at on the day of at o'clock in the forenoon, to answer a complaint made against you by of that you have while acting under colour or pretence of the process of the court been guilty of extortion [*or* misconduct] in that you [*here state particulars of extortion or misconduct alleged*] [*or* as stated in the particulars annexed (*annex particulars of extortion or misconduct alleged*)] [*or* that you have not duly paid or accounted for certain moneys levied by you against of at the suit of under the authority of the County Courts Act, 1888], and to show cause why an order should not be made against you under section 50 of the County Courts Act, 1888, for the repayment of the money extorted by you [*or* for the due payment of the moneys so levied by you], and for the payment of such damages and costs as the judge shall think just, and for the payment of a fine not exceeding 10*l.* for each offence so committed by you.

Dated this day of .

Registrar.

[*To be served personally ten clear days before the return day.*]

361.

Order under Section 50 of the County Courts Act, 1888, for Repayment of Money extorted, or Payment of Money levied, and for Damages, Costs, and Fine. 51 & 52 Vict. c. 43, s. 50.

[*Heading as in last preceding Form.*]

It is this day adjudged that E. F. of , bailiff [*or* other officer] of the court, do repay the sum of £ extorted by him from under colour or pretence of the process of this court [*or* do pay the sum of £ levied by him against of at the suit of under the authority of the County Courts Act, 1888, and not duly paid over or accounted for by him] and the sum of £ for damages sustained by of by reason of such extortion [*or* the neglect of the said E. F. to pay over the said moneys so levied by him] [*or* by reason of the misconduct of the said E. F. while acting under colour or pretence of the process of the court, in that [*here state particulars of the misconduct proved*] and the sum of £ for costs : *Order* 52, *Rule* 5.

And it is further adjudged that the said E. F. do forfeit and pay the sum of £ for the offence [*or* for each offence] so committed by him in [*here state particulars of each offence in respect of which a fine is imposed*] the sums to be paid by the said E. F. amounting together to the sum of £ .

And it is ordered that the said E. F. do pay the said sum of £ to the registrar of this court on the day of [*or* by instalments of for every days, the first instalment to be paid on the day of].

365.

Order under Section 162 of the County Courts Act, 1888, for Imprisonment or Fine for Insult or Misbehaviour. 51 & 52 Vict. c. 43, s. 162.

Order 52, *Rule* 8.

In the county court of , holden at .

Whereas on the day of A. B. wilfully insulted his honour the judge during his sitting in court [*or* in going to [*or* returning from] the court] [*or* C. D., the registrar *or* E. F. the high bailiff *or* G. H. a bailiff [*or* officer of the court] *or* J. K. a juror [*or* witness] during his attendance at the court] [*or* in going to [*or* returning from] the court] [*as the case may be*], *or* wilfully interrupted the proceedings of the court *or* misbehaved in the court :

It is hereby ordered that the said A. B. do stand committed for days to His Majesty's prison at [*here insert prison used by the court*] for such offence.

Or, it is hereby ordered that the said A. B. do forfeit and pay the sum of £ for such offence :

And it is ordered that the said A. B. do pay the said sum of £ to the registrar of this court forthwith :

And that in default of payment the said A. B. be imprisoned in His Majesty's prison at , and there kept for the space of days, unless the said fine be sooner paid.

Given under the seal of the court this day of 19 .

Judge.

366.

51 & 52 Vict. c. 43, s. 162.

Warrant of Commitment under Section 162 of the County Courts Act, 1888, for Insult or Misbehaviour.

Order 52, *Rule* 8.

In the county court of , holden at .

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and

To the governor of the [*prison used by the court*].

Whereas on the day of A. B. wilfully insulted his honour the judge during his sitting in court [*or as the case may be, reciting the insult or misbehaviour as stated in the order, Form* 365], and his honour the judge thereupon ordered that the said A. B. should stand committed for days to His Majesty's prison at for such offence:

These are therefore to require you, the said high bailiff, bailiffs, and others to take the said A. B. , and to deliver him to the governor of the above-named prison, together with this warrant, and you the said governor to receive the said A. B. , and him safely to keep in the said prison for days from the arrest under this warrant, or until he shall be sooner discharged by due course of law.

Given under the seal of the court this day of 19 .

Judge.

367.

51 & 52 Vict. c. 43, s. 162.

Warrant of Commitment under Section 162 of the County Courts Act, 1888, in Default of Payment of Fine for Insult or Misbehaviour.

Order 52, *Rule* 8.

In the county court of , holden at .

To the high bailiff, &c. [*as in last Form*].

Whereas [*recite insult or misbehaviour as stated in the order, Form* 365], and his honour the judge thereupon ordered that the said A. B. should forfeit and pay the said sum of £ for such offence, and that the said A. B. should pay the said sum of £ to the registrar of the court forthwith, and that in default of payment the said A. B. should be imprisoned in His Majesty's prison at , and there kept for the space of days, unless the said fine should be sooner paid:

And whereas default has been made in payment of the said fine:

These are therefore to require you the said high bailiff, bailiffs, and others to take the said A. B. and to deliver him to the governor of the above-named prison, together with this warrant, and you the said governor to receive the said A. B. , and him safely to keep in the said prison for days from the arrest under this warrant, unless the said fine be sooner paid.

Given under the seal of the court this day of 19 .

Judge.

For Forms 368—414, *see* Part III., "Admiralty," p. 1238; for Forms 415—422, *see* Part V., "Agricultural Holdings Acts," *post*, pp. 1739—1743; for Forms 423—429, *see* Part V., "Parliamentary Elections Acts," *post*, pp. 2166—2169.

430.

45 & 46 Vict. c. 31.

Certificate to be given by a County Court.

The Inferior Courts Judgments Extension Act, 1882.

Order 45, *Rules* 3, 4.

I, , certify that [*here state name, business, or occupation and address of person obtaining judgment, and whether plaintiff or defendant*] on the

day of 19 , obtained judgment against [*here state name, business, or occupation and address of person against whom judgment was obtained, and whether plaintiff or defendant*] in the county court of holden at for payment of the sum of on account of [*here state shortly the nature of the claim with the amount of costs (if any) for which judgment was obtained*] [*add, where the order was for payment by instalments*, and it was thereupon ordered by the said court that the said defendant [*or* plaintiff] should pay the same by instalments of for every days.]

Dated this day of 19 .

Registrar.

Indorsement to be made on certificate granted by a county court.

No. of plaint.

	£	s.	d.
Amount for which judgment was obtained			
Paid into court			
Remaining due on judgment			
Fee and costs for obtaining certificate of the judgment (45 & 46 Vict. c. 31, s. 4).			
Total			

NOTE OF PRESENTATION *to be appended to a certificate sought to be registered in a county court.*

The above certificate is presented by me for registration in the county court of holden at , in accordance with the provisions of the Inferior Courts Judgments Extension Act, 1882.

Here insert place, &c., in which the goods are.
Signature of solicitor or creditor.
Address.
Date.

431.

Warrant of Execution.

The Inferior Courts Judgments Extension Act, 1882.

45 & 46 Vict. c. 31.
Order 45, *Rule* 10.

In the county court of , holden at .

Between Plaintiff,
[*Address and description,**]

and

Defendant,
[*Address and description.**]

*As given in certificate.

Whereas on the day of 19 , the plaintiff [*or* defendant] obtained a judgment against the defendant [*or* plaintiff] in [*here set forth the court mentioned in the certificate*], for payment of the sum of £ for debt and costs [*or* damages and costs *or* for costs] *add where the certificate shows that judgment was to be paid by instalments*, and it was thereupon ordered by the said court that the defendant [*or* plaintiff] should pay the same by instalments of for every days.

And whereas the said judgment has been duly registered in this court pursuant to the Inferior Courts Judgments Extension Act, 1882:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant [*or* plaintiff], wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff [*or* defendant] under the said judgment, together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant [*or* plaintiff] which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court and others the bailiffs thereof.

	£	s.	d.
Amount for which judgment was obtained			
Paid as stated in certificate			
Costs for obtaining and registering certificate of the judgment (45 & 46 Vict. c. 31, s. 4).			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon].			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the debtor.

51 & 52 Vict. c. 43, s. 146. Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

Here state for the information of the high bailiff the place, &c., where the goods are stated to be.

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

For Forms 431A, and 432B *see* Part V., "Trade Union Act, 1913," *post*, pp. 2320—2321; for Form 432, *see* Part V., "The Employers and Workmen Act, 1875," *post*, p. 2121; for Form 433, *see* Part V., "The Married Women's Property Act, 1882," *post*, p. 2136; for Forms 434—442, *see* Part V., "The Charitable Trusts Acts, 1853 to 1887," *post*, pp. 1805—1809; for Forms 443—445, *see* Part V., "The Court of Probate Acts, 1857 and 1858," *post*, pp. 2202—2203; for Forms 446—448, *see* Part III. "The Merchant Shipping Act, 1894, s. 610"; for Forms 448A, 448B, 449—452, *see* Part V., "The National Insurance Act, 1911," *post*, pp. 2149—2151; for Form 453, *see* Army Act, p. 1003.

APPENDIX (*a*).

PART III.

(1.)

Statutory Provisions as to Service of Summonses on Companies. *Order 7, Rule 26.*

THE COMPANIES CONSOLIDATION ACT, 1845. 8 & 9 Vict. c. 16.
[8 & 9 VICT. C. 16.]

135. Any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

THE LANDS CLAUSES CONSOLIDATION ACT, 1845.
[8 & 9 VICT. C. 18.] 8 & 9 Vict. c. 18.

134. Any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or, in case there be no secretary, the solicitor of the said promoters.

THE RAILWAYS CLAUSES CONSOLIDATION ACT, 1845.
[8 & 9 VICT. C. 20.] 8 & 9 Vict. c. 20.

138. This section is identical in terms with 8 & 9 Vict. c. 16, s. 135, *supra*.

COMPANIES (CONSOLIDATION) ACT, 1908.
[8 EDW. VII. C. 69.] 8 Edw. VII. c. 69.

62. (1) Every company shall have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given to the registrar of companies, who shall record the same.

116. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

(*a*) Part II. of the Appendix, containing the forms of books to be used in county courts, is useless to practitioners, and is omitted ; Part IV. (Tables of Costs) is printed in Part II.

(2.)

Provisions of the Summary Jurisdiction Acts as to Imprisonment in default or in lieu of Distress to satisfy sums adjudged to be paid on Summary Conviction.

11 & 12 Vict. c. 43.

THE SUMMARY JURISDICTION ACT, 1848.

[11 & 12 VICT. C. 43.]

Power to justice to award costs which shall be specified in conviction or order of dismissal and may be recovered by distress.

18. In all cases of summary conviction or of orders made by a justice or justices of the peace it shall be lawful for the justice or justices making the same, in his or their discretion, to award and order in and by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as to such justice or justices shall seem just and reasonable in that behalf; and in cases where such justice or justices, instead of convicting or making an order as aforesaid, shall dismiss the information or complaint, it shall be lawful for him or them, in his or their discretion, in and by his or their order of dismissal, to award and order that the prosecutor or complainant respectively shall pay to the defendant such costs as to such justice or justices shall seem just and reasonable, and the sums so allowed for costs shall in all cases be specified in such conviction or order of dismissal aforesaid, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable; and in cases where there is no such penalty or sum to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress by imprisonment, with or without hard labour, for any time not exceeding one calendar month, unless such costs shall be sooner paid.

Power to justice to issue warrant of distress.

19. Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorising such conviction or order such penalty, compensation, or sum of money, is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases where by the statute in that behalf no mode of raising or levying such penalty, compensation, or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the justice or justices making such conviction or order, or for any justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of distress for the purpose of levying the same, which said warrant of distress shall be in writing under the hand and seal of the justice making the same; and if after delivery of such warrant of distress to the constable or constables to whom the same shall have been directed to be executed sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then, upon proof alone being made on oath of the handwriting of the justice granting such warrant before any justice of any other county or place, such justice of such other county or place shall thereupon make an indorsement on such warrant, signed with his hand, authorising the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty or sum aforesaid, and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place:

How warrant to be backed.

In default of sufficiency of distress, justice may commit defendant to prison.

21. If at the time and place appointed for the return of any such warrant of distress the constable who shall have had the execution of the same shall return that he could find no goods or chattels or no sufficient goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the justice of the peace before whom the same shall be returned to issue his warrant of commitment under his hand and seal directed to the same or any other constable, reciting the conviction or order shortly, the issuing of

the warrant of distress, and the return thereto, and requiring such constable to convey such defendant to the house of correction, or if there be no house of correction then to the common gaol of the county, riding, division, liberty, city, borough, or place for which such justice shall then be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, in such manner and for such time as shall have been directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice shall think fit so to order (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

In all cases of penalties, convictions, orders, where the statute provides no remedy in default of distress, justice may commit defendant to prison.

22. And whereas by some Acts of Parliament justices of the peace are authorised to issue warrants of distress to levy penalties or other sums recovered before them by distress and sale of the offender's goods, but no further remedy is thereby provided in case no sufficient distress be found whereon to levy such penalties; in all such cases, and in all cases of convictions or orders where the statute on which the same are respectively founded provides no remedy in case it shall be returned to a warrant of distress thereon that no sufficient goods of the party against whom such warrant shall have been issued can be found, it shall nevertheless be lawful for the justice to whom such return is made, or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, if he or they shall think fit, by his warrant as aforesaid, to commit the defendant to the house of correction or common gaol as aforesaid for any term not exceeding three calendar months, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and of the commitment and conveying of the defendant to prison (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

On payment of penalty, &c. distress not to be levied, or the party, if imprisoned for non-payment, shall be discharged.

23. In all cases where any person against whom a warrant of distress shall issue as aforesaid shall pay or tender to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same; and in all cases in which any person shall be imprisoned as aforesaid for non-payment of any penalty or other sum he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter.

The Summary Jurisdiction Act, 1879.

[42 & 43 Vict. c. 49.]

42 & 43 Vict. c. 49.

Scale of imprisonment for non-payment of money.

5. The period of imprisonment imposed by a court of summary jurisdiction under this Act or under any other Act, whether past or future, in respect of the non-payment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum, shall, notwithstanding any enactment to the contrary in any past Act, be such period as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale; that is to say,

Where the amount of the sum or sums of money adjudged to be paid by a conviction, as ascertained by the conviction,	The said period shall not exceed
Does not exceed ten shillings	Seven days.
Exceeds ten shillings, but does not exceed one pound .	Fourteen days.
Exceeds one pound but does not exceed five pounds .	One month.
Exceeds five pounds but does not exceed twenty pounds .	Two months.
Exceeds twenty pounds	Three months.

And such imprisonment shall be without hard labour, except where hard labour is authorised by the Act on which the conviction is founded, in which case the imprisonment may, if the court thinks the justice of the case requires it, be with hard labour, so that the term of hard labour awarded do not exceed the term authorised by the said Act.

Special provisions as to warrants of commitment for non-payment of sums of money, and as to warrants of distress.

21. (1) A court of summary jurisdiction to whom application is made either to issue a warrant of distress for any sum adjudged to be paid by a conviction or order, or to issue a warrant for committing a person to prison for non-payment of a sum of money adjudged to be paid by a conviction, or in the case of a sum not a civil debt by an order, or for default of sufficient distress to satisfy any such sum, may, if the court deem it expedient so to do, postpone the issue of such warrant until such time and on such conditions, if any, as to the court may seem just.

(2) The wearing apparel and bedding of a person and his family, and, to the value of five pounds, the tools and implements of his trade, shall not be taken under a distress issued by a court of summary jurisdiction.

(3) Where a person is adjudged by the conviction of a court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, to pay any sum of money, and on default of payment of such sum a warrant of distress is authorised to be issued, and it appears to the court of summary jurisdiction to whom application is made to issue such warrant that such person has no goods whereon to levy the distress, or that in the event of a warrant of distress being issued his goods will be insufficient to satisfy the money payable by him, or that the levy of the distress will be more injurious to him or his family than imprisonment, such court, instead of issuing such warrant of distress, may, if it think fit, order the said person on non-payment of the said sum to be imprisoned for any period not exceeding the period for which he is liable under such conviction or order to be imprisoned in default of sufficient distress.

(4) Where on application to a court of summary jurisdiction to issue a warrant for committing a person to prison for non-payment of a sum adjudged to be paid by a conviction of any court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, or for default of sufficient distress to satisfy any such sum, it appears to the court to whom the application is made that either by payment of part of the said sum, whether in the shape of instalments or otherwise, or by the net proceeds of the distress, the amount of the sum so adjudged has been reduced to such an extent that the unsatisfied balance, if it had constituted the original amount adjudged to be paid by the conviction or order, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction or order, the court shall, by its warrant of commitment, revoke the term of imprisonment, and order the defendant to be imprisoned for a term not exceeding such less maximum term, instead of for the term originally mentioned in the conviction or order.

PART IV.(*a*)

Tables of Costs.

(*a*) See separate Chapter on Costs, Part II.

APPENDIX A.

EDITOR'S (THE LATE) ADDITIONAL FORMS.

1.

Affidavit in support of Motion for a Prohibition.

In the High Court of Justice,
Queen's Bench Division.

I, A. B., of make oath and say as follows:—

1. I was on the day of served with a summons issued by the county court of holden at commanding me to appear at the said court on the day of . A true copy of the said summons is now produced and shown to me, and is hereunto annexed and marked A. [*Annex a copy marked A.*]

2. A document, which I believe to be a copy of the plaintiff's particulars of demand, was annexed to the said summons. A true copy of the said document is now produced and shown to me, and is hereunto annexed and marked B. [*Annex a copy marked B.*]

3. I appeared at the said court, in obedience to the said summons, on the said day of and on the cause being called on objected to the jurisdiction of the said court, on the ground that the particulars of demand in the action disclosed a claim for damages for not within the jurisdiction of the court.

4. The judge overruled my objection and proceeded to hear the evidence on behalf of the plaintiff, and at the end of the plaintiff's case I declined to call any witnesses, or to give evidence, and the judge gave a verdict for the plaintiff for 25*l*.

5. No application was made by the plaintiff for the amendment of his particulars of demand, and no amendment was, I believe, made by the judge.

2.

Notice of Injury under Employers' Liability Act.

Take notice, that A. B., of [*add his address*], on the [*add date of injury*] whilst engaged as a workman in your employ, was killed [*or* had his leg broken and was otherwise injured]

(a) Through falling off a scaffold forming part of your plant used in your mill at [*add name of place*], and defective in consequence of being unfenced:

(b) Through the negligence of C. D. [*add name*], the chief engineer of your mill at [*add name of place*], in setting in motion [*or* driving at excessive speed] a printing machine whilst the said A. B. was engaged in cleaning it:

(c) Through the negligence of C. D. [*add name*] the foreman of your mill at [*add name of place*], in ordering the said A. B. to carry goods up a loose flight of steps past unfenced machinery :

(d) Through the shunting of a goods train by order of C. D. [*add name*], one of your servants, in obedience to the [*add number*] of your rules or bye-laws, whilst the said A. B. was engaged in repairing the railway lines at a station :

(e) Through the neglect of C. D., the person in charge of and whose duty it was to examine the condition of the trucks forming a train upon your railway, in sending forward as part of the train a truck the main axle of which was broken.

And take notice, that I am prepared to treat with you as to the amount of compensation to be paid to the relatives of the deceased A. B. [*or* said A. B.]

Dated, &c.

(Signed) E. F.,
Solicitor for the above named.

To Mr. G. H.

3.

Particulars of Demand under the Employers' Liability Act.

[*Commence as in Form* 1, *ante*, p. 676.]

Section 1, sub-section 1.

The plaintiff claims £ damages, because on the [*date*] A. B. was a workman in the defendant's employment, and was injured* (a) by falling from a scaffold then in and forming part of the plant in the defendant's mill at [*place*]. The said scaffold was defective in consequence of being unfenced, and its defective condition was known to the defendant and to C. D., a foreman of the defendant's in the department in which the plaintiff was employed before the date aforesaid, but they neglected to remedy the same.

[The said A. B. died on the *date*].

When under Lord Campbell's Act.

This action is brought by the plaintiff, as executor of the last will of the said A. B., deceased, for and on behalf of E. F., the wife, and G. H. and I. K., the children of the said A. B.

Particulars of special damage :—

Medicines and medical attendance.
Nursing.
Extra food and nourishment.

(Signed, *if entered by solicitor*) L. M.
Solicitor for the above-named plaintiff
[who will accept service of proceedings on behalf of the plaintiff at his office, No. , Street,].

To the registrar of the court,
and to N. O., the defendant.

(*) This form may be varied so as to meet a case of injury only by omitting the paragraphs in brackets relating to the death and relatives of the deceased. It may be varied to meet other sub-sections of the Act as follows :—

Section 1, sub-section 2.

(b) By having his hand and arm drawn into and crushed in a printing machine in the defendant's mill at [*place*]. The said machine was negligently set in motion whilst the plaintiff was cleaning it by C. D., the engineer of the defendant, a person entrusted with the superintendence of the defendant's engine, mainshaft and machinery, whilst in the exercise of such superintendence.

Section 1, sub-section 3.

(c) By being whirled round by a fly-wheel and dashed against a wall in

the defendant's mill at [*place*]. The said injuries were received by the said A. B. through falling into the said fly-wheel whilst carrying goods up a loose flight of steps, which turned over as the plaintiff trod upon it. The plaintiff was carrying the said goods in obedience to the special orders of C. D., a foreman of the defendants, to whose orders the plaintiff was bound to conform, and did conform, and the said C. D. was negligent in giving such orders, being well aware that the said flight of steps was loose.

(d) By being dashed against the buttress of a bridge across the defendants' line of railway at [*place*], whilst travelling as guard of a train from A. to B. The said train was made up at A. under the direction of C. D. In making up the said train the said C. D. negligently placed in it a truck, the main axle of which was broken, thereby causing the truck and the carriage in which plaintiff was to leave the line and come in contact with the bridge aforesaid. The control of the said train was in the said C. D. Section 1, sub-section 2 or 5.

4.

Particulars of Demand (*a*) in Ordinary Claims for Debt or Damages.

a.

Particulars of plaintiff's claim for the price of goods sold and delivered: Goods sold.

1881—	£	*s.*	*d.*
5 Jan. To butcher's meat	3	10	0
6 June „ „	2	0	0
14 Sept. „ „	4	5	0
	9	15	0
1882—1st February.—Paid	5	0	0
Balance due	£4	15	0

Dated the .

(Signed, *if entered by solicitor*) L. M.
Solicitor for the above-named plaintiff
[who will accept service of proceedings on behalf of the plaintiff at his office, No. , Street,].

b.

Particulars of the plaintiff's claim for money received by the defendant for the use of the plaintiff: Money received.

1882—1st January.—	£	*s.*	*d.*
To amount of rent of No. 5, Smith Street, collected by the defendant...	22	10	0
To deposit on intended sale of Eva Villa	10	0	0
Amount due	£32	10	0

c.

Particulars of plaintiff's claim for damages for breach of defendant's contract to deliver to the plaintiff 100 sacks of flour known as seconds, at 35*s.* per sack: Breach of contract.

	£	*s.*	*d.*
20 sacks not delivered, loss 5*s.* per sack...	5	0	0
80 sacks delivered of inferior quality, loss 4*s.* per sack ...	16	0	0
	£21	0	0

(*a*) Framed on High Court forms.

d.

False imprisonment.

Particulars of the plaintiff's claim for damages against the defendant for assaulting him and giving him into the custody of a police officer on the day of , who detained him in custody for a long time.

General damages, £50.

e.

Detinue.

Particulars of the plaintiff's claim for damages against the defendant for detaining from the plaintiff his goods and chattels, that is to say, a horse, harness, and gig :

	£
Value of the said goods and chattels	40
Damages for their detention	10

The plaintiff claims a return of the said goods or their value, and £10 damages.

f.

Negligent driving.

Particulars of the plaintiff's claim for damage suffered by the plaintiff through the negligent driving by the defendant or his servants on the day of of a horse and cart in Street, .

	£
Personal injuries—General damages	30
Charges of Mr. X., surgeon	5
Injury to plaintiff's carriage—Repairs...	10
	45

g.

Nuisance by smells.

Particulars of the plaintiff's claim for damage suffered by him at his dwelling-house, No. , Street, , from offensive and pestilential smells and vapours caused by the defendant.

General damages, £50.

The plaintiff also claims an injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind in respect of the same property.

5.

Particulars of Claim on Bill of Exchange or Promissory Note (*a*).

a.

Payee against maker of promissory note.

Particulars of the plaintiff's claim against the defendant as maker of a promissory note for £30, dated 1st January, 1882, payable four months after date.

	£
Principal	30
Interest	3
	33

b.

Indorsee against acceptor of a bill of exchange.

Particulars of the plaintiff's claim against the defendant, as acceptor of a bill of exchange for £40, dated 1st January, 1882, drawn by A. B., payable three months after date to the order of E. F., and indorsed to the plaintiff.

	£
Principal	40
Interest	10
	50

(*a*) These forms are inapplicable when the action is under the Bills of Exchange Act, 1855. In such cases Form 26 (*ante*, *p.* 694) must be strictly observed.

c.

Indorsee against acceptor and drawer of a bill of exchange severally.

Particulars of the plaintiff's claim against the defendant A.B. as acceptor, and against the defendant C. D. as drawer, of a bill of exchange for £30, dated 1st January, 1882, payable three months after date, and indorsed by the defendant C. D. to the plaintiff, of the dishonour of which on presentation the defendant C. D. had notice.

	£
Principal	30
Interest	5
	35

6.

Particulars of Claim in Action for Recovery of Land.

Ejectment. 51 & 52 Vict. c. 43, s. 59.

The plaintiff is entitled to, and claims possession from the defendant, of a farm and premises called Church Farm, in the parish of St. James, in the county of Surrey, of the annual value and rent of £20.

Order 6, *Rule* 3.

The plaintiff claims £20 for mesne profits at the rate of £20 per annum from the day of .

Order 4, *Rule* 1.

7.

Particulars in Action for Recovery of Possession of Tenement.

a.

On determination of tenancy. 51 & 52 Vict. c. 43, s. 138.

The plaintiff is entitled to and claims possession of a farm and premises called Church Farm in the parish of St. James, in the county of Surrey, which was let by the plaintiff to the defendant for the term of 5 years from the 29th September, 1880, which term has expired [*or* as tenant from year to year from the 29th September, 1875, which said tenancy was duly determined by notice to quit expiring on the 29th September, 1885].

Order 5, *Rule* 3.

The plaintiff claims £20 for mesne profits at the rate of £50 per annum.

b.

For non-payment of rent. 51 & 52 Vict. c. 43, s. 139.

The plaintiff is entitled to and claims possession of a house and premises, being No. in Street, in , in the county of , let to the defendant at a rent of £50 a year, payable on the 25th March and the 29th September in each year. A half-year's rent due on the 29th September, 1885, is now due and in arrear, and the plaintiff is by the terms of the tenancy entitled to re-enter.

8.

Particulars in Equity Actions.

a.

Administration. 51 & 52 Vict. c. 43, s. 67.

The plaintiff is a creditor of X. Y., deceased, of whom the defendant C. D. is executor [*or* administrator] and the defendant E. F. is heir-at-law [*or* devisee].

Particulars of the claim:

Principal due on the bond of the testator [*or* intestate] dated the day of 19	£200	0	0
Interest from the of at 5 per cent.	25	0	0
	£225	0	0

The plaintiff claims to be paid the amount due to him, or to have the real and personal estate of the said X. Y. administered.

(Signed)

Delivered

b.

Execution of trust.
51 & 52 Vict. c. 43, s. 67.

1. By a settlement dated June 10, 1856, upon trust for A. B. and C. B. successively for life, with remainder for their children who should attain 21, the following property was assured :—
   a. A sum of 57*l.* 14*s.* 2*d.* consolidated 3*l.* per cent. annuities.
   b. 40*l.* invested on mortgage of land at X.
   c. One-fifth of the residuary estate of D. deceased, subject to a prior life interest.
2. On August 15, 1862, C. B. died.
3. On February 18, 1875, A. B. died.
4. On September 10, 1879, D. died.
5. A. B. and C. B. had five children only, of whom the plaintiff is one.
6. The defendants are the present trustees of the settlement.

The plaintiff claims :
1. Execution of the trusts of the settlement.
2. All necessary accounts and inquiries.
3. A receiver.

c.

Foreclosure or sale.
51 & 52 Vict. c. 43, s. 67.

1. The plaintiff is mortgagee of lands belonging to the defendant.
2. The following are the particulars of the mortgage :
   (*a.*) [*Date and names of mortgagor and mortgagee.*]
   (*b.*) [*Sum secured.*]
   (*c.*) [*Rate of interest.*]
   (*d.*) [*Property subject to mortgage.*]
   (*e.*) [*Amount now due.*]

[*If the plaintiff's title is a derivative title state shortly the assignments under which he claims.*]

[*If the plaintiff is mortgagee in possession add*] :

3. The plaintiff took possession of the mortgaged property on the of , and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale, or foreclosure (and possession).

d.

Specific performance.
51 & 52 Vict. c. 43, s. 67.

1. By an agreement [*or* letters] dated [*or* made verbally at interviews on or about] the day of , the plaintiff agreed to sell to the defendant the Home Farm, Kent, for £ . The sale was to be completed on the of .

[*If the agreement was verbal, add*] :

2. The agreement so entered into has been part performed as follows [*state how*].

The plaintiff claims specific performance of the above agreement.

e.

Dissolution of partnership.
51 & 52 Vict. c. 43, s. 67.

1. The plaintiff on December 20th, 1875, entered into partnership articles with the defendant for ten years.
2. The defendant has broken the partnership articles as follows :—
   a.
   b.

The plaintiff claims :—
1. Dissolution.
2. Accounts and inquiries.
3. A receiver.

9.

Notice of Motion on Appeal.

In the High Court of Justice.
Queen's Bench Division.
On Appeal from the county court of shire, holden at
Between A. B., plaintiff,
and
C. D., defendant.

Take notice, that this court will be moved on day the day of , or so soon thereafter as counsel can be heard, by of counsel for the above-named plaintiff [*or* defendant] on his behalf, that the judgment of nonsuit directed by his honour judge herein, on the day of , and the order of the said judge that the plaintiff should pay the defendant's costs may be set aside, and that a new trial may be directed to be had between the parties [*or* that judgment may be entered for the plaintiff for the agreed sum of 30*l.* and costs pursuant to leave reserved at the trial].

[*Or* that so much of the judgment of his honour judge given on the defendant's counterclaim herein as adjudges that the defendant should recover against the plaintiff 20*l.* damages and costs, may be set aside or varied, and that in lieu thereof judgment may be entered for the plaintiff.]

[*Or* that the judgment of his honour judge made herein on the day of , whereby he adjudged that the plaintiff should recover from the defendant the sum of 30*l.* damages and costs may be set aside or varied, and that in lieu thereof judgment may be entered for the defendant, or a new trial had between the parties.]

The following are the grounds of appeal [*state the grounds particularly*] as,

That there was evidence of a defect in the condition of the defendant's machinery, and that such defect was known to the defendant, and that he negligently omitted to repair or remedy the same.

That the judge improperly rejected evidence tendered by the plaintiff to prove the knowledge of the defendant of the said defect.

That there was no evidence of any negligence on the part of the plaintiff [*or* defendant].

That there was no evidence of contributory negligence on the part of the plaintiff [*or* defendant].

That the judge misdirected the jury in telling them that the plaintiff was responsible for the trespass of E. F., and that they ought to find for the plaintiff if they found that E. F. had in fact committed the alleged trespass.

Dated the day of .

(Signed) G. H.,
Solicitor to the above-named plaintiff [*or* defendant].

To J. K.,
Solicitor to the above-named defendant [*or* plaintiff].

10.

Notice of Cross Appeal.

[*Title and heading as in Form* 9.]

Take notice that upon the hearing of the appeal herein the defendant will, if necessary, object to so much of the ruling of the judge at the trial as ruled that the defendant was not at liberty to rely on his objection that the plaintiff had given insufficient notice of injury because the defendant had not given notice of his objection as a statutory defence, pursuant to Order X. rr. 10, 18 of the County Court Rules. And take notice that the court will, if necessary, be asked to affirm the judgment entered at the trial

for the defendant on the grounds aforesaid, notwithstanding that it may be of opinion that the grounds upon which judgment was given at the trial were erroneous.

[*Or* the plaintiff will contend that the judge at the trial ought to have given judgment for the plaintiff for the sum of 10*l.* claimed by the plaintiff as special damage for [*state grounds*], in addition to the sum of 20*l.* for which judgment was in fact given, and the plaintiff will, on the hearing of the appeal, contend that the judgment ought to be varied accordingly.]

Dated, &c.

(Signed) I. K.,
Solicitor to the above-named
defendant [*or* plaintiff].

11.

Affidavit for Leave to Defend under Bills of Exchange Act.

[*Commence with Form* 3, *p.* 677.]

I, A. B., of make oath and say as follows:

1. I was on the day of served with the summons herein issued out of this court, a true copy whereof is now produced and shown to me, and is hereunto annexed and marked A.

2. Annexed to the said summons was a copy of the plaintiff's particulars of demand in this action, and a copy of the same is now produced and shown to me, and is hereunto annexed and marked B.

3. The bill of exchange upon which this action is brought was drawn by the plaintiff upon and was accepted by me, and a true copy of the said bill appears in the said particulars of demand.

4. The said bill of exchange was accepted by me exclusively for the accommodation of the plaintiff, at his request, and no consideration whatever existed or exists for my acceptance of the said bill.

5. I am advised and believe that I have a good defence to this action upon the merits.

12.

Substituted Service by Advertisement.

In the county court of , holden at .

To of in the county of . Take notice that a plaint has been entered and a summons issued against you in the above county court by of aforesaid for an account of the partnership dealings between himself and you, under, and in pursuance of a certain partnership deed dated the , and also that the partnership may be dissolved under the order of the court, and for an injunction restraining you from collecting or receiving any of the partnership moneys, or any debt or debts due to the partnership, and also from in anywise dealing or interfering with or wasting the partnership assets, or any part thereof; and an order has been made that the publication of a notice of the entry of such plaint in the *London Gazette*, the and the shall be deemed to be service of the summons upon you. The summons will be heard at the court house, situate in in aforesaid, on the day of next, at eleven o'clock in the forenoon, on which day you are required to appear; and if you do not appear, either in person or by your solicitor, at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of 19 .

Registrar.
A. B.,
Plaintiff's Solicitor.

APPENDIX B.

TABLE OF INTERLOCUTORY APPLICATIONS BEFORE THE TRIAL.

NOTE.—The word "Court" when used in the County Courts Act, 1888, means the judge or registrar of the Court. Sect. 186. The word "Court" when used in the County Court Rules includes the judge or registrar exercising the powers of the Court in Chambers as well as in open Court: Order LV. "Court."

Order for	To whom application to be made.	Act or Rule governing jurisdiction (*a*).	How application to be made.
Leave to enter plaint	J. or R.	C. C. Act, sec. 74; O. 5, R. 13.	O. 5, R. 13; O. 12, R. 11.
Leave to join different causes of action.	J. or R.	O. 4, Rr. 1, 2.....	O. 12, R. 11.
Separate trials when different causes of action joined.	Judge.	O. 4, R. 7	O. 12, R. 11; O. 15.
Conduct of action.....	J. or, in his absence, R.	O. 54, R. 11	O. 12, R. 11; O. 15.
Leave to defend for others in same interest.	J. or R.	O. 3, R. 7	O. 3, R. 8; O. 12, R. 11.
Leave in administration action to appear on claim of third person.	J. or R.	O. 3, R. 34..	O. 12, R. 11; O. 15.
Application for directions.....	J. or R.	O. 15, R. 1.....	O. 12, R. 1; O. 15, Rr. 2, 3.
Leave to third person to defend in ejectment.	J. or R.	O. 10, R. 4...	O. 10, R. 4; O. 12, R. 11; O. 15.
Amendment of parties.....	J. or R.	O. 14, Rr. 1 to 9 ..	O. 14, R. 10; O. 12, R. 11; O. 15.
Substitution of parties to or upon whom interest or liability has devolved.	Registrar.	O. 17, Rr. 2, 3	O. 17, Rr. 2, 3.

(*a*) Where the County Courts Act or particular rules relate to the application, neither the 98th section of the Judicature Act, 1873, nor section 164 of the County Courts Act, 1888, is cited.

Order for	To whom application to be made.	Act or Rule governing jurisdiction.	How application to be made.
Order to continue proceedings between new parties in consequence of change of interest, &c.	J. or R.	O. 17, R. 4.....	O. 17, Rr. 4, 5.
Variation of last order at instance of person under disability.	J. or R.	O. 17, R. 6.....	O. 12, R. 11; O. 15.
Security for costs on bankruptcy of plaintiff.	Judge.	C. C. Act, s. 94; O. 17, R. 9.	O. 12, R. 11; O. 15.
Amendment of proceedings ...	Judge.	C. C. Act, s. 87	O. 12, R. 11; O. 15.
Amendment of particulars ...	J. or R.	C. C. Act, s. 87; O. 14, Rr. 12, 15.	O. 12, R. 11; O. 15.
Delivery of further particulars.	J. or R.	O. 6, R. 7; O. 22A, R. 6; O. 55; C. C. Act, s. 164.	O. 12, R. 11; O. 15.
Substituted service of summons, documents, &c.	J. or R.	O. 7, R. 40.....	O 12, R. 11; O. 15.
Service out of England and Wales.	J. or deputy judge.	O. 7, Rr. 41—49 ...	O. 12, R. 11.
Leave to issue default summons in certain cases.	J. or R.	C. C. Act, s 86; O. 5, R. 15.	O. 5, R. 15; O. 12, R. 11.
Leave to proceed under default summons as if personal service effected.	J. or R.	C. C. Act, s. 86.....	O. 12, R. 11.
Leave to plaintiff to serve default summons.	Registrar.	O. 7, R. 33.....	O. 12, R. 11.
Leave to issue successive default summonses.	Registrar.	O. 7, R. 30.....	O. 12, R. 11.
Leave to defend default summons though notice to defend not given.	J. or R.	C. C. Act, s. 86.....	O. 12, R. 11.
Leave to stakeholder and others to interplead.	Judge.	Jud. Act, 1873, s. 89	O. 12, R. 11; O. 27, R. 15.
	Registrar.	O. 27, R. 15	O. 12, R. 11.
Leave to interplead when chose in action assigned.	Registrar.	O. 27, R. 15	O. 12, R. 11.
Consolidation of actions	Judge.	O. 8, Rr. 1, 2, 4, 7.	O. 8, R. 3; O. 12, R. 11; O. 15.

Order for	To whom application to be made.	Act or Rule governing jurisdiction.	How application to be made.
Certificate for purpose of objection to jurisdiction.	Judge.	C. C. Act, s. 62; O. 10, R. 6.	O 10, R. 6; O. 12, R. 11.
Leave to make third person defendant to counterclaim.	J. or R.	O. 10, R. 22; O. 14, R. 2.	O. 12, R. 11; O. 15.
Directions when third party notice served.	Judge.	O. 11, R. 4.....	O. 12, R. 11; O. 15.
Staying proceedings under Arbitration Act, 1889.	Judge. R. doubtful.	Jud. Act, 1873, s. 89. Arb. Act, 1889, s. 4.	O. 12, R. 11.
Assessors..	Judge.	C. C. Act, s. 103; O. 21, Rr. 7, 8.	O. 21, Rr. 7, 12.
Jury.....	J. or R.	C. C. Act, s. 101; O. 22, Rr. 12, 3, 4; O. 22A, R. 20.	O. 12, R. 11; O. 15.
Adjournment, generally	Judge.	C. C. Act, s. 106...	O. 12, R. 11.
,, ,, ...	J. or R.	O. 15, R. 1	O. 15.
Adjournment, where practice not complied with.	J. or R.	O. 12, R. 15	O. 12, R. 11; O. 15.
Adjournment, by consent ...	J. or R.	O. 12, R. 12	O. 12, Rr. 11, 12.
Adjournment, on account of pending interlocutory proceedings.	J. or R.	O. 12, R. 13	O. 12, Rr. 11, 13; O. 15.
Discovery of documents	J. or R.	O. 16, R. 10; O. 15, R. 1	O. 12, R. 11; O. 15.
Further affidavit of documents	Judge.	Jud. Act, 1873, s. 89	O. 12, R. 11; O. 15.
Production of documents	J. or R.	O. 16, R. 12	O. 12, R. 11; O. 15
Inspection of documents	J. or R.	O. 16, R. 16	O. 12, R. 11; O. 16, R. 16; O. 15.
Inspection of bankers' books	Judge.	42 Vict. c. 11.....	O. 12, R. 11; O. 15.
Interrogatories	J. or R.	O. 16, R. 1.....	O. 12, R. 11; O. 15.
Further answer to ditto	J. or R.	O. 16, R. 9.....	O. 12, R. 11; O. 16, R. 9.
Amendment of admission of facts.	J. or R.	O. 9, R. 8; O. 55; C. C. Act, s. 186.	O. 12, R. 11; O. 15.
Leave to issue summons to witness in blank.	J. or R.	O. 13, R. 3.....	O. 12, R. 11; O. 15.
Bringing up prisoner for criminal offence as witness.	Judge.	C. C. Act, s. 112 ...	O. 12, R. 11; O. 15.

Order for	To whom application to be made.	Act or Rule governing jurisdiction.	How application to be made.
Oral examination of witness.	J. or R.	O. 18, R. 2, 14; O. 52; C. C. Act, s. 186, but see O. 18, R. 15.	O. 12, R. 11; O. 15.
Order to prove fact or facts by affidavit.	Judge.	O. 18, R 2	O. 12, R. 11.
Order for examination of witness out of court.	Judge.	O. 18, R. 2; R. 10	O. 12, R. 11.
Attendance of witness before examiner.	J. or R.	O. 18, R. 18; O. 55; C. C. Act, s. 186.	O. 12, R. 11; O. 15.
Attendance when witness refuses to attend or be sworn.	Judge.	O. 18, R. 26	O. 12, R. 11; O. 15.
Accounts and inquiries	Judge.	O. 12, Rr. 5, 6	O. 12, Rr. 6, 8, 11.
Receiver	Judge.	Jud. Act, 1873, s. 25, sub-s. 8; O. 13, R. 1.	O. 12, Rr. 6, 8, 11.
Mandamus	Judge.	Jud. Act, 1873, s. 25, sub-s. 8, and s. 89.	C. C. Act, s. 9; O. 12, R. 11.
Injunction	Judge.	Jud. Act, 1873, s. 25, sub-s. 8; O. 12, R. 6.	O. 12, Rr. 6, 8, 11.
Preservation of property, &c.	J. or R.	O. 12, Rr. 1, 2, 3 ...	O. 12, R. 11; O. 15.
Payment into court when lien claimed.	Judge.	O. 12, R. 7.....	O. 12, Rr. 7, 8, 11; O. 15.
Plaintiff to make deposit as security for costs of defendant out of jurisdiction.	Registrar.	O. 12, R. 9.....	O. 12, R. 9.
Reference to arbitration	Judge.	C. C. Act, s. 104; O. 20, R. 1.	O. 12, R. 11; O. 15.
Transfer to another court ...	Judge.	C. C. Act, ss. 42, 85	O. 12, R. 11; O. 15.
,, ,, ...	,,	O. 8, R. 8; O. 22, R. 23.	
Transfer of equity cases	J. or R.	C. C. Act, ss. 75, 186	O 12, R. 11; O. 15.
Approval of bond as security	Registrar.	O. 29, R. 1.....	O. 29, Rr. 1, 2, 3.
Approval of deposit as security	Registrar.	C. C. Act, s. 109 ...	C. C. Act, s. 109.
Repayment of money deposited as security.	Judge.	C. C. Act, s. 109 ...	O. 12, R. 11; O. 15.
Extension of time for taking proceeding.	J. or R.	C. C. Act, s. 106; O. 54, R. 12.	O. 54, R. 12; O. 12, R. 11; O. 15.

Order for	To whom application to be made.	Act or Rule governing jurisdiction.	How application to be made.
Setting aside proceeding for irregularity.	J. or R.	O. 54, Rr. 24, 25 ...	O. 12, R. 11; O. 54, R. 25.
Leave to defend under Bills of Exchange Act.	J. or R.	Order in Council, 30 Jan. 1856; 18 & 19 Vict. c. 67, s. 2; O. 35, R. 2.	O. 12, R. 11; O. 15.
That loss of bill of exchange be not set up.	J. or R.	Order in Council, 30 Jan. 1856; 18 & 19 Vict. c. 67, s. 7; C. L. P. Act, 1854, s. 87; C. C. Act, s. 164; 45 & 46 Vict. c. 61, s. 70.	O. 12, Rr. 10, 11; O. 15.

APPENDIX C.

TIME TABLE.

Shewing the Times Limited by Rules of Court for the taking of various Proceedings in the County Court.

Accounts and Inquiries.	
Advertisements (where ordered), insertion of.	Fourteen days previous to day appointed (Ord. XXIV. r. 2).
Claims, not sent in by creditors pursuant to advertisement.	Two days before day to which the adjudication is adjourned (Ord. XXIV. r. 20).
Notice of non-allowance of claim and of attendance to prove it.	Not less than seven days after notice (Ord. XXIV. r. 19).
Registrar's certificate to be prepared and ready for inspection.	Seven days before day appointed for presenting it (Ord. XXIV. r. 31).
Return day of summons.	Not less than seven days from date of order (Ord. XXIV. r. 2).
Return day of summons where advertisements are ordered.	Not less than twenty-one days from date of order (Ord. XXIV. r. 2).
Admissions of truth of statements in plaintiff's particulars,	
in actions not exceeding £50.	Five clear days before return day (Ord. IX. r. 5).
in actions exceeding £50.	Ten clear days before return day (Ord. XXIIA. r. 8).
Admissions of Facts on Notice.	
(a) Notice to admit	
in actions not exceeding £50.	Six clear days before return day (Ord. IX. r. 8).
in actions exceeding £50.	Twelve clear days before return day (Ord. XXIIA. r. 9).
(b) Delivery of admission	
in actions not exceeding £50.	Three clear days before return day (Ord. IX. r. 8).
in actions exceeding £50.	Six clear days before return day (Ord. XXIIA. r. 9).
Amendment, of default summons.	At any time during its currency (Ord. VII. r. 30A).
Appeal to High Court, Entry of.	Twenty-one days from date of judgment or order (R. S. C., Ord. LIX. r. 12).
Notice of motion. Service of.	Eight days (R. S. C. Ord. LIX. r. 10). Twenty-one days from date of judgment or order (R. S. C., Ord. LIX. r. 12).
Stay of proceedings by making deposit or giving security.	Ten days after decision (R. S. C., Ord. LIX. r. 14).

ASSESSORS,	
Application for,	
in actions not exceeding £50.	Six clear days before return day (Ord. XXI. r. 7).
in actions exceeding £50.	Twelve clear days before return day (Ord. XXIIA. r. 19).
under Employers' Liability Act, 1880.	Ten clear days before return day (Ord. XLIV. r. 6).
under Workmen's Compensation Act, 1906.	Eight clear days before arbitration day (Rule 52 (1)).
ATTACHMENT. *See* "Enforcement of Judgments and Orders."	
BILLS OF EXCHANGE ACT, 1855.	
Application for leave to appear.	Twelve days from service of writ (18 & 19 Vict. c. 67, s. 2).
CHANGE OF SOLICITORS.	
Notice to registrar and parties.	Forty-eight hours' notice (Ord. LIV. r. 6).
COMMITTAL ORDER. *See* "Enforcement of Judgments and Orders."	
CONFESSIONS,	
Of debt under s. 98, delivery to registrar,	
in actions not exceeding £50.	Five clear days before return day (Ord. IX. r. 2).
in actions exceeding £50.	Ten clear days before return day (Ord. XXIIA. r. 8).
in action of ejectment or for recovery of possession.	At any time before return day (Ord. IX. r. 7).
COSTS. *And see* "Security for Costs."	
Notice of taxation.	One day (Ord. LIII. r. 2).
Review of taxation, application for.	Before signing of certificate or allocatur.
COUNTERCLAIM. *And see* "Special Defences."	
Notice of, to be filed.	Five clear days before return day (Ord. X. r. 10).
In actions exceeding £50.	Ten clear days before return day (Ord. XXIIA. r. 13).
Objection to, under 47 & 48 Vict. c. 61, s. 18.	Within two clear days after receipt of notice (Ord. X. r. 3).
DEFAULT SUMMONS. *And see* "Summons, 3."	
Judgment on, where no notice of defence or leave to defend.	Within two months from date of service (Ord. VII. r. 36).
Exchange of, for ordinary summons.	Within twelve months of issue (Ord. VII. r. 38).
Successive.	Within three months of entry of plaint (Ord. VII. r. 6 (4)).
Notice to defend.	Within eight days after service inclusive of day of service (51 & 52 Vict. c. 43, s. 86).
DIRECTIONS.	
Notice of application for.	Three clear days' notice in writing to every party affected (Ord. XV. r. 2).

DISCHARGE FROM CUSTODY (other than under Debtors Act, 1869).	
(a) By judge.	Two clear days' notice to opposite party before making of application (Ord. XXV. r. 62).
(b) By registrar.	The same (Ord. XXV. r. 63).
DISCOVERY AND INSPECTION.	
1. Interrogatories.	
(a) Delivery of.	Within the time specified in the order giving leave (Ord. XVI. r. 2).
(b) Answer to.	Within the time named in the order giving leave to interrogate (Ord. XVI. r. 8).
(c) Further answer. Notice of application for.	Two clear days (Ord. XVI. r. 9).
2. Production and Inspection of Documents.	
(a) Notice to produce.	At any time (Ord. XVI. r. 13).
(b) Order to produce.	At any time (Ord. XVI. r. 12).
(c) Time for inspection.	Within three days from delivery of notice to inspect (Ord. XVI. r. 15).
3. Affidavit of Documents.	To be filed within time named in order (Ord. XVI. r. 11).
DOCUMENTS, Admission of. *See* "Evidence."	
EJECTMENT. *See* "Special Defences."	
ENFORCEMENT OF JUDGMENTS AND ORDERS.	
1. Execution against goods.	
(a) Length of time in force.	One year from day of issue and exclusive of that date, unless renewed (Ord. XXV. r. 6).
(b) Leave required.	When no payment made by judgment debtor within twenty-four months previously (Ord. XXV. r. 10).
(c) Execution against firm. Where leave sought to issue execution against person not admitted or adjudged to be liable as a partner, etc.	Two clear days' notice of intention to apply for leave (Ord. XXV. r. 11).
(d) Application to issue process on change of parties after judgment.	Six clear days before proceedings issue on the order (Ord. XXV. r. 15).
(e) Private sale under Bankruptcy Acts.	Notice of application to be served four clear days before day appointed for hearing of application (Ord. XXV. r. 24 (3)).
(f) Appraisement.	Not before fifth day of possession by bailiff, unless goods of perishable nature, or sold at request of party or removed (Ord. XXV. r. 21).

ENFORCEMENT OF JUDGMENTS AND ORDERS—*Continued.*	
(g) Proceeds of execution levied in foreign district.	To be paid over by bailiff to registrar of foreign court within twenty-four hours from receipt of money (Ord. XXVIII. r. 2).
2. Execution in action of ejectment.	
(a) If judgment for plaintiff.	On day named in judgment; if no day named, after expiration of fourteen clear days from day on which judgment given (Ord. XXV. r. 65).
(b) If judgment for defendant.	The same (Ord. XXV. r. 67).
3. Judgment summons.	
(a) Issue and service of.	
In ordinary cases.	Issue not less than ten clear days, and service not less than five clear days before hearing (Ord. XXV. r. 31).
Where judgment debtor about to remove or avoiding service.	At any time before hearing (Ord. XXV. r. 32).
(b) Successive judgment summons.	At any time within three months (Ord. XXV. r. 33).
(c) Limitation of time for issue, where summons not successive.	Four months from date of last payment into court, or (if no payment into court) from date of default (Ord. XXV. r. 28), with certain exceptions.
4. Committal order.	
(a) Duration of order.	In force for one year from date, (exclusive of day of date) unless renewed (Ord. XXV. r. 46 (4)).
(b) Payment to bailiff on arrest.	At any time before delivery of body of debtor into custody of gaoler (Ord. XXV. r. 48).
(c) Payment over to registrar.	Within twenty-four hours after receipt of amount (Ord. XXV. r. 48).
(d) Part payment after arrest but before delivery to custody of gaoler.	
(a) Where payment into foreign court.	As soon as may be the registrar must notify payment to high bailiff, or to bailiff (Ord. XXV. r. 48a).
(b) Where payment into home court after order sent for reissue to a foreign court.	As soon as may be notice must be given to registrar of foreign court. (Ord. XXV. r. 48a).
(e) Part payment after debtor lodged in gaol.	Same as (d) above.
5. Attachment.	
(a) Notice to attend to show cause.	Not less than three days after service of copy order on person to be bound by the order (Ord. XXV. r. 59).
(b) Service of copy order for attachment.	Before or at time of execution of warrant, unless judge otherwise orders (Ord. XXV. r. 61).

EVIDENCE.	
Admission and inspection of documents.	
Notice to admit and inspect.	
(a) In actions not exceeding £50.	Five clear days before trial (Ord. XVIII. r. 6).
(b) In actions exceeding £50.	Ten clear days before trial (Ord. XXIIA. r. 17).
Admissions to be made.	
(a) In actions not exceeding £50.	Within three days after receipt of notice (Ord. XVIII. r. 6).
(b) In actions exceeding £50.	Within five days after receipt of notice (Ord. XXIIA. r. 17).
Affidavits, notice of intention to use at trial.	
(a) In actions not exceeding £50.	Not less than four clear days before trial (Ord. XVIII. r. 11).
(b) In actions exceeding £50.	Not less than eight clear days before trial (Ord. XXIIA. r. 18).
Notice of objection to use of affidavit.	
(a) In actions not exceeding £50.	Two clear days before trial (Ord. XVIII. r. 11).
(b) In actions exceeding £50.	Four clear days before trial (Ord. XXIIA. r. 18).
Witness, summons to.	To be served within reasonable time (Ord. XVIII. r. 4).
EXECUTION. *See* "Enforcement of Judgments and Orders."	
GUARDIAN AD LITEM.	
Where it is apparent on face of proceedings that defendant is of unsound mind or an infant.	
Appointment of, on defendant's application.	
(a) In actions not exceeding £50.	After service of summons and not less than six clear days before return day (Ord. VII. r. 50 (1)).
(b) In actions exceeding £50.	After service of summons and not less than twelve clear days before return day (Ord. XXIIA. r. 7).
Appointment of, on plaintiff's application.	
(*a*) Service of notice of application and copy of affidavit in support.	Three clear days at least before day for hearing application (Ord. VII. r. 50 (5)).
Where such defect not apparent on face of proceedings.	
Person named by defendant.	On appearance at trial (Ord. VII. r. 51 (1)).
In other cases.	
Application on behalf of defendant.	Within six days of its being made to appear that defendant is infant or of unsound mind (Ord. VII. r. 51 (2)).
(*b*) Application by plaintiff (where none on behalf of defendant).	Three clear days at least before day named in notice for hearing application (Ord. VII. r. 51 (2), and r. 50 (5)).

NOTE: It should be observed that, where an infant is sued for a debt or liquidated demand, paragraphs 4 to 6 of Ord. VII. r. 50 (as to appointment of guardian *ad litem*) do not apply unless otherwise ordered (Ord. VII. r. 50 (7)).

INTERPLEADER.	
Particulars and grounds of claim. To be delivered to high bailiff or left at registrar's office.	Five clear days at least before return day (Ord. XXVII. r. 5).
Execution creditor's notice of admission of claimant's title.	Within four days after receipt of notice of claim from high bailiff (Ord. XXVII. r. 1 (2)).
Execution creditor's notice to high bailiff to withdraw from possession.	The same (Ord. XXVII. r. 1 (2)).
Notice to execution creditor of claim for possession fees.	Three clear days (Ord. XXVII. r. 1 (2)).
Notice of application for protection order by high bailiff.	Three clear days (Ord. XXVII. r. 2).
Claim for damages against high bailiff, notice to registrar and high bailiff.	Five clear days before return day of summons (Ord. XXVII. r. 9).
Where assignor disputes assignment, or defendant has notice of conflicting claim. Application for interpleader summons.	Within five days of service of summons in action (Ord. XXVII. r. 15 (1)).
Particulars of claim or notice of relinquishment.	Five clear days before return day of interpleader summons (Ord. XXVII. r. 15 (5)).
INTERROGATORIES. *See* "Discovery and Inspection."	
ENTRY OF JUDGMENTS OR ORDERS.	
Judgment on default summons where no notice of defence or leave to defend.	Not after two months from date of service (Ord. VII. r. 36).
Ordinary judgment, payment under.	Within fourteen days from date of judgment, unless otherwise ordered (Ord. XXIII. r. 11).
Payment by instalments where no period mentioned in order.	On twenty-eighth day from making of order and on each successive twenty-eighth day (Ord. XXIII. r. 11).
Special judgment, application to judge to settle draft of.	Four days' notice (Ord. XXIII. r. 4).
JUDGMENT SUMMONS. *See* "Enforcement of Judgments and Orders, 3."	
JURISDICTION, OBJECTION TO. *See* "Special Defences, 3."	
JURY. *And see* "Trial."	
Notice of demand of.	Ten clear days before return day (Ord. XXII. r. 1).
Under Employers' Liability Act, 1880.	Fifteen clear days before return day (Ord. XLIV. r. 4).
LIBEL OR SLANDER.	
Notice to registrar of special defence in remitted action.	Five clear days before day appointed for trial (Ord. XXXIII. r. 4).

NEW TRIAL.	
1. Where defendant appears at trial.	
(a) Application.	(i.) On day of trial if parties present; or (ii.) At first court held next after expiration of twelve clear days from trial (Ord. XXXI. r. 1).
(b) Notice of application.	Seven clear days before holding of court (Ord. XXXI. r. 1).
2. Where defendant does not appear at trial.	Application at same or any subsequent court (51 & 52 Vict. c. 43, s. 91).
3. By order of Court of Appeal.	At court held next after twelve clear days from deposit of order with registrar (Ord. XXXII. r. 3).
Entry for trial.	To be filed at time of entry of plaint (Ord. VI. r. 1).
PARTICULARS.	
1. Of claim or demand, except in actions by ordinary summons for debt or damages not exceeding forty shillings (*a*).	
2. Further particulars, notice by defendant of requirement of.	
(a) in actions not exceeding £50.	Five clear days before return day (Ord. VI. r. 7).
(b) in actions exceeding £50.	Fifteen clear days before return day (Ord. XXIIA. r. 6).
Filing and delivery of.	Within two clear days of service upon plaintiff of defendant's notice (Ord. VI. r. 7).
3. Amendment of.	At any time before return day (Ord. XIV. r. 12).
PAYMENT INTO COURT.	
With denial of liability.	
In actions not exceeding £50.	Five clear days before return day (Ord. IX. r. 12 (1)).
In actions exceeding £50.	Ten clear days before return day (Ord. XXIIA. r. 10).
Generally.	
In actions not exceeding £50.	(*b*) At any time less than five clear days before return day (Ord. IX. r. 12 (3)) (*b*).
In actions exceeding £50.	(*b*) At any time less than ten clear days before return day (Ord. XXIIA. r. 10) (*b*).
PETITIONS.	
Under s. 67, sub-ss. 5 and 6 of County Courts Act, 1888, or under the Trustee Act, 1893 (except under s. 42), or under the Settled Land Acts, 1882 to 1890.	
Service of.	Ten days at least before hearing (Ord. XXXVIII. r. 4).
RECEIVER.	
Audit of accounts, notice by registrar to produce accounts.	Seven days (Ord. XIII. r. 6).
Interval between audits.	Not more than one year (Ord. XIII. r. 7).

(*a*) In actions under s. 60 of the Act particulars must be filed, whatever may be the amount of damages claimed (Ord. VI. r. 4).

(*b*) In these cases liability may not be denied, except by leave of the court (Ord. IX. r. 12 (3); Ord. XXIIA. r. 10).

SECURITY.

1. By bond.
   Notice by registrar to sureties of time and place for executing. — Forthwith upon receipt of notice from party of proposed sureties (Ord. XXIX. r. 1).

2. Deposit in lieu of bond.
   Notice by party making deposit to opposite party. — Forthwith upon deposit being made (Ord. XXIX. r. 4).

3. Deposit by plaintiff where defendant resides twenty miles from court.
   Affidavit of merits to be sent by defendant by registered post to registrar.
   (a) In actions not exceeding £50. — Seven clear days before return day (Ord. XII. r. 9).
   (b) In actions exceeding £50. — Ten clear days before return day (Ord. XXIIA. r. 15).
   Deposit to be made by plaintiff. — Within three clear days from date of registrar's notice (Ord. XII. r. 9).

SPECIAL DEFENCES.

1. Counterclaim, Objection to.
   Notice in writing by plaintiff. — Within two clear days after receipt of notice of counterclaim (Ord. X. r. 3).

2. Ejectment and Recovery of Possession.
   (i.) Affidavit of person not named as defendant, but desirous to appear and defend, to be filed.
   (a) Where yearly value or rent does not exceed £50. — In ejectment twelve clear days, in recovery of possession five clear days before return day (Ord. X. r. 4).
   (b) Where yearly value or rent exceeds £50. — In ejectment twenty clear days, in recovery of possession ten clear days, before return day (Ord. XXIIA. r. 11).
   (ii.) Notice by registrar to plaintiff of addition of defendant.
   (a) Where yearly value or rent does not exceed £50. — In ejectment ten clear days, in recovery of possession three clear days, before return day (Ord. X. r. 4).
   (b) Where yearly value or rent exceeds £50. — In ejectment eighteen clear days, in recovery of possession eight clear days, before return day (Ord. XXIIA. r. 11).
   (iii.) Limitation of defence.
   Notice by defendant to registrar.
   (a) Where yearly value or rent does not exceed £50. — In ejectment twelve clear days, in recovery of possession five clear days, before return day (Ord. X. r. 5).
   (b) Where yearly value or rent exceeds £50. — In ejectment twenty clear days, in recovery of possession ten clear days, before return day (Ord. XXIIA. r. 11).

SPECIAL DEFENCES—*Continued.*	
2. Ejectment and Recovery of Possession—*Continued.*	
(iv.) Notice of limitation of defence by registrar to plaintiff.	
(a) Where yearly value or rent does not exceed £50.	In ejectment ten clear days, in recovery of possession three clear days, before return day (Ord. X. r. 5).
(b) Where yearly value or rent exceeds £50.	In ejectment eighteen clear days, in recovery of possession eight clear days, before return day (Ord. XXIIA. r. 11).
3. Objection to jurisdiction under s. 62 of the Act.	
Notice by defendant to registrar and to plaintiff.	
(a) In actions not exceeding £50.	Five clear days before return day (Ord. X. r. 6).
(b) In actions exceeding £50.	Ten clear days before return day (Ord. XXIIA. r. 12).
4. Notice of special defences mentioned in Ord. X. rr. 12 to 20 and 21A, and of set-off or counterclaim.	
(i.) To be filed by defendant.	
(a) In actions not exceeding £50.	Five clear days before return day (Ord. X. r. 10).
(b) In actions exceeding £50.	Ten clear days before return day (Ord. XXIIA. r. 13).
(c) In libel and slander actions.	Five clear days before return day (Ord. XXXIII. r. 4).
(ii.) By registrar to plaintiff.	Within twenty-four hours after receipt from defendant (Ord. X. r. 10).
5. Amendment of special defence.	At any time before return day (Ord. XIV. r. 12).
SUMMONS.	
1. Ordinary summons, not exceeding £50.	
(a) Delivery to bailiff.	
For service in home district.	Fifteen clear days before return day (Ord. VII. r. 9).
For service in foreign district.	Eighteen clear days before return day (*ib.*).
(b) Service (in any district).	Ten clear days before return day (Ord. VII. r. 9).
Where defendant about to remove out of district.	At any time before return day (*ib.*).
(c) Successive summons.	
Issue of.	Not after three months from entry of plaint (Ord. VII. r. 6 (4)).
Notice of service (otherwise than by bailiff).	Within three clear days after day of service, unless time extended by registrar (Ord. VII. r. 29a (3)).

SUMMONS—*Continued.*	
2. Ordinary summons, exceeding £50.	
(a) Issue of.	
For service in home district.	Twenty-five clear days before return day (Ord. XXIIA. r. 2).
For service in foreign district.	Twenty-eight clear days before return day (*ib.*).
(b) Service of (in any district).	Twenty clear days before return day (*ib.*).
(c) Notice of service (otherwise than by bailiff).	Within three clear days after day of service, unless time extended by registrar (Ord. XXIIA. r. 4).
3. Default summons.	
(a) In force for	Twelve months from date (Ord. VII. r. 30).
(b) Service of	Within twelve months from date (*ib.*).
Notice of service (otherwise than by bailiff).	Within three clear days after day of service, unless time extended by registrar (Ord. VII. r. 34).
(c) Successive	
Issue of	Within twelve months from date of default summons (Ord. VII. r. 30).
Service of	Within twelve months from date (*ib.*).
In force for	Twelve months from date (*ib.*).
(d) Striking out.	Where not returned to registrar within twelve months from issue, unless time extended (Ord. VII. r. 35).
(e) Proceedings on, where issued to save Statute of Limitations.	Within one year from service (Ord. VII. r. 37).
(f) Exchange of, for ordinary summons.	Within twelve months of issue (Ord. VII. r. 38).
4. Summons in ejectment.	
(a) Delivery to bailiff.	Forty clear days before return day (Ord. VII. r. 8).
(b) Service of	Thirty-five clear days before return day (*ib.*).
5. Under Employers' Liability Act, 1880.	
(a) Delivery to bailiff.	
For service in home district.	Thirty-five clear days before return day (Ord. XLIV. r. 1).
For service in foreign district.	Thirty-eight clear days before return day (*ib.*).
(b) Service of (in any district).	Thirty clear days before return day (*ib.*).
6. Judgment summons. *See* "Enforcement of Judgments and Orders."	
TAXATION OF COSTS.	
Notice of.	One day (Ord. LIII. r. 2).
Notice of application for review.	Two days, unless by leave (Ord. LIII. r. 47).

THIRD PARTY.	
Defendant to file notice of claim.	
In actions not exceeding £50.	Five clear days before return day (Ord. XI. r. 1).
In actions exceeding £50.	Ten clear days before return day (Ord. XXIIA. r. 14).
TRANSFER OF PROCEEDINGS.	
Notice of application for.	Three clear days, unless judge otherwise orders (Ord. VIII. r. 9).
TRIAL.	
1. Notice.	
(a) Where selected action tried and judgment given in favour of defendant, plaintiffs in stayed actions to give registrar notice to set down for trial.	Within one month from date of judgment (Ord. VIII. r. 5).
(b) Where judgment in selected action given against defendant, plaintiffs in stayed actions to give notice to set down for trial.	Within one month from date of judgment (Ord. VIII. r. 6).
2. Where trial adjourned generally by order for directions.	
(a) Notice to other party of application to set down for trial.	Three clear days, but by consent at any time (Ord. XV. r. 5).
(b) Where so set down, notice of day of trial to be served on all other parties.	
(i.) In actions not exceeding £50.	Eight clear days before day fixed for trial unless otherwise ordered (Ord. XV. r. 6).
(ii.) In actions exceeding £50.	Ten clear days before day fixed for trial, unless otherwise ordered (Ord. XXIIA. r. 16).
3. Remitted Actions. Notice of trial to be given by registrar to parties.	Ten clear days before day fixed for trial (Ord. XXXIII. r. 1).
4. Trial with Jury. Notice of demand for jury to be made in writing to registrar.	
(a) In ordinary actions.	Ten clear days before return day (Ord. XXII. r. 1).
(b) In actions under Employers' Liability Act, 1880.	Fifteen clear days before return day (Ord. XLIV. r. 4a).
5. Postponement of Trial. Notice of application for, to be given to every party affected.	Three clear days (Ord. XV. r. 2).
WITNESS.	
Service of summons to.	Within a reasonable time (Ord. XVIII. r. 4).

APPENDIX D.

ORDER AS TO PRISONS (*a*).

(AMENDED BY ORDER 5TH AUGUST, 1902, AND SUBSEQUENT ORDERS.)

THE COUNTY COURTS (COMMITTALS TO PRISON) ORDER, 1899. DATED AUGUST 31, 1899.

In pursuance of the power vested in me by Section 163 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), I hereby order as follows :—

1. This Order may be cited as the County Courts (Committals to Prison) Order, 1899.

2. The place of imprisonment for prisoners committed either for contempt, or in pursuance of the Debtors Act, 1869 (32 & 33 Vict. c. 62), by the judge of any of the county courts held at the towns or places (in this Order called "Court Towns") named in the first column of the first schedule hereto, shall be the prison or one of the prisons specified, opposite to the name of such court town, in the second column of the same schedule.

3. The Orders of which the dates are specified in the second schedule hereto are hereby revoked.

4. This Order shall come into operation on the First day of October, 1899.

THE FIRST SCHEDULE (*b*).

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.	Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Aberavon	Swansea	Altrincham	Knutsford (for males).
Aberayron	Carmarthen (for males).		Manchester (for females).
	Swansea (for females).	Ambleside	Lancaster.
Aberdare	Swansea.	Ampthill	Bedford (for males).
Abergavenny	Hereford (for males).		Northampton (for females).
	Usk (for females).	Andover	Winchester.
Aberystwith	Carmarthen (for males).	Appleby	Carlisle.
	Swansea (for females.	Arundel	Portsmouth or Lewes.
Abingdon	Oxford.	Ashborne	Derby.
Accrington	Preston.	Ashby-de-la-Zouch	Derby.
Alcester	Warwick.	Ashford	Canterbury.
Aldershot	Winchester.	Ashton-under-Lyne	Knutsford (for males).
Alfreton	Derby.		Manchester (for females).
Alnwick	Newcastle.	Atherston	Warwick.
Alston	Carlisle.	Attleborough	Norwich.
Alton	Winchester.		

(*a*) Owing to the war a number of temporary orders have been issued by the Home Secretary altering the prisons to which for the time being prisoners are to be sent. The list therefore cannot be relied on.

(*b*) Various orders have been issued at different times altering certain of the prisons mentioned in the original schedule. The alterations are here incorporated.

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Axbridge	Shepton Mallet.
Axminster	Exeter.
Aylesbury	Northampton or Oxford.
Aylsham	Norwich.
Bacup	Knutsford (for males). Manchester (for females).
Bakewell	Derby.
Bala	Ruthin (for males). Shrewsbury (for females).
Banbury	Oxford.
Bangor	Carnarvon.
Barnard Castle	Durham.
Barnet	Brixton (for males). Holloway (for females).
Barnsley	Wakefield (for males). Leeds (for females).
Barnstaple	Exeter.
Barrow-in-Furness	Lancaster.
Barry	Cardiff.
Barton-on-Humber	Hull.
Basingstoke	Winchester or Reading.
Bath	Bristol.
Beccles	Norwich.
Bedford	Bedford (for males). Northampton (for females).
Belford	Newcastle.
Bellingham	Newcastle.
Belper	Derby.
Berwick	Newcastle.
Beverley	Hull.
Bicester	Oxford.
Bideford	Exeter.
Biggleswade	Bedford (for males). Holloway (for females).
Bingham	Nottingham or Derby.
Birkenhead	Liverpool.
Birmingham	Birmingham.
Bishop Auckland	Durham.
Bishop's Castle	Shrewsbury.
Bishop's Stortford	Cambridge (for males). Holloway (for females).
Bishop's Waltham	Winchester.
Blackburn	Preston.
Blackpool	Preston.
Blaenavon	Usk.
Blandford	Dorchester (for males). Shepton Mallet (for females).
Bloomsbury	Brixton (for males). Holloway (for females).
Blyth	Newcastle.
Bodmin	Bodmin (for males). Plymouth (for females).
Bolton	Knutsford (for males). Manchester (for females).
Boston	Lincoln (for males). Nottingham (for females).
Bourn	Lincoln (for males). Nottingham (for females).
Bournemouth	Dorchester (for males). Shepton Mallet (for females).
Bow	Brixton (for males). Holloway (for females).
Brackley	Northampton.
Bradford (Wilts)	Shepton Mallet.
Bradford (York)	Leeds.
Braintree	Chelmsford (for males). Ipswich (for females).
Brampton	Carlisle.
Brecon	Brecon (for males). Swansea (for females).
Brentford	Brixton (for males). Holloway (for females).
Brentwood	Chelmsford (for males). Holloway (for females).
Bridgend	Swansea.
Bridgnorth	Shrewsbury.
Bridgwater	Shepton Mallet or Exeter.
Bridlington	Hull.

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Bridport	Dorchester (for males). Shepton Mallet (for females).
Brigg	Lincoln or Hull (for males). Hull (for females).
Brighton	Lewes.
Bristol	Bristol.
Bromley	Maidstone.
Brompton	Brixton (for males). Holloway (for females).
Bromsgrove	Worcester.
Bromyard	Worcester.
Buckingham	Northampton or Oxford.
Builth	Brecon (for males). Shrewsbury (for females).
Bungay	Norwich.
Burnley	Preston.
Burslem	Stafford.
Burton-upon-Trent	Derby.
Bury	Knutsford (for males). Manchester (for females).
Bury St. Edmunds	Ipswich.
Buxton	Derby.
Caistor	Lincoln or Hull (for males). Hull (for females).
Calne	Shepton Mallet.
Cambridge	Cambridge (for males). Ipswich (for females).
Cambridge Borough (Court of Pleas)	Cambridge (for males). Ipswich (for females).
Camelford	Bodmin (for males). Plymouth (for females).
Canterbury	Canterbury.
Cardiff	Cardiff.
Cardigan	Carmarthen (for males). Swansea (for females).
Carlisle	Carlisle.
Carmarthen	Carmarthen (for males). Swansea (for females).
Carnarvon	Carnarvon.
Cerne	Dorchester (for males). Shepton Mallet (for females).
Chapel-en-le-Frith	Derby.
Chard	Exeter.
Cheadle	Stafford.
Chelmsford	Chelmsford (for males). Holloway (for females).
Cheltenham	Gloucester (for males). Worcester (for females).
Chepstow	Bristol.
Chertsey	Brixton (for males). Holloway (for females).
Chesham	Brixton or Northampton (for males). Holloway (for females).
Chester	Knutsford (for males). Liverpool (for females).
Chesterfield	Derby.
Chichester	Portsmouth.
Chippenham	Shepton Mallet.
Chipping Norton	Oxford.
Chipping Sodbury	Bristol.
Chorley	Preston.
Christchurch	Dorchester (for males). Winchester (for females).
Cirencester	Gloucester (for males). Bristol (for females)
Cleobury Mortimer	Worcester.
Clerkenwell	Brixton (for males). Holloway (for females).
Clitheroe	Preston.
Cockermouth	Carlisle.
Colchester	Ipswich.
Colne	Preston.

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Congleton	Stafford.
Consett	Durham.
Conway	Carnarvon.
Corwen	Ruthin (for males). Shrewsbury (for females).
Coventry	Warwick.
Cranbrook	Maidstone.
Crediton	Exeter.
Crewe	Shrewsbury or Stafford.
Crewkerne	Dorchester (for males). Shepton Mallet (for females)
Crickhowell	Brecon (for males). Usk (for females).
Croydon	Brixton (for males). Holloway (for females).
Darlington	Durham.
Dartford	Maidstone.
Darwen	Preston.
Daventry	Northampton.
Deal	Canterbury.
Denbigh	Ruthin (for males). Carnarvon (for females).
Derby	Derby.
Devizes	Shepton Mallet.
Dewsbury	Wakefield (for males). Leeds (for females).
Diss	Norwich.
Dolgelly	Carnarvon.
Doncaster	Wakefield (for males). Hull (for females).
Dorchester	Dorchester (for males). Shepton Mallet (for females).
Dorking	Brixton (for males). Holloway (for females).
Dover	Canterbury.
Downham Market	Cambridge (for males). Norwich (for females).
Droitwich	Worcester.
Dudley	Worcester.
Dunmow	Chelmsford (for males). Ipswich (for females).
Durham	Durham.
Dursley	Gloucester (for males). Bristol (for females).
Easingwold	Northallerton (for males). Leeds (for females).
Eastbourne	Lewes.
East Dereham	Norwich.
East Grinstead	Lewes.
East Retford	Lincoln (for males). Nottingham (for females).
East Stonehouse	Exeter.
Edmonton	Brixton (for males). Holloway (for females).
Ely	Cambridge (for males). Norwich (for females).
Epsom	Brixton (for males). Holloway (for females).
Evesham	Worcester.
Exeter	Exeter.
Eye	Ipswich.
Fakenham	Norwich.
Falmouth	Bodmin (for males). Plymouth (for females).
Farnham	Winchester.
Faringdon	Oxford.
Faversham	Canterbury.
Felixstowe	Ipswich.
Festiniog	Carnarvon.
Flint	Ruthin (for males). Liverpool (for females).
Folkestone	Canterbury.
Fordingbridge	Winchester or Dorchester (for males). Winchester (for females).
Framlingham	Ipswich.
Frome	Shepton Mallet.

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Gainsborough	Lincoln (for males).
	Hull (for females).
Garstang	Lancaster
Gateshead	Newcastle.
Glossop	Knutsford (for males).
	Manchester (for females).
Gloucester	Gloucester (for males).
	Worcester (for females).
Godalming	Brixton (for males).
	Holloway (for females).
Goole	Hull (for males).
	Hull (for females).
Grantham	Lincoln (for males).
	Nottingham (for females).
Gravesend	Maidstone.
Grays Thurrock	Chelmsford (for males).
	Holloway (for females).
Great Driffield	Hull.
Great Grimsby	Hull.
Great Malvern	Worcester.
Great Yarmouth	Norwich.
Greenwich	Brixton (for males).
	Holloway (for females).
Guildford	Brixton (for males).
	Holloway (for females).
Guisborough	Northallerton (for males).
	Durham (for females).
Hadleigh	Ipswich.
Halesworth	Ipswich.
Halifax	Wakefield or Leeds (for males).
	Leeds (for females).
Halstead	Chelmsford (for males).
	Ipswich (for females).
Haltwhistle	Carlisle.
Hanley	Stafford.
Harleston	Norwich.
Harwich	Ipswich.
Haslingden	Preston.
Hastings	Lewes.
Haverfordwest	Carmarthen (for males).
	Swansea (for females).
Haverhill	Cambridge (for males).
	Ipswich (for females).
Hay	Brecon (for males)
	Usk (for females)
Haywards Heath	Lewes.
Hedon	Hull.
Helmsley	Northallerton (for males).
	Leeds (for females)
Helston	Bodmin (for males)
	Plymouth (for females).
Henley-on-Thames	Reading.
Hereford	Hereford (for males).
	Worcester (for females).
Hertford	St. Albans (for males).
	Holloway (for females).
Hexham	Newcastle.
High Wycombe	Reading.
Hinckley	Leicester.
Hitchin	Bedford (for males).
	Holloway (for females).
Holbeach	Lincoln (for males).
	Nottingham (for females).
Holmfirth	Wakefield (for males).
	Leeds (for females).
Holsworthy	Exeter.
Holt	Norwich.
Holyhead	Carnarvon.
Holywell	Ruthin (for males).
	Liverpool (for females).
Honiton	Exeter.
Horncastle	Lincoln (for males).
	Hull (for females).
Horsham	Lewes.
Howden	Hull.
Huddersfield	Wakefield (for males).
	Leeds (ofr females).

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Hungerford	Reading.
Huntingdon	Cambridge (for males). Leicester (for females).
Hyde	Knutsford (for males). Manchester (for females).
Hythe	Canterbury.
Ilkeston	Derby.
Ipswich	Ipswich.
Jarrow	Newcastle.
Keighley	Leeds.
Kendal	Lancaster.
Keswick	Carlisle.
Kettering	Northampton.
Kidderminster	Worcester.
Kingsbridge	Exeter.
King's Lynn	Cambridge (for males). Norwich (for females).
Kingston-on-Hull	Hull.
Kingston-on-Thames	Brixton (for males). Holloway (for females).
Kington	Hereford (for males). Worcester (for females).
Kirkby Lonsdale	Lancaster.
Kirkham	Preston.
Knaresborough	Leeds.
Knighton	Hereford (for males). Shrewsbury (for females).
Lambeth	Brixton (for males). Holloway (for females).
Lampeter	Carmarthen (for males). Swansea (for females).
Lancaster	Lancaster.
Langport	Dorchester (for males). Shepton Mallet (for females).
Launceston	Bodmin (for males). Plymouth (for females).
Ledbury	Hereford (for males). Worcester (for females).
Leeds	Leeds.
Leek	Stafford.
Leicester	Leicester.
Leigh	Knutsford (for males). Manchester (for females).
Leighton Buzzard	Northampton.
Leominster	Hereford (for males). Worcester (for females).
Lewes	Lewes.
Leyburn	Northallerton (for males). Durham (for females).
Lichfield	Stafford.
Lincoln	Lincoln (for males). Nottingham (for females).
Liskeard	Bodmin (for males). Plymouth (for females).
Little Walsingham	Norwich.
Liverpool	Liverpool.
Llandeilo Fawr	Carmarthen (for males). Swansea (for females).
Llandovery	Carmarthen (for males). Swansea (for females).
Llandrindod Wells	Brecon (for males). Shrewsbury (for females).
Llandudno	Carnarvon.
Llanelly	Carmarthen (for males). Swansea (for females).
Llanfyllin	Shrewsbury.
Llangefni	Carnarvon.

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Llangollen	Ruthin (for males). Shrewsbury (for females).
Llanidloes	Shrewsbury.
Llanrwst	Carnarvon.
London, City of	Brixton (for males). Holloway (for females).
London, Lord Mayor's Court	Brixton (for males). Holloway (for females).
Long Eaton	Derby.
Longton	Stafford.
Loughborough	Leicester.
Louth	Lincoln (for males). Hull (for females).
Lowestoft	Norwich.
Ludlow	Hereford (for males). Shrewsbury (for females).
Luton	Bedford (for males). Northampton (for females).
Lutterworth	Leicester.
Lymington	Winchester.
Macclesfield	Knutsford or Stafford (for males). Manchester (for females).
Machynlleth	Carnarvon or Shrewsbury.
Madeley (Salop)	Shrewsbury.
Maidenhead	Reading.
Maidstone	Maidstone.
Maldon	Chelmsford (for males). Ipswich (for females).
Malmesbury	Gloucester (for males). Bristol (for females).
Manchester	Knutsford (for males). Manchester (for females).
Mansfield	Lincoln or Nottingham (for males). Nottingham (for females).
March	Cambridge (for males). Leicester (for females).
Margate	Canterbury.
Market Bosworth	Leicester.
Market Drayton	Shrewsbury.
Market Harborough	Leicester.
Market Rasen	Lincoln (for males). Hull (for females).
Marlborough	Reading.
Marylebone	Brixton (for males). Holloway (for females).
Matlock	Derby.
Melksham	Shepton Mallet.
Melton Mowbray	Leicester.
Menai Bridge	Carnarvon.
Merthyr Tydfil	Brecon (for males). Swansea (for females).
Middlesbrough	Durham and North allerton (for males). Durham (for females).
Midhurst	Portsmouth.
Mildenhall	Cambridge (for males). Ipswich (for females).
Millom	Lancaster.
Mold	Ruthin (for males). Liverpool (for females).
Monmouth	Hereford (for males). Usk (for females).
Morpeth	Newcastle.
Mountain Ash	Swansea.
Nantwich	Shrewsbury or Stafford.
Narberth	Carmarthen (for males). Swansea (for females).
Neath	Swansea.
Newark	Lincoln (for males). Nottingham (for females).

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Newbury	Reading.
Newcastle-in-Emlyn	Carmarthen (for males).
	Swansea (for females).
Newcastle-under-Lyme	Stafford.
Newcastle-upon-Tyne	Newcastle.
Newent	Gloucester (for males).
	Worcester (for females).
New Malton	Northallerton (for males).
	Hull (for females).
Newmarket	Cambridge (for males).
	Ipswich (for females).
New Mills	Derby.
Newnham	Hereford (for males).
	Usk (for females).
Newport (I. of Wight).	Portsmouth.
Newport (Mon.)	Cardiff.
Newport (Salop)	Stafford.
Newport Pagnell	Northampton.
Newton Abbot	Exeter.
Newtown	Shrewsbury.
North Shields	Newcastle.
North Walsham	Norwich.
Northallerton	Northallerton (for males).
	Durham (for females).
Northampton	Northampton.
Northleach	Gloucester (for males).
	Worcester (for females).
Northwich	Knutsford (for males).
	Manchester (for females).
Norwich	Norwich.
Nottingham	Nottingham or Derby.
Nuneaton	Leicester.
Oakham	Leicester.
Okehampton	Exeter.
Oldham	Knutsford (for males).
	Manchester (for females).
Ormskirk	Liverpool.
Oswestry	Shrewsbury.
Otley	Leeds.
Oundle	Northampton.
Oxford	Oxford.
Paignton	Exeter.
Pembroke Dock	Carmarthen (for males).
	Swansea (for females).
Penrith	Carlisle.
Penzance	Bodmin (for males).
	Plymouth (for females).
Pershore	Worcester.
Peterborough	Cambridge or Northampton (for males).
	Northampton (for females).
Petersfield	Portsmouth.
Petworth	Portsmouth.
Plymouth	Exeter.
Pocklington	Hull.
Pontefract	Wakefield (for males).
	Leeds (for females).
Pontypool	Cardiff.
Pontypridd	Cardiff.
Poole	Dorchester (for males).
	Shepton Mallet (for females).
Porth	Cardiff.
Portmadoc	Carnarvon.
Portsmouth	Portsmouth.
Presteign	Hereford (for males).
	Worcester (for females).
Preston	Preston.
Pwllheli	Carnarvon.
Ramsgate	Canterbury.
Rawtenstall	Knutsford (for males).
	Manchester (for females).
Reading	Reading.
Redditch	Worcester.

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Redhill	Brixton (for males). Holloway (for females).
Redruth	Bodmin (for males). Plymouth (for females).
Retford (East)	Lincoln (for males). Nottingham (for females).
Rhayader	Brecon (for males) Shrewsbury (for females).
Rhyl	Ruthin (for males). Carnarvon (for females).
Richmond (Yorkshire)	Northallerton (for males). Durham (for females).
Ringwood	Winchester or Dorchester (for males). Winchester (for females).
Ripon	Northallerton (for males). Leeds (for females).
Rochdale	Knutsford (for males). Manchester (for females).
Rochester	Maidstone.
Romford	Chelmsford (for males). Holloway (for females).
Romney	Canterbury.
Romsey	Winchester.
Ross	Hereford (for males). Usk (for females).
Rothbury	Newcastle.
Rotherham	Wakefield (for males). Derby (for females).
Royston	Cambridge (for males). Holloway (for females).
Rugby	Warwick.
Rugeley	Stafford.
Runcorn	Liverpool.
Ruthin	Ruthin (for males). Carnarvon (for females).
Ryde	Portsmouth.
Rye	Canterbury.
Saddleworth	Knutsford (for males). Preston (for females).
Saffron Walden	Cambridge (for males). Holloway (for females).
St. Albans	St. Albans (for males). Holloway (for females).
St. Asaph	Ruthin (for males). Carnarvon (for females).
St. Austell	Bodmin (for males). Plymouth (for females).
St. Columb Major	Bodmin (for males) Plymouth (for females).
St. Helens	Liverpool.
St. Neots	Bedford (for males). Northampton (for females).
Salford	Knutsford (for males). Manchester (for females).
Salisbury	Winchester.
Sandbach	Stafford.
Sandwich	Canterbury.
Saxmundham	Ipswich.
Scarborough	Hull (for males). Hull (for females).
Seaham Harbour	Durham.
Selby	Leeds (for males). Hull (for females).
Settle	Lancaster.
Sevenoaks	Maidstone.
Shaftesbury	Shepton Mallet.
Sheerness	Canterbury.
Sheffield	Wakefield (for males). Derby (for females).
Shipston-on-Stour	Warwick.

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Shoreditch	Brixton (for males). Holloway (for females).
Shrewsbury	Shrewsbury.
Sittingbourne	Canterbury.
Skipton	Leeds.
Sleaford	Lincoln (for males). Nottingham (for females).
Soham	Cambridge (for males). Ipswich (for females).
Solihull	Warwick.
South Molton	Exeter.
Southport	Liverpool.
South Shields	Newcastle.
Southam	Warwick.
Southampton	Winchester.
Southend	Chelmsford (for males). Holloway (for females).
Southwark	Brixton (for males). Holloway (for females).
Southwark, Court of Record	Brixton (for males). Holloway (for females).
Spalding	Lincoln (for males). Nottingham (for females).
Spilsby	Lincoln (for males). Hull (for females).
Stafford	Stafford.
Stalybridge	Knutsford (for males). Manchester (for females).
Stamford	Lincoln (for males). Nottingham (for females).
Stockport	Knutsford (for males). Manchester (for females).
Stockton-on-Tees	Durham.
Stoke-upon-Trent	Stafford.
Stokesley	Northallerton (for males). Durham (for females).
Stone	Stafford.
Stourbridge	Worcester.
Stow-on-the-Wold	Gloucester (for males). Oxford (for females).
Stowmarket	Ipswich.
Stratford-on-Avon	Warwick.
Stroud	Gloucester (for males). Bristol (for females).
Sturminster	Dorchester (for males). Shepton Mallet (for females).
Sudbury	Chelmsford (for males). Ipswich (for females).
Sunderland	Newcastle.
Swaffham	Norwich.
Swansea	Swansea.
Swindon	Gloucester (for males). Bristol (for females).
Tadcaster	Leeds.
Tamworth	Stafford.
Taunton	Exeter.
Tavistock	Exeter.
Temple Cloud	Bristol.
Tenbury	Hereford (for males) Worcester (for females).
Tenterden	Canterbury.
Tewkesbury	Gloucester (for males). Worcester (for females).
Thame	Oxford.
Thetford	Cambridge or Norwich (for males). Norwich (for females).
Thirsk	Northallerton (for males). Leeds (for females).
Thornbury	Bristol.
Thorne	Hull.
Thrapstone	Northampton.
Tiverton	Exeter.
Todmorden	Preston or Leeds.
Tonbridge	Maidstone.
Torquay	Exeter.

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Torrington	Exeter.
Totnes	Exeter.
Towcester	Northampton.
Tredegar	Cardiff.
Trowbridge	Shepton Mallet.
Truro	Bodmin (for males). Plymouth (for females).
[Stannaries Court]	Bodmin (for males). Plymouth (for females).
Tunbridge Wells	Maidstone.
Tunstall	Stafford.
Ulverston	Lancaster.
Uppingham	Leicester.
Usk	Cardiff or Usk.
Uttoxeter	Stafford.
Uxbridge	Brixton (for males). Holloway (for females).
Wakefield	Wakefield (for males). Leeds (for females).
Wallingford	Reading.
Walsall	Stafford.
Waltham Abbey	Brixton (for males). Holloway (for females).
Wandsworth	Brixton (for males). Holloway (for females).
Wantage	Oxford.
Wareham	Dorchester (for males). Shepton Mallet (for females).
Warminster	Shepton Mallet.
Warrington	Liverpool.
Warwick	Warwick.
Watford	St. Albans (for males). Holloway (for females).
Watton	Norwich.
Welshpool	Shrewsbury.
Wellingborough	Northampton.
Wellington (Salop)	Shrewsbury.
Wellington (Somerset)	Exeter.
Wells	Shepton Mallet.
Wem	Shrewsbury.
West Bromwich	Stafford.
Westbury	Shepton Mallet.
West Hartlepool	Durham.
Westminster	Brixton (for males). Holloway (for females).
Weston-super-Mare	Bristol.
Weymouth	Dorchester (for males). Shepton Mallet (for females).
Whitby	Northallerton (for males). Durham (for females).
Whitchurch	Shrewsbury.
Whitechapel	Brixton (for males). Holloway (for females).
Whitehaven	Carlisle.
Widnes	Liverpool.
Wigan	Preston or Liverpool.
Wigton	Carlisle.
Williton	Exeter.
Wimborne Minster	Dorchester (for males). Shepton Mallet (for females).
Wincanton	Shepton Mallet.
Winchcomb	Gloucester (for males). Worcester (for females).
Winchester	Winchester.
Windsor	Reading.
Winsford	Knutsford (for males). Manchester (for females).
Wirksworth	Derby.
Wisbech	Cambridge (for males). Leicester (for females).
Witney	Oxford.
Wolsingham	Durham.
Wolverhampton	Stafford.
Woodbridge	Ipswich.
Wood Green	Brixton (for males). Holloway (for females).
Woodstock	Oxford.
Wooler	Newcastle.

Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.	Court Town.	Name of Prison to which Prisoners from Court held at such Court Town are to be committed.
Woolwich	Brixton (for males). Holloway (for females).	Yeovil	Dorchester (for males). Shepton Mallet (for females).
Worcester	Worcester.	York	Wakefield (for males). Hull (for females).
Workington	Carlisle.	York (City) Court of Record	Wakefield (for males). Hull (for females).
Worksop	Lincoln (for males). Nottingham (for females).	Ystradyfodwg	Cardiff.
Worthing	Lewes.		
Wrexham	Ruthin (for males). Shrewsbury (for females).		
Wymondham	Norwich.		

THE SECOND SCHEDULE.

1889, December 13.
1890, September 1.
1891, June 13.
1891, November 2.
1894, May 29.
1894, July 16.
1894, August 15.
1894, December 3.
1895, January 14.
1895, February 18.
1895, November 8.
1896, October 26.
1897, January 14.
1898, March 11.
1898, July 20.
1898, July 29.

M. W. RIDLEY,
One of Her Majesty's Principal Secretaries of State.

Whitehall,
August 31st, 1899.

APPENDIX E.

HOLIDAYS IN COUNTY COURT OFFICES.

ORDER OF THE LORD CHANCELLOR OF 3rd DECEMBER, 1897.

I, HARDINGE STANLEY, BARON HALSBURY, Lord High Chancellor of Great Britain, pursuant to the County Courts Act, 1888, and all other powers enabling me in that behalf, Do hereby order that the offices of the County Courts may be closed in every year, until further order, on the following days (not including Sunday), viz. :—On the day before Christmas Day, the Bank Holiday following Christmas Day, and the two days next after the Bank Holiday.

Given under my hand this third day of December, 1897.

(Signed) HALSBURY, C.

ADDITIONAL WHITSUNTIDE HOLIDAYS IN CERTAIN COURTS.

I, THE RIGHT HONOURABLE FARRER, BARON HERSCHELL, Lord High Chancellor of Great Britain, Do hereby order that, until further order, the offices of the County Courts holden at the places mentioned in the first column of the schedule hereto may be closed in every year on the days in Whitsun week respectively mentioned in the second column of the same schedule.

Given under my hand the sixteenth day of March, 1894.

(Signed) HERSCHELL, C.

SCHEDULE.

Places.	Days.
Ashton-under-Lyne and Stalybridge, Altrincham, Birkenhead, Bolton, Bury, Buxton, Chapel-en-le-Frith and New Mills, Glossop, Manchester, Oldham, Rochdale, Runcorn, St. Helens and Widnes, Salford, Warrington, Wigan	Tuesday to Saturday inclusive.
Blackburn, Blackpool, Burnley, Garstang, Lancaster, Preston	Tuesday till Friday inclusive.
Bakewell, Barnsley, Belper, Bingham, Birmingham, Bradford, Burton-on-Trent, Chesterfield, Darlington, Derby, Dewsbury, Doncaster, Durham, East Retford, Goole, Halifax, Hartlepool, Holmfirth, Huddersfield, Hull, Keighley, Kendal, Knaresborough, Leeds, Leicester, Liverpool, Mansfield, Middlesbrough, Newark, Nottingham, Otley, Ormskirk and Southport, Pontefract, Ripon, Rotherham, Scarborough, Seaham Harbour, Selby, Settle, Sheffield, Skipton, Stockton-on-Tees, Sunderland, Tadcaster, Thorne, Todmorden, Wakefield, Wirksworth and Matlock, Worcester, Worksop	Tuesday and Wednesday.
Accrington, Bacup, Haslingden, Hyde, Saddleworth, Stockport	Friday and Saturday.
Kidderminster	Tuesday.

CHAPTER VIII.

RULES OF EVIDENCE, AND SOME GENERAL PRINCIPLES OF LAW.

GENERAL RULES, 906:
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Res inter alios excluded.
Collateral Facts excluded.

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Exceptions.
Parol Explanation of Documents excluded.
Exceptions.
Hearsay not Evidence.
Exceptions.
Res Gestæ.

DOCUMENTARY EVIDENCE, 911
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SEDUCTION, 935

BREACH OF PROMISE OF MARRIAGE, 936.

It will be useful here to consider some of the most usual rules of evidence and principles of law of common occurrence in county courts.

What Facts may be Proved.]—With respect to the question what facts may be proved in an action, the first broad rule is that the evidence must be confined to the issue. And in a county court the usual issue is, whether the plaintiff is entitled to recover in respect of the cause of action alleged in the summons and particulars.

Facts Relevant.]—This rule does not of course mean that no fact can be proved except those actually put in issue, as constituting the cause of action itself; but that no facts can be proved which are not relevant to the issue in the sense that they afford ground for a reasonable inference in favour of a finding one way or the other. What facts are in this sense relevant depends upon no technical rule of law, but upon the general experience of men, the conclusions from which are equally applicable in courts of justice and out of them. Whatever facts are relevant in this sense are in general admissible in evidence in court. But this proposition must be taken subject to certain qualifications.

Res Inter Alios not Admissible.]—Any transaction actually forming a constituent part of the plaintiff's cause of action or of the defendant's defence, may and must of course, be proved in evidence, whoever be the parties to it. A plaintiff making title to land must show the conveyance to himself, whether the defendant was a party to it or not. A man relying upon the act of an agent must prove the fact that he authorised the act, whether the authority was conferred in the presence of his opponent or not. And so it is with any other fact having an actual legal operation upon the rights of the parties. But as to facts not falling within this description the rule of law is that *res inter alios actæ* cannot be given in evidence against one who was a stranger to them. Statements therefore not made in the presence of the party against whom they are sought to be used, transactions to which he was no party, are not admissible against him. A judgment in an action to which he is neither party nor privy cannot be used against him; except, indeed, in the case of what is called a judgment *in rem*, that is to say, a judgment which not only determines facts in controversy between the parties to the cause, but affects status (as in the case of a decree for divorce), or disposes of property (as in the case of a decree for sale in a court of Admiralty), as against all the world. Such a judgment is a fact having an actual legal operation upon rights, and is therefore admissible for or against anybody whose rights it may affect. (As to the distinction between judgments *in rem* and judgments *in personam*, see *Duchess of Kingston's Case*, (1776) 2 Smith's L. C. 754, 12th edit.; *Castrique* v. *Imrie*, (1870) L. R. 4 H. L. 414; 39 L. J. C. P. 350.)

Collateral Matters.]—Again, the law excludes evidence of facts purely collateral to the matter in question. That is to say, when you are inquiring into one circumstance or one transaction, you must not go into another circumstance or transaction, however similar to it, if unconnected with it, in order to draw any inference from the one to the other. Thus, if the question be as to the terms of a contract of sale, one party cannot prove as against the other the terms of other contracts of sale entered into by the latter on other occasions for the purpose of showing that the contract in question contained the same terms (*Hollingham* v. *Head*, (1858) 4 C. B. N. S. 388; 27 L. J. C. P. 241). Nor in order to rebut the implied authority of the servant or agent of a horse-dealer to warrant the soundness of a horse which he is entrusted to sell, is evidence admissible of a practice amongst horse-dealers not to warrant where the horse has been examined and certified to be sound (*Howard* v. *Sheward*, (1866) L. R. 2 C. P. 148; 36 L. J. C. P. 42). Nor if the question be whether A., a brewer, sold good beer to B., is evidence admissible to prove that he sold good beer to C. and D. (*Holcombe* v. *Hewson*, (1810) 2 Camp. 391; 11 R. R. 746).

In order to make such evidence admissible, it is necessary to establish some substantial connection between the two sets of circumstances, such as to show that an inference may properly be drawn from one to the other

as if in the case last cited it were shown that the beer was all of the same brew. If the question be as to the validity of the acceptance of a bill of exchange, and the case turn upon an alleged general authority to accept bills, of which evidence has been given, evidence of an admission of liability upon another bill accepted under the same general authority is admissible (*Llewellyn* v. *Winckworth*, (1845) 13 M. & W. 598; 14 L. J. Ex. 329; 67 R. R. 751). So where the question was as to the ownership of a strip of unenclosed land in a manor on the border of a high road, evidence was admitted that other strips similarly situated on the edge of the same road belonged to the lord as wastes of the manor (*Doe* v. *Kemp*, (1835) 7 Bing. 332 9 L. J. C. P. 102; 33 R. R. 487; (1835) 2 Bing. N. C. 102; 4 L. J. (N. S.) Ex. 331; 33 R. R. 492; and see *Jones* v. *Williams* (1837) 2 M. & W. 326;, 6 L. J. (N. S.) Ex. 107; 46 R. R. 611). And where the question was as to a custom making brokers in the London fruit trade personally liable on their contracts, evidence was admitted of a similar custom in a closely allied trade—the colonial trade—in the same city (*Fleet* v. *Murton*, (1871) L. R. 7 Q. B. 126; 41 L. J. Q. B. 49).

How Facts Admissible are to be Proved.]—Upon the subject of how facts admissible are to be proved, the first great rule of evidence is that the best evidence (the best in degree, not in amount) must be adduced. In considering the meaning and application of this rule, it will be convenient to distinguish, first, the case of documents; secondly, the case of facts other than the contents of documents, which can of course only be proved by human testimony.

Documents must be Produced.]—Whenever the contents of a document are to be proved, the document itself must be produced. Thus, a copy of any instrument is never evidence if the original can be produced; but if the absence of the primary evidence is sufficiently accounted for, secondary or parol evidence of its contents is admitted, and when once the rule is broken through, there are no degrees of secondary evidence; therefore parol evidence of the contents of a document is not excluded by a copy, nor is a second copy by a first.

It follows from this rule, that where a contract has been reduced into writing by the parties it must be produced, and to this there is no exception; and in no case can a witness be asked as to the contents of a written instrument which is neither produced nor its absence accounted for (*M'Donnell* v. *Evans*, (1852) 11 C. B. 930; 21 L. J. C. P. 141); but it is otherwise where the writing is a mere memorandum of an event, as a receipt (*Rambert* v. *Cohen*, (1802) 4 Esp. 213; 6 R. R. 854), or a promise to pay (*Singleton* v. *Barrett*, (1832) 2 C. & J. 368; 1 L. J. (N. S.) Ex. 134; 37 R. R. 742), in such case, the fact may be proved by parol, although a record of it has been reduced into writing.

Exceptions.]—It must be remembered that where the witness is a party to a cause, the above rule does not prevent his being asked as to his knowledge of any fact, although that knowledge is derived solely from written documents (see also as to the cross-examination of a witness respecting previous statements made by him in writing, 17 & 18 Vict. c. 125, ss. 24, 103).

Admissions.]—Parol admissions are primary evidence against the party making them, although they relate to the contents of a written instrument (*Slatterie* v. *Pooley*, (1840) 6 M. & W. 664; 10 L. J. Ex. 8; 55 R. R. 760).

Secondary Evidence.]—Secondary evidence of the contents of a document becomes admissible if the original is shown or appears to be in the possession or power of the opposite party, and he, after notice to produce it,

does not do so (as to notice to produce, see p. 496); or if the original is shown or appears to be in the possession or power of a stranger not legally bound to produce it, and who refuses to produce it after being served with a summons to produce it, or after having been sworn as a witness and asked for the document and having admitted that it is in court; or when the original has been destroyed or lost, and proper search has been made for it (Stephen's Digest of the Law of Evidence, Article 71); or where it is physically impossible to produce the document, as in the case of an inscription on a tombstone; or where the document is abroad and its production cannot be obtained (*Alivon* v. *Furnival*, (1834) 1 C. M. & R. 277; 3 L. J. (N. S.) Ex. 241; 40 R. R. 561); or where the document is a public record, which it would not be convenient to carry about from court to court, such as a register of births or deaths. These are common law exceptions to the general rule requiring the production of the original document. Many statutory provisions facilitating the proof of documents will be noticed further on in this chapter.

Secondary evidence is also admissible when the originals consist of numerous documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection: provided that that result is capable of being ascertained by calculation. In such case secondary evidence is admissible as to the general result of the documents by any person who has examined them and who is skilled in the examination of such documents.

Questions as to the existence of facts rendering secondary evidence of the contents of documents admissible must be decided by the judge.

Parol Explanations of Written Instruments.]—A further branch of this rule is, that parol evidence is not admitted to vary or contradict the terms of a written instrument (*Meres* v. *Ansell*, (1771) 3 Wils. 275; *Adams* v. *Wordley*, (1836) 1 M. & W. 374; 5 L. J. Ex. 158; *Harnor* v. *Groves*, (1855) 15 C. B. 667; 24 L. J. C. P. 53; 100 R. R. 535; *Aynsley, In re*, (1915) 1 Ch. 172; 84 L. J. Ch. 211); but such evidence is admitted to supplement the writing by showing that it was not intended to contain the whole contract, and to add terms consistent with it (*Malpas* v. *L. & S. W. Rail. Co.*, (1866) L. R. 1 C. P. 336; 35 L. J. C. P. 166), or to show a separate parol contract collateral to the written one (*Lindley* v. *Lacey*, (1864) 17 C. B. N. S. 578; 34 L. J. C. P. 7; 142 R. R. 525; *Morgan* v. *Griffith*, (1871) L. R. 6 Ex. 70; 40 L. J. Ex. 46; *Erskine* v. *Adeane*, (1873) L. R. 8 Ch. 756; 42 L. J. Ch. 835), or to show that a writing purporting to be a contract was not intended to be a contract at all (*Pym* v. *Campbell*, (1856) 6 E. & B. 370; 25 L. J. Q. B. 277; 106 R. R. 632; *Rogers* v. *Hadley*, (1863) 2 H. & C. 227; 32 L. J. Ex. 241; 133 R. R. 652), or that the parties have by parol waived or annulled an alleged written agreement (*Goss* v. *Lord Nugent*, (1833) 5 B. & Ad. 58; 2 L. J. (N. S.) K. B. 127; 39 R. R. 392; *Eden* v. *Blake*, (1845) 13 M. & W. 614; 14 L. J. Ex. 194; 67 R. R. 757 (as to the rescission of agreements required to be in writing by the Statute of Frauds, see *Noble* v. *Ward*, (1867) L. R. 1 Ex. 117; 35 L. J. Ex. 81; *Ib.* (1867) L. R. 2 Ex. 135; 36 L. J. Ex. 91)), or that the instrument, whether a deed or simple contract, is void by reason of fraud, illegality or error (*Doe* v. *Allen*, (1799) 8 T. R. 147; *per* Lord Abinger, *Hutchins* v. *Scott*, (1837) 2 M. & W. 816; 6 L. J. Ex. 186; 46 R. R. 770).

Parol evidence of custom or usage is also admissible to annex incidents to written contracts on matters with respect to which they are silent. Hence in commercial contracts evidence of usage is admissible to ingraft terms on the contract (2 Sm. L. C., 12th edit., 620, notes to *Wigglesworth* v. *Dallison*) and to explain the terms of the contract itself (2 Sm. L. C., 12th

edit., 620 *et seq.* ; *Olympia Oil and Cake Co.* v. *Produce Brokers Co.*, (1916) 85 L. J. K. B. 1695). A custom, said to have grown up since the war, to alter in the case of carriage of goods the place of discharge of the goods, and which was inconsistent with the express terms of the written contract, it was held could not be set up (*Sutro & Co.* v. *Heilbut, Symons & Co.*, (1917) 86 L. J. K. B. 330). See also *Miller, Gibb & Co.* v. *Smith and Tyrer, Ltd.*, (1917) 2 K. B. 141. So in contracts between landlord and tenant, evidence is admissible to annex terms to the contract and explain it (2 Sm. L. C., 12th edit., 622, 623 ; *Hutton* v. *Warren*, (1836) 1 M. & W. 466, 475 ; 5 L. J. Ex. 234 ; 46 R. R. 368). Parol evidence may also be given to explain a latent ambiguity ; which means that where a doubt is raised by extrinsic parol evidence, the same is admitted to solve it. Where, however, the ambiguity is patent or apparent on the face of the instrument, no evidence is admissible to explain it.

Hearsay not Evidence.]—The rule which requires the production of the best evidence, when applied to facts other than the contents of a document, is in effect this :—Hearsay is not evidence ; that is, a witness may not relate a fact which he has heard from another, but of which he has no personal knowledge ; since the oath of the first relator, and the opportunity of cross-examining him as a witness, are wanting (Taylor on Evid., Part III. Chap. II. (9th edit.)).

Exceptions.] — To this rule there are, however, exceptions, the most important of which are—*first*, in proving matters of public or general interest, as boundaries of parishes, rights of common or customs, evidence of reputation is admissible (Taylor on Evid., Part III. Chap. III.) ; *secondly*, in questions of pedigree and relationship, statements made by deceased members of the family may be proved (*Ib.* Part III. Chap. IV. ; *Doe* v. *Davies*, (1847) 10 Q. B. 314 ; 16 L. J. Q. B. 218 ; 74 R. R. 299) ; *thirdly*, on a second trial between the same parties, the evidence of a witness examined at a former trial, in which the same question was in issue, and since deceased, may be proved by any one who heard it (*Wright* v. *Doe* d. *Tatham*, (1834) 1 A. & E. 3 ; *Morgan* v. *Nicholl*, (1866) L. R. 2 C. P. 117 ; 36 L. J. C. P. 86) ; *fourthly*, declarations made by persons since deceased against their pecuniary or proprietary interest are admissible, such as admissions by a person that he has no title to an estate or easement, or accounts by which a man charges himself with the receipt of money (*Higham* v. *Ridgway*, (1808) 10 East, 109 ; 2 Smith's L. C. 301 (12th edit.) ; 10 R. R. 235), but the interest must be *proprietary* or *pecuniary* (*Smith* v. *Blakey*, (1867) L. R. 2 Q. B. 326 ; 36 L. J. Q. B. 156), and the relation of an act which would make the relator liable to prosecution is no exception (*Sussex Peerage Case*, (1844) 11 Cl. & Fin. 85, 103 ; 65 R. R. 11). *Lastly*, declarations in the ordinary course of office business or employment, by deceased persons who had no interest in stating an untruth, with respect to acts done by them within the scope of their duty, and which are made contemporaneously with the acts to which they relate (*Price* v. *Lord Torrington*, (1704) Salk. 285 ; 2 Smith's L. C. 294 (12th edit.) ; *Smith* v. *Blakey*, (1867) L. R. 2 Q. B. 326 ; 36 L. J. Q. B. 156), but the whole of the entry is not evidence, but only such part of it as is shown to have been the duty of the deceased person to make (*Chambers* v. *Bernasconi*, (1834) 1 C. M. & R. 347 ; 3 L. J. Ex. 373 ; 40 R. R. 604).

Res Gestæ.]—There are other statements which are admissible in evidence as part of the *res gestæ*, namely, where a statement is made by a person accompanying an act, and which tends to explain or show the intention of such act ; as what a person says on entering on land, on forfeiture, etc.,

departing from his dwelling, secreting himself, or when he does any act the character of which it is material to understand (Taylor on Evid., sect. 584 (9th edit.)); and generally, where any transaction is being inquired into, all that was said at the time is admissible in evidence. See *Tustin* v. *Arnold & Sons*, (1915) 84 L. J. K. B. 2214.

Of Documentary Evidence.—Acts of Parliament.]—Public Acts of Parliament require no proof, as of these the court takes judicial cognizance.

Copies of private or local and personal Acts are evidence, if purporting to be printed by the King's printer.

Royal and other Proclamations.]—Copies of parliamentary journals or royal proclamations, purporting to be printed by the printers of the Crown, or of either House (8 & 9 Vict. c. 113, s. 3), are likewise evidence.

Any proclamation, order or regulation issued by the King, the Privy Council, the Commissioners of the Treasury, the Board of Admiralty, any secretary of state, the Board of Trade, or the Poor Law Board, may be proved *primâ facie* by producing a copy of the *Gazette* purporting to contain the proclamation, order or regulation in question ; or a copy purporting to be printed by the King's printer or the government printer of any colony or possession ; or a copy or extract purporting to be certified to be true, if the document be issued by the King or the Privy Council, by the clerk or any member of the Privy Council ; if by the Treasury, by any commissioner, secretary or assistant secretary of the Treasury ; if by the Admiralty, by a lord of the Admiralty or a secretary ; if by a secretary of state, by any secretary or under secretary of state, and if by the Board of Trade, or Poor Law Board, then by any member of such Board or a secretary or assistant secretary (31 & 32 Vict. c. 37, s. 2).

Records and Proceedings of Courts.]—Records of the superior courts, if the issue be upon their existence, can only be proved by production of the original, or exemplification under the great seal. The proper course was to get the record removed by *certiorari* into Chancery, and that court would send it by *mittimus* to the county court (*Winsor* v. *Dunford*, (1848) 12 Q. B. 603 ; 18 L. J. Q. B. 14). Since the Judicature Acts, the power exercised by the Court of Chancery in this respect may be exercised by any division of the High Court. In other cases, if complete, they may be proved by examined copies of the original (14 & 15 Vict. c. 99, s. 14).

Orders or rules of court, and judges' orders, may, except in the cases already mentioned, be proved in the same way ; the latter may be proved by production, the court being bound to take judicial cognizance of the signature (8 & 9 Vict. c. 113, s. 2).

Convictions must be proved either by production of the record, or under sect. 13 of the Evidence Act, 1851 (14 & 15 Vict. c. 99) (*Mash* v. *Darley*, (1914) 3 K. B. 1226 ; 83 L. J. K. B. 1740).

Judgments of inferior courts must be proved by their production from their proper custody, or by examined copies. All proceedings in county courts may be proved by a copy of the entry thereof in the book of the court, bearing the seal of the court, and purporting to be signed and certified as a true copy by the registrar (51 & 52 Vict. c. 43, s. 28 ; see *ante*, p. 14).

Proceedings or copies of proceedings in bankruptcy appearing to be sealed with the seal of the court, or purporting to be signed by a judge having bankruptcy jurisdiction, are evidence (46 & 47 Vict. c. 52, s. 134).

Banker's Books.]—By the 42 Vict. c. 11 (The Bankers' Books Evidence Act, 1879), subject to the provisions contained in the Act, copies of any entries made in a banker's book may be received in evidence.

Public Entries and Documents.]—Entries in books and documents of a public nature, which it would be inconvenient on public grounds to remove, as parish registers (*Doe* v. *Barnes*, (1834) 1 Moo. & R. 386; 42 R. R. 809), the bank books (*Mortimer* v. *M'Callan*, (1840) 6 M. & W. 58; 9 L. J. Ex. 73; 55 R. R. 503), etc., may be proved by copies; so may inscriptions on tombstones, writings affixed to walls, and the like, which it would be impossible or extremely difficult to produce in court; and whenever by an Act of Parliament any certificate, official or public document, or document or proceeding of any corporation or company, or certified copy of a document, bye-law, entry in a register or other book, or of any other proceeding, is receivable "in evidence of any particular, the same are admissible, provided they purport to be sealed, stamped or signed as required or directed, without any proof of the seal, stamp, or signature, or official character of the person signing, and without any further proof thereof, in every case in which the original could have been received" (8 & 9 Vict. c. 113, s. 1; see *Doe* d. *Hemming* v. *Willetts*, (1849) 7 C. B. 709; 18 L. J. C. P. 240).

Certified copies of entries purporting to be sealed or stamped with the seal of the registrar-general's office, are received as evidence of birth, death or marriage (6 & 7 Will. IV. c. 86, s. 38. There are numerous other statutes allowing certain public documents to be proved by certified copies, which will be found in Taylor on Evid. Part V. Chap. IV. (9th edit.)).

Also, whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof, or extract therefrom, will be admissible in evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed as a true copy or extract by the officer to whose custody the original is entrusted (14 & 15 Vict. c. 99, s. 14. As to objections at the trial to the admission of documents apparently genuine, see *ante*, p. 497).

Ancient Records.]—Ancient records and writings, as ecclesiastical tenures, manor books, and the like, are proved by being produced from the proper custody. It need not be from the most proper custody (*Doe* v. *Keeling*, (1848) 11 Q. B. 884; 75 R. R. 658), provided it is where it would reasonably be expected that they should be found (*Croughton* v. *Blake*, (1843) 12 M. & W. 205; 132 L. J. Ex. 78; 67 R. R. 310), as a terrier from the parish chest or an expired lease from the possession of the lessor (*Plaxton* v. *Dare*, (1829) 10 B. & C. 17; 8 L. J. (O. S.) K. B. 98; *Reg.* v. *Hall*, (1866) L. R. 1 Q. B. 632; 35 L. J. M. C. 251). It is not enough merely to produce them, but a witness must be called to speak to their custody (*Evans* v. *Rees*, (1839) 10 A. & E. 151; 50 R. R. 366).

Wills and Probate.]—Before the passing of 20 & 21 Vict. c. 77, in order to prove a devise of lands, the will must have been produced (*Doe* v. *Calvert*, (1810) 2 Camp. 389; 11 R. R. 745), unless it had been lost, in which case an examined copy was evidence; but now if notice be given, ten days before the trial, of a party's intention to give in evidence the probate or letters of administration with the will annexed, stamped with the seal of the court of probate, or a copy so stamped, and a notice is not given by the other side within four days that he disputes the validity of the devise, the probate is sufficient evidence of the will and of its validity and contents (20 & 21 Vict. c. 77, s. 64). The failure to give the counter notice does not, however, preclude a party from contesting at the trial the validity of the will (*Barraclough* v. *Greenhough*, (1867) L. R. 2 Q. B. 612; 36 L. J. Q. B. 251). Where title to personal property is derived under

a will, it must be proved by the probate, not by the will itself (*Pinney* v. *Pinney*, (1828) 8 B. & C. 335; 6 L. J. K. B. 353; 32 R. R. 400). Administration is proved by the letters. The seal of the court needs no proof (20 & 21 Vict. c. 77, s. 22. As to colonial probates, etc., see 55 Vict. c. 6).

Documents thirty years old.]—The general rule of law is that where any document purporting or proved to be thirty years old, is produced from any custody which the judge in the particular case considers proper, it is presumed that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested; and the attestation or execution need not be proved, even if the attesting witness is alive and in court.

Proper Custody.]—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable (Stephen's Digest of the Law of Evidence, Article 88; see, however, next paragraph for the rule in county courts).

Documents produced from Proper Custody.]—In county courts, however, where *any* documents, which would, if duly proved, be admissible in evidence, are produced to the court from proper custody, they must be read without further proof, if, in the opinion of the court, they appear to be genuine, and no objection is taken to them. If the admission of any document so produced is objected to, the court may adjourn the hearing for proof of the documents, and the party objecting must be ordered to pay the costs caused by the objection, if the documents are afterwards proved unless the judge otherwise orders (Order XVIII. r. 9).

Deeds.]—To prove a deed or other written instrument to which there is an attesting witness, if the instrument is one to the validity of which attestation is requisite, he must be called (*Bowman* v. *Hodgson*, (1867) L. R. 1 P. & M. 362; 36 L. J. P. 124), unless he is dead, insane (*Currie* v. *Child*, (1812) 3 Camp. 283), or absent in a foreign country (*Prince* v. *Blackburn*, (1802) 2 East, 250), or he cannot be found on diligent inquiry (*Cunliffe* v. *Sefton*, (1802) 2 East, 183; *Spooner* v. *Payne*, (1847) 4 C. B. 328; 16 L. J. C. P. 225).

In these and some other cases evidence of the witness's handwriting is admissible, and the handwriting of the party who executed the instrument need not be proved except, perhaps, for the purpose of establishing his identity (*Nelson* v. *Whittall*, (1817) 1 B. & A. 19). A party to a deed requiring attestation cannot also attest it (*Seal* v. *Claridge* (C. A.), (1881) 7 Q. B. D. 516; 50 L. J. Q. B. 316). If the instrument is one to the validity of which attestation is not requisite, the attesting witness need not be called. It may be proved by admission or otherwise, as if there had been no attesting witness (17 & 18 Vict. c. 125, s. 26; see, however, *Re Rice* (C. A.), (1886) 32 Ch. D. 35; 55 L. J. Ch. 799).

When a deed is produced under a notice to produce, the party calling for it must still prove its execution if it be objected to (*Gordon* v. *Secretan*, (1807) 8 East, 548), unless the party who produces it claims a beneficial interest under it (*Pearce* v. *Hooper*, (1810) 3 Taunt. 60).

In accordance with the rule (*supra*) mentioned above, no proof is required if the deed purports, or is proved, to be thirty years old, if it is produced from custody which the judge considers proper; and even if less

than thirty years old a party objecting to a genuine deed, if it comes within Order XVIII. r. 9, may have to pay the costs occasioned by his objection.

Sale of Goods.]—See Sale of Goods Act, 1893, and cases in notes thereto, *ante*, p. 318. In any action founded upon a contract of sale of goods the plaintiff must prove the contract of sale. If the goods be of the value of 10*l.* or upwards, there must, to satisfy the Sale of Goods Act, 1893, be a note or memorandum in writing, or a part payment of the price, or earnest, or an acceptance and actual receipt of part of the goods. Sect. 4 (1).

As to the note or memorandum, what is required is a written document in existence when the action commenced (*Lucas* v. *Dixon* (C. A.), (1889) 22 Q. B. D. 357; 58 L. J. Q. B. 161); whether contemporaneous with the contract or not, whether intended to be a memorial of the contract or not, and whether addressed to the other contracting party or not, signed by the party against whom it is used or his agent, containing a statement of the terms of the contract (*Bailey* v. *Sweeting*, (1861) 9 C. B. N. S. 843; 30 L. J. C. P. 150; 127 R. R. 896; *Gibson* v. *Holland*, (1865) L. R. 1 C. P. 1; 35 L. J. C. P. 5; *Wilkinson* v. *Evans*, (1866) L. R. 1 C. P. 407; 35 L. J. C. P. 224; *Buxton* v. *Rust*, (1872) L. R. 7 Ex. 1, 279; 41 L. J. Ex. 1; *Reuss* v. *Picksley*, (1866) L. R. 1 Ex. 342; 35 L. J. Ex. 218; 143 R. R. 797).

Acceptance and Receipt.]—As to acceptance and receipt, there must be both acceptance and actual receipt. Acceptance without receipt will not satisfy the requirements of the statute (*Farina* v. *Home*, (1846) 16 M. & W. 119); 16 L. J. Ex. 73; 73 R. R. 433); nor will receipt without acceptance, as where goods are delivered to and received by a carrier named by a purchaser (*Hart* v. *Bush*, (1858) E. B. & E. 494; 27 L. J. Q. B. 271; 113 R. R. 744; *Smith* v. *Hudson*, (1865) 6 B. & S. 431; 34 L. J. Q. B. 145; 141 R. R. 459).

Acceptance.]—It is not necessary that the acceptance should be such as would preclude the purchaser from rejecting goods as not according to contract. Acceptance, for the purpose of the statute, means such a dealing with the goods as amounts to a recognition of the existence of the contract, and it may precede delivery (*Morton* v. *Tibbett*, (1850) 15 Q. B. 428; 19 L. J. Q. B. 382; 81 R. R. 666; *Kibble* v. *Gough* (C. A.), (1878) 38 L. T. 204; *Page* v. *Morgan* (C. A.), (1885) 15 Q. B. D. 228; 54 L. J. Q. B. 434). Thus the exercise of any act of ownership, such as marking (*Hodson* v. *Le Bret*, (1808) 1 Camp. 233), weighing (*Simmonds* v. *Humble*, (1862) 13 C. B. N. S. 258; 134 R. R. 526), or re-selling (*Morton* v. *Tibbett*, *supra*), is evidence of acceptance. So, examination and selection of goods prior to delivery is evidence of acceptance (*Cusack* v. *Robinson*, (1861) 1 B. & S. 299; 30 L. J. Q. B. 261; 124 R. R. 566). On a sale by sample, inspection after delivery, in order to see if the bulk corresponds with the sample, is evidence of acceptance (*Page* v. *Morgan*, *supra*). Keeping goods for an unreasonable time after delivery, without giving notice of rejection, is also evidence of acceptance (*Bushel* v. *Wheeler*, (1844) 15 Q. B. 442; 81 R. R. 675; *Norman* v. *Phillips*, (1845) 14 M. & W. 277; 14 L. J. Ex. 306).

Receipt.]—Receipt is the co-relative term to delivery, and to constitute actual receipt for the purposes of the statute it is necessary, on the one hand, that the vendor should have parted with the possession of the goods so as to deprive himself of his right of lien (*Bill* v. *Bament*, (1841) 9 M. & W. 36, 41; 11 L. J. Ex. 81; 60 R. R. 658, *per* Parke, B.; *Baldey* v. *Parker*, (1823) 2 B. & C. 37, 44; 1 L. J. K. B. 229; 26 R. R. 260, *per* Holroyd, J.); on the other, that the purchaser or his agent should have received

them. Where the delivery is made to a carrier selected by the purchaser, the carrier becomes for this purpose his agent (*Hart* v. *Bush*, (1858) E. B. & E. 494; 27 L. J. Q. B. 271; 113 R. R. 744). But if the delivery be to a wharfinger for shipment, or on board a ship not named by the purchaser, there is no receipt for the purpose of the statute (*Hart* v. *Bush*, *supra*; *Meredith* v. *Meigh*, (1853) 2 E. & B. 364; 22 L. J. Q. B. 401; 95 R. R. 603). To make a wharfinger or other person in whose custody goods are placed by the vendor the agent to receive them for the purchaser, there must be, so to speak, an attornment, whereby the wharfinger or other person agrees with the purchaser to hold them for him (*Farina* v. *Home*, (1846) 16 M. & W. 119, 123; 16 L. J. Ex. 73; 73 R. R. 433, *per* Parke, B.; *Meredith* v. *Meigh*, *supra*). Where goods, selected by a purchaser, were, at his request, forwarded by a carrier whom he named to a wharfinger whom he also named, receipt by the wharfinger was held to be a good receipt within the statute (*Cusack* v. *Robinson*, (1861) 1 B. & S. 299; 30 L. J. Q. B. 261; 124 R. R. 566).

Part Payment.]—The retention of money due by purchaser to vendor, though such retention be a term of the contract, is not part payment which satisfies sect. 4, sub-s. 1 of the Sale of Goods Act, 1893 (*Norton* v. *Davison*, (1899) 1 Q. B. 401; 68 L. J. Q. B. 265).

Goods sold and delivered.]—In an action for goods sold and delivered, the contract of sale, either express or implied, and the delivery of the goods to the defendant or his authorised agent must be proved; delivery to a carrier or other person, in pursuance of the contract or with the assent of the defendant, is sufficient for this purpose (*Dutton* v. *Solomonson*, (1803) 3 B. & P. 582; 7 R. R. 883; *Meredith* v. *Meigh*, *supra*). If goods delivered "on sale or return" are not returned within a reasonable time, the sale becomes absolute, and the price may be recovered as for goods sold and delivered (*Moss* v. *Sweet*, (1851) 16 Q. B. 493; 20 L. J. Q. B. 167; 83 R. R. 560). If a wife is living with her husband an order by and delivery to her of goods for household use is *primâ facie* sufficient, though her presumed authority may be disproved (*Jolly* v. *Rees*, (1864) 15 C. B. N. S. 628; 33 L. J. C. P. 177; 137 R. R. 688; *Debenham* v. *Mellon*, (1880) 6 App. Cas. 24). If, however, she live separate from him, the burden of proof is shifted; if the husband allows her a sufficient maintenance, he is not bound by her contracts, though the person supplying the goods had no notice of the allowance (*Mizen* v. *Pick*, (1838) 3 M. & W. 481; 7 L. J. Ex. 153; 49 R. R. 694; *Travers* v. *Sen*, (1917) 33 T. L. R. 202).

If the goods were to be paid for by bill or on credit, it must be shown that the defendant has refused to give the bill, or that the credit has expired (*Webb* v. *Fairmaner*, (1838) 3 M. & W. 473; 7 L. J. Ex. 140; 49 R. R. 690; *Mussen* v. *Price*, (1803) 4 East, 147), or that the bill has been dishonoured (*Fry* v. *Hill*, (1817) 7 Taunt. 397; 18 R. R. 512).

Defence.]—The defendant may deny the sale or delivery, or may show that the credit has not expired. He may prove that the goods were sold by description and do not correspond therewith (*Varley* v. *Whipp*, (1900) 1 Q. B. 513; 69 L. J. Q. B. 333). Having given the proper notice (*ante*, p. 81), he may rely on infancy, coverture, the Statute of Limitations, or his discharge under the Bankruptcy Act. He may show that the goods were sold under an illegal contract, or prove payment, a tender, or (having given the proper notice) a set-off against the plaintiff's claim, or a counterclaim, or may pay money into court. He may likewise prove that the goods were inferior in quality to those bargained for, which will

afford a defence *pro tanto* (*Mondel* v. *Steel*, (1841) 8 M. & W. 858; 10 L. J. Ex. 426; 58 R. R. 890; *Davis* v. *Hedges*, (1871) L. R. 6 Q. B. 687; 40 L. J. Q. B. 276).

Plaintiff's Answer.]—Where infancy is proved, the plaintiff may show in answer that the goods were necessaries (*Peters* v. *Fleming*, (1840) 6 M. & W. 42; 9 L. J. Ex. 81; 55 R. R. 495). In answer to the Statute of Limitations, he may prove part payment or an acknowledgment in writing by the defendant within six years. But the acknowledgment must either contain an actual promise of payment, or else be an unconditional acknowledgment from which a promise may be implied (*Smith* v. *Thorne*, (1852) 18 Q. B. 134; 21 L. J. Q. B. 199; 88 R. R. 555; *Tanner* v. *Smart*, (1827) 6 B. & C. 603; 5 L. J. K. B. 218; 30 R. R. 461; *Chasemore* v. *Turner*, (1875) L. R. 10 Q. B. 500; *Green* v. *Humphreys* (C. A.), (1884) 26 Ch. D. 474; 53 L. J. Ch. 625). An acknowledgment by one of two jointly liable will not take the case out of the statute against the other. (9 Geo. 2, c. 14, sect. 1 (Lord Tenterden's Act)). If part payment is relied on, it must be shown that the payment was on account of the debt for which the action was brought, and that it was made as part payment of a greater debt (*Tippets* v. *Heane*, (1834) 1 C. M. & R. 252; 3 L. J. Ex. 281; 40 R. R. 549; *Burn* v. *Boulton*, (1846) 2 C. B. 476; 15 L. J. C. P. 97; 69 R. R. 508), and that it was a voluntary promise from which a promise to pay the balance may be implied (*Morgan* v. *Rowlands*, (1872) L. R. 7 Q. B. 493; 41 L. J. Q. B. 187). The payment may be by goods (*Hooper* v. *Stephens*, (1835) 4 A. & E. 71; 5 L. J. K. B. 4; 43 R. R. 306). Payment by one of two jointly liable will not take the case out of the statute against both (19 & 20 Vict. c. 97, s. 14).

Goods sold but not delivered.]—Where the property in goods has passed by sale to the purchaser, but there has been no delivery to him, the seller may maintain an action for the price, unless he was bound to deliver before calling for payment and is himself in default (*Atkinson* v. *Bell* (1828) 8 B. & C. 277; 6 L. J. K. B. 258; 32 R. R. 382; *Alexander* v. *Gardner*, (1835) 1 Bing. N. C. 671; 4 L. J. C. P. 223; 41 R. R. 651). The plaintiff is entitled to recover the whole price of the goods (*Hankey* v. *Smith*, (1796) 1 Peake, 57).

Not accepting Goods.] —If the property in the goods has not passed to the buyer, and he refuses to accept them according to contract, the seller's remedy is by action for damages for not accepting. The damages will generally be the difference between the contract price and the market price at the time when the goods ought to have been accepted (*Boorman* v. *Nash*, (1829) 9 B. & C. 145; 7 L. J. K. B. 150; 32 R. R. 607).

The defendant, in addition to the defences already pointed out with respect to actions for the price of goods, may show, where the sale is by sample or description, that he rejected the goods because they did not correspond with the sample or description (*Heilbutt* v. *Hickson*, (1872) L. R. 7 C. P. 438; 41 L. J. C. P. 228; *Bowes* v. *Shand*, (1877) 2 App. Cas. 455, 480; 46 L. J. Q. B. 561; see *per* Lord Blackburn; *Varley* v. *Whipp*, (1900) 1 Q. B. 513; 69 L. J. Q. B. 333). After giving notice of rejection he is not bound to return them, but he must not use them (*Grimoldby* v. *Wells*, (1875) L. R. 10 C. P. 391; 44 L. J. C. P. 203; *Lucy* v. *Mouflet*, (1860) 5 H. & N. 229; 29 L. J. Ex. 110; 120 R. R. 555). Where a sale is of specific goods so that the property passes by the sale, and a warranty is given with them, as in the case of a sale of a horse with a warranty, this is a thing collateral, and its breach does not entitle the

purchaser to reject the things bought (*Street* v. *Blay*, (1831) 2 B. & Ad. 456; 36 R. R. 626; *Couston* v. *Chapman*, (1872) L. R. 2 Sc. App. 250).

Not delivering Goods.]—If the vendor refuses to deliver goods sold, the buyer may bring an action for damages for breach of contract. If the property has passed to the buyer, he may instead sue in trover for a conversion; but the measure of damages in both cases will generally be the same, viz., the difference between the contract price and the market price (*Chinery* v. *Viall*, (1860) 5 H. & N. 288; 29 L. J. Ex. 180; 120 R. R. 588). Where the sale is of specific or ascertained goods the buyer may in an action for breach of contract obtain an order for specific delivery pursuant to the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71, s. 52).

Goods not according to Contract.]—If goods delivered are not according to contract, or if being sold with a warranty the warranty is not complied with, the purchaser may, in an action for damages, recover the difference between the price contracted for and the real value of the goods (*Mondel* v. *Steel*, (1841) 8 M. & W. 858, 870; 10 L. J. Ex. 426; 58 R. R. 890, *per* Parke, B.), together with such special damage as may be applicable to the case (*Hadley* v. *Baxendale*, (1854) 9 Ex. 341; 23 L. J. Ex. 179; 96 R. R. 742). And he may maintain this action even though he has been sued for and has paid the price of the goods (*Davis* v. *Hedges*, (1871) L. R. 6 Q. B. 687; 40 L. J. Q. B. 276).

Services Rendered.]—An action lies when work, either bodily or mental (*Grafton* v. *Armitage*, (1845) 2 C. B. 336; 15 L. J. C. P. 20), has been done by the plaintiff for the defendant under a contract, express or implied. If materials have been provided, a claim for their value may be joined. The plaintiff must prove, first, the express contract, if there be one, if not, the circumstances from which it arises; secondly, the performance on the plaintiff's part; and lastly, the value of the work, by the agreement, if any, if not, generally.

If plaintiff contracts to do particular work for a certain sum, and does not complete it, he cannot generally sue for a *quantum meruit* proportioned to the part of the work which he has done (see *Cutter* v. *Powell*, 2 Smith's Leading Cases, 12th edit., p. 1, and cases there referred to; *H. Dakin & Co., Ltd.* v. *Lee*, (1916) 1 K. B. 566).

Defence.]—The defendant may show in defence that he did not order the work; that credit was not given to him, but to another; that the work was not done; or that the work was done under an entire contract not yet completed (*Sinclair* v. *Bowles*, (1829) 9 B. & C. 92; 7 L. J. K. B. 178; 32 R. R. 589; *Cutter* v. *Powell*, (1795) 2 Sm. L. C. (12th edit.), p. 1; 3 R. R. 185); *Appleby* v. *Myers*, (1867) L. R. 2 C. P. 651); or, if completed, in reduction of the claim, that it was improperly done (*Mondel* v. *Steel*, (1841) 8 M. & W. 858, 870; 10 L. J. Ex. 426; 58 R. R. 890, *per* Parke, B.).

Solicitors.]—Solicitors must prove the retainer by the defendant, that the business was done, and that a signed bill was duly delivered to the defendant one month before action (6 & 7 Vict. c. 73, s. 37). An agency bill is taxable, and must therefore be delivered (*Smith* v. *Dimes*, (1849) 4 Ex. 32; 19 L. J. Ex. 60; 80 R. R. 473). Even if the defendant has assented to the items, if no bill has been delivered plaintiff cannot recover as an account stated (*Brooks* v. *Bockett*, (1847) 9 Q. B. 847; 16 L. J. Q. B. 178). The bill may be proved by a copy, or duplicate original, without notice to produce (*Colling* v. *Treweek*, (1827) 6 B. & C. 394; 5 L. J. K. B. 132; 30 R. R. 366).

Defence.]—The defendant may show that the plaintiff is uncertificated (37 & 38 Vict. c. 68, s. 12), or was not duly admitted (*Hill* v. *Sydney*, (1838) 7 A. & E. 956; 7 L. J. Q. B. 87), or that no signed bill has been delivered (6 & 7 Vict. c. 73, s. 26); but where, as in the last instance, the defence is a statutory defence, notice of special defence must be given under Order X. rr. 10, 18. The plaintiff's negligence is no defence (*Templer* v. *M'Lachlan*, (1806) 2 N. R. Bos. & P. 136; *Cox* v. *Leech*, (1857) 1 C. B. N. S. 617; 26 L. J. C. P. 125; 107 R. R. 829), except it has deprived the defendant of all benefit (*Bracey* v. *Carter*, (1840) 12 A. & E. 373; 54 R. R. 575); even the disbursements cannot then be recovered (*Lewis* v. *Samuel*, (1846) 8 Q. B. 685; 15 L. J. Q. B. 218; 70 R. R. 582). The defendant may prove a special agreement, to charge only costs out of pocket, or the like (*Jones* v. *Reade*, (1836) 5 A. & E. 529; 6 L. J. K. B. 9; 33 & 34 Vict. c. 28, s. 6. As to the enforcement of such agreements, see Part V.), p. 2258.

Medical Practitioners, etc.]—Physicians, surgeons, and medical practitioners, before they can recover for medical or surgical advice, attendance, or for the performance of any operation, or for medicine supplied, must prove registration under the Medical Act (21 & 22 Vict. c. 90, s. 32; 2 Vict. c. 21; 23 & 24 Vict. c. 7); but should they be fellows of a college of physicians, the fellows of which are prohibited by bye-law from recovering at law their expenses, charges, or fees, the defendant may rely on such bye-law as a defence (49 & 50 Vict. c. 48, s. 6; sect. 31 of the 21 & 22 Vict. c. 90, is repealed by 49 & 50 Vict. c. 48, s. 28); notice of the intention to rely on it should, as a statutory defence, be given pursuant to Order X. r. 18. If a duly qualified practitioner allows his assistant, an unqualified person, to attend patients for him, and renders no services himself, he cannot recover anything (*Howarth* v. *Brearley*, (1887) 19 Q. B. D. 303; 56 L. J. Q. B. 543).

Medical Register.]—Registration under the Medical Act is proved by a printed copy of the current annual Medical Register containing the name and qualifications of the plaintiff, or if it does not, by a certified copy of the entry on the register under the hand of the registrar of the council (21 & 22 Vict. c. 90, s. 27).

Apothecaries.] — An apothecary must prove that he has obtained a certificate under the Apothecaries Act (55 Geo. III. c. 194, s. 21), dated prior to the accruing of the claim (*Leman* v. *Houseley*, (1874) L. R. 10 Q. B. 66; 44 L. J. Q. B. 22). The certificate proves itself when produced (14 & 15 Vict. c. 99, s. 8).

Servants.]—Servants suing for wages must prove the retainer or service, and the amount of wages. If a servant quits before the term has expired, or is discharged for good cause, he can recover nothing (*Huttman* v. *Boulnois*, (1826) 2 C. & P. 510; *Lilley* v. *Elwin*, (1848) 11 Q. B. 742; 17 L. J. Q. B. 132; 75 R. R. 623). A general hiring depends on the custom; it is usually for a year (*Beeston* v. *Collyer*, (1827) 4 Bing. 309; 5 L. J. C. P. 180; 29 R. R. 576; *Lilley* v. *Elwin*, *supra*), though the wages are paid monthly (*Fawcett* v. *Cash*, (1834) 5 B. & Ad. 904; 3 L. J. K. B. 113; 39 R. R. 709). In the case of domestic and menial servants the contract may be determined by a month's warning on either side (*Nowlan* v. *Ablett*, (1835) 2 C. M. & R. 54; 4 L. J. Ex. 155). If a master turn away a domestic servant without good cause, he must pay a month's wages, not board wages, in advance (*Robinson* v. *Hindman*, (1800) 3 Esp. 235); this cannot be recovered under a claim for work and labour; the plaintiff

must specially state his cause of action (*Fewings* v. *Tisdal*, (1847) 1 Ex. 295; 11 Jur. 977; 17 L. J. Ex. 18; as to who are menial servants, see *Nowlan* v. *Ablett, supra*; *Todd* v. *Kerrich*, (1852) 8 Ex. 151; 22 L. J. Ex. 1).

A servant wrongfully discharged may treat the contract as rescinded, and sue for his actual service, or on the contract for wrongful dismissal; but having once sued on the contract, he cannot afterwards sue for his work and labour (*Goodman* v. *Pocock*, (1850) 15 Q. B. 576; 19 L. J. Q. B. 410; 81 R. R. 705; see also notes to *Cutter* v. *Powell*, (1795) 2 Sm. L. C. (12th edit.), p. 1; 3 R. R. 185).

Other Liquidated Claims.—Money Lent.] — An action lies for money lent to the defendant, or to a third person, on his sole credit; where money is lent to be repaid by the defendant on demand, or he is to do some act, the action lies if he omits to do the act (*Bristowe* v. *Needham*, (1842) 9 M. & W. 729; 11 L. J. Ex. 278). An I O U is not in itself evidence of money lent, for though it admits money to be due, it does not admit that it became due in any particular way (*Fesenmayer* v. *Adcock*, (1847) 16 M. & W. 449; 73 R. R. 567).

Money Paid.]—Where the plaintiff has paid money for the defendant at his request, either express or implied, he may recover the amount from the defendant. If the plaintiff has paid money and the defendant has expressly or impliedly contracted to indemnify him either wholly or by way of contribution (*Prior* v. *Hembrow*, (1841) 8 M. & W. 873; 58 R. R. 891; *Sedgwick* v. *Daniell*, (1857) 2 H. & N. 319; 27 L. J. Ex. 116; 115 R. R. 561), as in the case of a surety (*Kemp* v. *Finden*, (1844) 12 M. & W. 421; 13 L. J. Ex. 137; 67 R. R. 384; *Reynolds* v. *Wheeler*, (1861) 10 C. B. N. S. 561; 30 L. J. C. P. 350; 128 R. R. 836), or the accommodation acceptor of a bill (*Garrard* v. *Cottrell*, (1847) 10 Q. B. 679); or if the plaintiff has been compelled under a legal obligation to pay money for which the defendant is properly and primarily liable, as where a tenant under threat of distress pays taxes which his landlord is bound to pay (*Exall* v. *Partridge*, (1799) 8 T. R. 308; *Hooper* v. *Treffry*, (1847) 1 Ex. 17; 16 L. J. Ex. 233; 74 R. R. 578); this action lies although the plaintiff is not relieved from any liability by the payment (*Brittain* v. *Lloyd*, (1845) 14 M. & W. 762; 15 L. J. Ex. 43; 69 R. R. 816; *Lewis* v. *Campbell*, (1849) 8 C. B. 541; 19 L. J. C. P. 130; 79 R. R. 623). The plaintiff must prove the express agreement if there be one; if not, those facts from which a promise or legal liability to repay may be implied.

Money Had and Received.]—A claim for money had and received lies to recover money which belongs to the plaintiff, but has been obtained by the defendant by fraud (*Crockford* v. *Winter*, (1807) 1 Camp. 124); by extortion (*Smith* v. *Sleap*, (1844) 12 M. & W. 585); by the improper use of legal process (*Duke de Cadaval* v. *Collins*, (1836) 4 A. & E. 858; 5 L. J. K. B. 171; 43 R. R. 499); by legal duress (*Close* v. *Phipps*, (1844) 7 M. & G. 586; 8 Scott, N. R. 381), or wrongful detention of goods (*Ashmole* v. *Wainwright*, (1842) 2 Q. B. 837; 11 L. J. Q. B. 79; 57 R. R. 817; *Oates* v. *Hudson*, (1851) 6 Ex. 346; 20 L. J. Ex. 284; 86 R. R. 326); or by a refusal to do what the defendant was legally bound to do (*Parker* v. *G. W. Rail. Co.*, (1844) 7 M. & G. 253; 7 Scott, N. R. 835; 13 L. J. C. P. 105). It lies where the defendant has received money paid by the plaintiff under a mistake or forgetfulness of facts (*Kelly* v. *Solari*, (1841) 9 M. & W. 54; 11 L. J. Ex. 10; 60 R. R. 666; *Townsend* v. *Crowdy*, (1860) 8 C. B. N. S. 477; 29 L. J. C. P. 300), but not where it has been paid under a mistake of law (*Marriott* v. *Hampton*, (1797) 7 T. R. 269; 2

Sm. L. C. 403 (12th edit.); 4 R. R. 439); also where it has been paid on a consideration which afterwards fails (*Young* v. *Cole*, (1837) 3 Bing. N. C. 724; 6 L. J. C. P. 201; 43 R. R. 783; *Westropp* v. *Solomon*, (1849) 8 C. B. 345; *Woodland* v. *Fear*, (1857) 7 E. & B. 519; 26 L. J. Q. B. 202; 110 R. R. 707), as a deposit on a bargain which has gone off without plaintiff's fault (*Simmons* v. *Heseltine*, (1858) 5 C. B. N. S. 554; 28 L. J. C. P. 129; 116 R. R. 764), or paid to a company for shares in an abortive scheme (*Walstab* v. *Spottiswoode*, (1846) 15 M. & W. 501; 15 L. J. Ex. 193; 71 R. R. 746). The plaintiff must prove the receipt of the money by the defendant, and his own title to recover it.

Where the person receiving the money is a mere agent of another to whom he is accountable (*Stephens* v. *Badcock*, (1832) 3 B. & Ad. 354; 1 L. J. K. B. 75; 37 R. R. 448; *Bamford* v. *Shuttleworth*, (1840) 11 A. & E. 926; 52 R. R. 542), or where it is paid to a third party who has not acknowledged that he holds it for the plaintiff (*Lilly* v. *Hays*, (1836) 5 A. & E. 548; *Moore* v. *Bushell*, (1857) 27 L. J. Ex. 3) the action does not lie.

Interest is recoverable in any case where there has been an express contract to pay it, and, by the custom of merchants, on bills of exchange (*Page* v. *Newman*, (1829) 9 B. & C. 378; 7 L. J. K. B. 267; 33 R. R. 204). In other cases it may be recovered as damages from the time when the debt was due, if payable by a written instrument at a certain time; if not, from the time when a written demand for it was made with notice that interest would be claimed (3 & 4 Will. IV. c. 42, s. 28). At common law there is no right to interest on a claim for money had and received, but in equity interest can be given in certain circumstances, the principal one being where the defendant has used for his own benefit the money upon which interest is claimed, and the money has been demanded. Interest may be given from the date of such demand (*Barclay* v. *Harris and Cross*, (1916) 85 L. J. K. B. 115). Interest may also be recovered where a promise to pay is to be implied from the usage of trade or other circumstances (see Mayne on Damages (5th edit.), Chap. IV.).

On an account stated, the plaintiff must prove an absolute and unqualified (*Wayman* v. *Hilliard*, (1830) 7 Bing. 101; 9 L. J. (O. S.) C. P. 30) acknowledgment by the defendant of his claim. It ought to appear that the account was stated with reference to former transactions (*Clarke* v. *Webb*, (1834) 1 C. M. & R. 29; 3 L. J. Ex. 300). An oral admission of a debt due for goods sold, is evidence of an account stated, although the agreement of sale was in writing (*Newhall* v. *Holt*, (1840) 6 M. & W. 662; 9 L. J. Ex. 293; 55 R. R. 758). An I O U is *primâ facie* evidence of an account stated with the party to whom it is given, though his name is not on it (*Fesenmayer* v. *Adcock*, (1847) 16 M. & W. 449; 73 R. R. 567; see, however, *Lemere* v. *Elliott*, (1861) 6 H. & N. 656; 30 L. J. Ex. 350; 123 R. R. 755); an award made by an arbitrator is not (*Bates* v. *Townley*, (1848) 2 Ex. 152; 12 Jur. 606; 76 R. R. 544).

In an action on a simple money bond, execution of the bond is all that need be proved; where conditions are annexed, in addition to this a breach must be proved. Interest may be recovered from the day for payment (3 & 4 Will. IV. c. 42, s. 28).

The defendant may prove that he did not execute the bond; and in the case of a money bond, payment before or at the day appointed; or where there is a condition, performance; and in either case, satisfaction and discharge by deed after breach; that the bond was obtained by fraud, or is void by reason of illegality, or has been altered in a material point since execution. He may (having given the proper notice) (see *ante*, p. 81) rely

on infancy, coverture, the Statute of Limitations, or discharge under the Bankruptcy Act.

Award.]—In debt on an *award* the execution of the award, and also the submission of the parties, must be proved (*Brazier* v. *Jones*, (1828) 8 B. & C. 124).

Money-lenders Act, 1900.]—(See Act and cases in notes thereto, *ante*, p. 253). Where proceedings are taken in any court by a money-lender as defined by the Act (63 & 64 Vict. c. 51, s. 6; see *Litchfield* v. *Dreyfus*, (1906) 1 K. B. 584; 75 L. J. K. B. 447) to recover money lent after November 1st, 1900, or to enforce any agreement or security taken after that date in respect of money lent either before or after that date, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent, or the amounts charged for expenses, inquiries, renewals, etc., are excessive, and that the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may re-open the transaction and take an account between the money-lender and the person sued notwithstanding any agreement purporting to close the transaction, and may relieve the person sued from being compelled to make any excessive payment; or if an excessive amount has been already paid may order repayment by the creditor and may set aside any security given, and may order a money-lender who has parted with the security to indemnify the borrower (63 & 64 Vict. c. 51, s. 1, sub-s. 1). The Act does not apply to a contract for a loan made and intended to be performed abroad (*Shrichand* v. *Lacon*, (1906) 22 T. L. R. 245).

Any court in which proceedings might be taken for the recovery of money lent by a money-lender may exercise the powers above mentioned (63 & 64 Vict. c. 51, s. 1, sub-s. 2). See Money Lenders Act, *ante*, p. 253.

On the above section, it was decided in *Wilton* v. *Osborn*, (1901) 2 K. B. 110; 70 L. J. K. B. 507, that the words "or otherwise is such that a court of equity would give relief" were not exclusive of the words "harsh and unconscionable," and that in order to entitle the person sued to relief the transaction must be such as a court of equity would relieve against on the ground of its being harsh and unconscionable. This decision practically limited the effect of sect. 1, sub-s. 1 of the Act to cases where the debtor could theretofore have obtained relief in a court of equity (see *Nevill* v. *Snelling*, (1880) 15 Ch. Div. 679; 49 L. J. Ch. 777). But in the case of *In re A Debtor* (C. A.), (1903) 1 K. B. 705; 72 L. J. K. B. 382; and see *Poncione* v. *Higgins*, (1904) 21 T. L. R. 11, the Court of Appeal held that a transaction might be re-opened which was harsh and unconscionable, although not one in which a court of equity would have given relief before the Act, and *Wilton* v. *Osborne* was in terms overruled. Excessive interest, having regard to the risk or absence of risk, may of itself render a transaction harsh and unconscionable (*In re A Debtor*, *supra*; *Saunders* v. *Newbold*, (1905) 1 Ch. 260; 74 L. J. Ch. 120; (H. L.), *sub nom.* *Samuel* v. *Newbold*, (1906) A. C. 461; 75 L. J. Ch. 705; *Wells* v. *Allott* C. A.), (1904) 2 K. B. 842; 73 L. J. K. B. 1023; *Part* v. *Bond*, (1905) 93 L. T. 49; (C. A.) 94 L. T. 390). But a high rate of interest is not necessarily excessive (*Carringtons* v. *Smith*, (1906) 1 K. B. 79; 75 L. J. K. B. 49).

It has been held at *nisi prius* that the transaction may be re-opened where it appears that, by reason of a term of the bargain understood by the money-lender but not explained to or understood by the borrower, the rate of interest is considerably increased beyond that contemplated by the borrower (*Levene* v. *Greenwood*, (1904) 20 T. L. R. 389).

A transaction of the nature described in s. 2, sub-s. 1 (c), entered into by an unregistered money-lender is unenforceable, and there is no transaction to re-open under the powers of s. 1, sub-s. 1 (*Victorian Daylesford Syndicate* v. *Bott*, (1905) 2 Ch. 624; 74 L. J. Ch. 673; approved in *Bonnard* v. *Dott* (C. A.) (1906), 1 Ch. 740; 75 L. J. Ch. 446). But an unregistered money-lender can maintain an action for damages for fraudulent misrepresentations whereby he was induced to advance money on loan (*Dott* v. *Brickwell*, (1906) 23 T. L. R. 61).

The mere fact that the loan is actually completed at the borrower's office is not an infringement of sect. 2, sub-s. 1 (b), which requires the business to be carried on at the money-lender's registered address and at no other address (*King* v. *Massey*, (1908) 24 T. L. R. 710); it may be carried on through the post (*In re Seed, Ex parte King*, (1910) 1 K. B. 661; 79 L. J. K. B. 421; *Jackson* v. *Price*, (1910) 1 K. B. 143; 79 L. J. K. B. 130). It is not necessary that every stage and every incident of every piece of the money-lending business should be transacted at the registered office. The question is one of fact, not of law (*Kirkwood* v. *Gadd*, (1910) A. C. 422; 79 L. J. K. B. 815; reversing *Gadd* v. *Provincial Union Bank*, (1909) 2 K. B. 353; 78 L. J. K. B. 815). A breach of the provisions of s. 2, sub-s. 1, though it subjects the money-lender to the penalties set out in the section does not make the transaction void. *Finegold* v. *Cornelius*, (1916) 2 K. B. 719; 86 L. J. K. B. 1. By the Money Lenders Act, 1911 (1 & 2 Geo. V. c. 38) notwithstanding anything in s. 2 of the Money Lenders Act, 1900, any agreement with, or security taken by a money-lender shall be, and shall be deemed to have been, valid in favour of any *bonâ fide* assignee or holder for value without notice of any defect due to the operation of that section. The money-lender is liable to indemnify any person prejudiced by this enactment. Such *bonâ fide* holder for value without notice must not himself be a money-lender. See Act, *ante*, p. 258.

Practice.]—The powers of the county court under sect. 1, sub-s. 1 of the Act may be exercised at any stage of the proceedings, whether notice has or has not been given by the defendant of his intention to ask the court to exercise its powers, subject, where no notice has been given, to such terms as to adjournment, furnishing particulars, costs and otherwise as may be just (Order L. r. 33 (1)). An application to the court under sect. 1, sub-s. 2 of the Act must be by action commenced by plaint and summons. Particulars stating concisely the grounds on which the application is made, and the relief claimed, must be filed (Order L. r. 33 (2)).

Allowances of special items of costs under Order LIII. r. 8 (1), may be made (Order LIII. r. 8 (2)).

Carriage of Goods.—Common Carrier.]—A common carrier, that is to say, one whose business is to carry the goods of all persons indiscriminately for hire, is under two obligations; first, he is bound to receive all goods of the class as to which he holds himself out as a carrier duly tendered to him and for which he has room (*a*); and secondly, he is responsible for the safe delivery of goods, loss by the act of God or the King's enemies alone excepted (*Morse* v. *Slue*, (1672) Ventr. 190, 238; notes to *Coggs* v. *Bernard*, (1704) 1 Sm. L. C. 191 (12th edit.); *Liver Alkali Co.* v. *Johnson*, (1872) L. R. 7 Ex. 267; 41 L. J. Ex. 110; 9 Ex. 338; 43 L. J. Ex. 216; *James Morrison & Co.* v. *Shaw, Savill and Albion Co.*, (1916) 85 L. J. K. B. 724). And owners of carrying ships, lightermen, and the like, though they may not

(*a*) See *Littleton Collieries* v. *L. & N. W. Rail. Co.*, (1916) 85 L. J. K. B. 1481.

hold themselves out to take the first goods that offer, and though they may not ply between any fixed termini, may incur the liability of common carriers unless such liability be excluded by contract (*Liver Alkali Co.* v. *Johnson, supra ; Nugent* v. *Smith,* (1876) 1 C. P. D. 19, 423; 45 L. J. C. P. 19, 697; but see *Watkins* v. *Cottell,* (1916) 85 L. J. K. B. 287, where case of *Liver Alkali Co.* v. *Johnson* is considered). *Quære* whether, notwithstanding certain expressions in the cases as to a person "incurring the liability of a common carrier," this liability can be incurred by anyone who is not in fact a common carrier.

Other Carriers.] — In the case of carriers who do not fall within the description of common carriers, or of those who incur the liabilities of common carriers as first stated, the terms of the contract of carriage in each particular case must be looked to (*Scaife* v. *Farrant,* (1875) L. R. 10 Ex. 358; 44 L. J. Ex. 234). In the absence of special contract, the case will fall under the general rule as to a bailee for hire, who is bound to take reasonable care of the goods entrusted to him (*Coggs* v. *Bernard, supra*).

Special Contract.]—Apart from statutory enactment, there was nothing to hinder any carrier, whether a common carrier or not, from limiting or regulating his liability by special agreement. In some respects, however, the common law liability of carriers has been limited, and their common law freedom of contract has been restrained by statute.

As to special contract excluding liability save for non-delivery of any package or consignment, see *Wills* v. *Great Western Rail. Co.,* (1917) A. C. 148: 86 L. J. K. B. 641; *Grand Trunk Rail. of Canada* v. *Robinson,* (1915) A. C. 740; 84 L. J. P. C. 194.

Land Carriers Act.]—By the Carriers Act (11 Geo. IV. & 1 Will. IV. c. 68), which applies to all common carriers by land, the carrier is not liable for the loss of, or injury to, gold or silver coin, English or foreign, gold or silver manufactured or unmanufactured, precious stones, jewellery, watches, clocks, or timepieces, trinkets, bills, bank notes, English, Scotch or Irish, orders, notes or securities for payment of money, English or foreign, stamps, maps, writings, title deeds, paintings, engravings, pictures, gold or silver plate, or plated articles, glass, china, silk, manufactured or unmanufactured and whether wrought up with other materials or not, furs or lace (by 28 & 29 Vict. c. 94, s. 1, machine-made lace is excluded from the Act), contained in any parcel or package (as to what is a parcel or package, see *Whaite* v. *L. & Y. Rail. Co.,* (1874) L. R. 9 Ex. 67; 43 L. J. Ex. 47), if the value of such articles exceeds 10*l.* (as to computation of value, see *Treadwin* v. *G. E. Rail. Co.,* (1868) L. R. 3 C. P. 308; 37 L. J. C. P. 83; *Henderson* v. *L. & N. W. Rail. Co.,* (1870) L. R. 5 Ex. 90; 39 L. J. Ex. 55), unless at the time of delivering such articles for carriage their value and nature has been declared, and the increased charge (which the carrier is authorised to make) paid, or an agreement to pay it accepted (11 Geo. IV. & 1 Will. IV. c. 68, s. 1), if demanded by the carrier (*G. N. Rail. Co.* v. *Behrens,* (1862) 7 H. & N. 950; 31 L. J. Ex. 299). The sender is bound to declare the value and nature of the enumerated goods, wherever the delivery be; otherwise he can in no case recover their value (*Hart* v. *Baxendale,* (1851) 6 Ex. 769; 21 L. J. Ex. 123; 86 R. R. 465). On the other hand, the carrier is bound to post up his rates of extra charge in the warehouse, office or receiving house where such goods are received, and, if required, to give a receipt for the goods, acknowledging them to be insured. If he fail in either of these particulars, and proper notice of value and nature has been given, he is under the common law liabilities and must

refund the extra charge (11 Geo. IV. & 1 Will. IV. c. 68, ss. 2, 3; *Hart* v. *Baxendale, supra*). The Act does not protect a carrier from liability for loss or injury to goods of any kind arising from the felonious acts of his servant (11 Geo. IV. & 1 Will. IV. s. 8; as to what is sufficient evidence of loss by the felony of the carrier's servant, see *Vaughton* v. *L. & N. W. Rail. Co.*, (1874) L. R. 9 Ex. 93; 43 L. J. Ex. 75; *M'Queen* v. *G. W. Rail. Co.*, (1875) L. R. 10 Q. B. 569; 44 L. J. Q. B. 130). And the statute applies only to loss or injury, not to delay (*Hearn* v. *L. & S. W. Rail. Co.*, (1855) 10 Ex. 793; 24 L. J. Ex. 180; 102 R. R. 833).

By the Railway and Canal Traffic Act, a railway or canal company is not liable for a horse to the extent of more than 50*l.*, neat cattle per head than 15*l.*, or a sheep or pig than 2*l.*, unless at the time of delivery a higher value be declared, in which case the company may by way of extra rate charge a reasonable percentage on the declared value. A table of rates must be exhibited as under the Carriers Act. The proof of value lies on the owner (17 & 18 Vict. c. 31, s. 7).

The Land Carriers Act does not restrict the freedom of carriers generally to limit their common law liability by special contract (11 Geo. IV. & 1 Will. IV. c. 68, s. 6); though it provides that no mere general notice shall have that effect (11 Geo. IV. & 1 Will. IV. c. 68, s. 4). But the Railway and Canal Act provides with respect to railway and canal companies not only that they cannot limit their liability by mere notice, but further that they can only do so by such conditions as the court or judge before whom the question arises shall deem reasonable; and those conditions to be operative must be embodied in a special contract in writing (*Peek* v. *N. Staff. Rail. Co.*, (1862) 10 H. L. C. 473; 32 L. J. Q. B. 241; 138 R. R. 250; *Doolan* v. *Mid. Rail. Co.*, (1877) 2 App. Cas. 792) signed by the other party to the contract or the person delivering the goods for carriage (17 & 18 Vict. c. 31, s. 7. As to conditions held reasonable, see *Peek* v. *N. Staff. Rail. Co., supra; Lewis* v. *G. W. Rail. Co.* (C. A.), (1877) 3 Q. B. D. 195; 47 L. J. Q. B. 131; *M. S. & L. Rail. Co.* v. *Brown*, (1883) 8 App. Cas. 703; 53 L. J. Q. B. 124; *Western Electric Co.* v. *Great Eastern Rail. Co.*, (1914) 3 K. B. 554; 83 L. J. K. B. 1326; and *Gunyon* v. *South Eastern and Chatham Railway Committee*, (1915) 2 K. B. 370; 84 L. J. K. B. 1212).

The plaintiff in an action against a carrier must prove the contract of carriage, either express or implied from circumstances, as from the delivery of the goods for carriage. He must show also that he is the right person to sue, that is to say, the person on whose account the contract was made, or for the purpose of establishing a wrong independent of contract, that the goods are his property (*Marshall* v. *York Rail. Co.*, (1851) 11 C. B. 655; 21 L. J. C. P. 34; 87 R. R. 742). In the case of goods sold and despatched to the buyer by carrier, if the property passes to the buyer before or by the delivery, he is in general the person to sue (*Dutton* v. *Solomonson*, (1803) 3 B. & P. 582, 584; 7 R. R. 883; *Dawes* v. *Peck*, (1799) 8 T. R. 330; 4 R. R. 675; *Brown* v. *Hodgson*, (1809) 2 Camp. 36); while if the property remains in the seller he must sue (*Sargent* v. *Morris*, (1820) 3 B. & Ald. 277; 22 R. R. 382; *Coats* v. *Chaplin*, (1842) 3 Q. B. 483; 11 L. J. Q B. 315; 61 R. R. 267; *Coombs* v. *B. & E. Rail. Co.*, (1858) 3 H. & N. 1, 510; 27 L. J. Ex. 401; 117 R. R. 828). The plaintiff must further prove the breach, by loss, injury or delay, or as the case may be. As to general lien on goods for freight see *United States Steel Products Co.* v. *Great Western Rail. Co.*, (1914) 3 K. B. 567; 83 L. J. K. B. 1650. On appeal (1916) 85 L. J. K. B. 1.

The defendant may disprove any of the matters alleged by the plaintiff

or take advantage of the Carriers Act already referred to, if the facts bring him within its protection.

The damages in an action against a carrier are ordinarily limited to such as are the natural and ordinary consequences of his default; exceptional damages arising from special circumstances are not recoverable (*Hadley* v. *Baxendale*, (1854) 9 Ex. 341; 23 L. J. Ex. 179; 96 R. R. 742; *British Columbia Co.* v. *Nettleship*, (1868) L. R. 3 C. P. 499; 47 L. J. C. P. 235; *Horne* v. *Mid. Rail. Co.*, (1873) L. R. 7 C. P. 583; 41 L. J. C. P. 264; 8 C. P. 131; 42 L. J. C. P. 59). Even if the carrier has notice of the special circumstances from which peculiar damage is likely to arise, the better opinion seems to be that that will not increase his liability unless the circumstances show that he undertook to bear the exceptional risk (*British Columbia Co.* v. *Nettleship*; *Horne* v. *Mid. Rail. Co.*, *supra*).

Carriage of Passengers.] — Carriers of passengers are not insurers. A carrier of passengers is only bound to exercise due care, skill and foresight for the safe carriage of those whom he undertakes to carry; and therefore it follows that in order to recover, a passenger who complains must prove negligence. Thus, if a railway accident happen from a defect in a carriage and a passenger is injured, the company are liable or not according as the defect is or is not one which they might and ought to have detected (*Readhead* v. *Mid. Rail. Co.*, (1869) L. R. 2 Q. B. 412; 4 Q. B. 379). It is the same thing if the complaint be of the state of a station or the conduct of the company's servants, alleged to have caused an accident, or of delay in the arrival of a train (*Bridges* v. *North London Rail. Co.*, (1874) L. R. 7 H. L. 213; 43 L. J. Q. B. 151). In case of injury through negligence, a passenger may sue for damages, though his ticket was taken for him by another person, as where a master takes tickets for himself and his servant (see *Longmeid* v. *Holliday*, (1851) 6 Ex. 761, 767; 20 L. J. Ex. 430; 86 R. R. 459, *per* Parke, B.; and *Marshall* v. *York Rail. Co.*, *ante*, p. 924).

The defendant may disprove negligence on his own part, or prove contributory negligence on the part of the plaintiff; that is to say, such negligence that without it the accident would not have occurred, or that he has contracted with plaintiff that he shall not be responsible for negligence. See *Cook* v. *T. Wilson, Sons & Co., Ltd.*, (1916) 35 L. J. K. B. 888; *Richardson, Spence & Co.* v. *Rowntree*, (1894) 63 L. J. Q. B. 283; (1894) A. C. 217; *Stephen* v. *International Sleeping Car Co.*, (1903) 19 T. L. R. 621.

Innkeeper.]—An innkeeper was, at common law, liable for the loss of any goods of his guest in the inn, unless the loss arose from the act of God or the King's enemies, or was caused by the negligence of the guest himself (*Calye's Case*, (1584) 8 Co. 32; 1 Sm. L. C. 131 (12th edit.), and cases collected in notes thereto); that is to say, by the neglect by his guest of such precautions as a man of ordinary prudence would take, but for which neglect the loss would not have occurred (*Calye's Case*, *supra*; *Oppenheim* v. *White Lion Hotel Co.*, (1871) L. R. 6 C. P. 515; 40 L. J. C. P. 231).

By 26 & 27 Vict. c. 41, s. 1, an innkeeper is no longer liable for the loss of or injury to his guests' goods, other than horses or other live animals, or gear appertaining thereto, or carriages, to a greater amount than 30*l.*, unless either the goods have been stolen, lost or injured through the wilful act, default or neglect of the innkeeper or his servants, or the goods have been expressly deposited with him for safe custody. He cannot refuse to accept the custody of goods; but he may require them to be deposited in a proper box or receptacle and sealed up. A copy of sect. 1 must be exhibited in a conspicuous part of the hall (sect. 3).

As to liability for the condition of the premises, see *Maclenan* v. *Segar*, (1917) 2 K. B. 325.

The innkeeper has a lien for his charges upon all goods brought by a guest, as such, to the inn (*Calye's Case, supra*; *Threfall* v. *Borwick*, (1875) L. R. 7 Q. B. 711; 41 L. J. Q. B. 266; 10 Q. B. 210; 44 L. J. Q. B. 87).

Landlord and Tenant.]—In an action for rent the plaintiff must prove the terms of the tenancy and that the rent sued for is in arrear. He must show that he is the person entitled to sue for it, that is to say, under ordinary circumstances, either that he is the original lessor or that he has become the assignee of the reversion. By sect. 25 sub-s. 5 of the Judicature Act, 1873, a mortgagor in possession, or in receipt of the rents of the mortgaged estates, may sue for arrears of rent in his own name (see *Fairclough* v. *Marshall* (C. A.), (1878) 4 Ex. D. 37; 48 L. J. Ex. 146). The plaintiff must further prove that the defendant is the person liable to be sued for the rent, that is to say, that he is the original tenant or the assignee of the term.

If a tenant who has taken premises for his own occupation is prevented, as by law, from occupying them, this is no defence to an action for the reserved rent, unless personal residence was the foundation of the contract (*London and Northern Estates Co.* v. *Schlesinger*, (1916) 1 K. B. 22).

Defence.]—The defendant may deny the tenancy or dispute its terms, or that the rent is in arrear. He cannot deny his landlord's title to grant the lease under which he has held (*Cooke* v. *Loxley*, (1792) 5 T. R. 4; *Delaney* v. *Fox*, (1857) 2 C. B. N. S. 768; 26 L. J. C. P. 248; 107 R. R. 614).

Use and Occupation.]—If there be no express agreement as to the terms of holding, but the defendant has occupied the premises with the assent of the plaintiff, the latter may recover in respect of the use and occupation of the premises for so long a time as the defendant has actually occupied them.

Mesne Profits.]—Should the defendant have been in occupation of the plaintiff's land as a mere wrongdoer, the plaintiff may recover the value of that occupation under the title of mesne profits.

In the case of leases for terms of years, express provisions are almost invariably inserted in the lease determining the liability to keep the premises in repair. A covenant by a tenant to keep a house in tenantable repair imposes upon him the duty of first putting it in repair if it be out of it (*Payne* v. *Haine*, (1847) 16 M. & W. 541; 16 L. J. Ex. 130; 73 R. R. 629). But in construing such a covenant, and ascertaining the extent of the obligation which it imposes, the age, character, and locality of the premises must be taken into account (*Proudfoot* v. *Hart* (C. A.), (1890) 25 Q. B. D. 42; 59 L. J. Q. B. 389). Where there is an express agreement to repair, it is no answer to an action for not repairing that the premises have been destroyed by accidental fire; the tenant who covenanted to repair is in such a case bound to rebuild (*Bullock* v. *Dommitt*, (1796) 6 T. R. 650).

A tenant from year to year, or for any shorter term, is not, in the absence of special agreement, bound to do substantial repairs. His only obligation is to keep the demised premises wind and water tight, to abstain from voluntary waste, that is to say, from doing actual injury to the premises, and make good damage done by himself, such as broken windows and the like (*Auworth* v. *Johnson*, (1832) 5 C. & P. 239; 38 R. R. 821; *Leach* v. *Thomas*, (1797) 7 C. & P. 327; 48 R. R. 790; *Ferguson* v. ——, (1797) 2 Esp. 590; 5 R. R. 757).

In the absence of express agreement a landlord is under no obligation to repair the demised premises, whatever the nature of the tenancy be (*Gott* v. *Gandy*, (1853) 2 E. & B. 845; 23 L. J. Q. B. 1; 95 R. R. 848), but where he lets a part of premises, *e.g.*, an unfurnished flat, but contains control of the roof of the building, he is under an absolute obligation to keep the roof in repair, and is liable to the tenant in damages if the flat is not reasonably habitable by reason of such non-repair (*Hart* v. *Rogers*, (1916) 85 L. J. K. B. 272), but unless in the case of a concealed trap not to the wife or family of the tenant who may suffer bodily injury in consequence of the want of repair (*Groves* v. *Western Mansions, Ltd.*, (1916) 33 T. L. R. 76; *Ryall* v. *Kidwell & Son*, (1913) 3 K. B. 123; 82 L. J. K. B. 877). Such damages cannot, however, be set off against a claim for rent (*ib.*). See *Miller* v. *Hancock*, (1893) 2 Q. B. 177.

Where the landlord does enter into an express agreement to repair, he is entitled to notice by the tenant of any want of repair before he can be liable to make it good (*Makin* v. *Watkinson*, (1870) L. R. 6 Ex. 25; *L. & S. W. Rail. Co.* v. *Flower*, (1875) 1 C. P. D. 77; 40 L. J. Ex. 33).

There is no implied warranty by the landlord on the letting of an unfurnished house that it is fit for habitation (*Hart* v. *Windsor*, (1843) 12 M. & W. 68; 13 L. J. Ex. 129; 67 R. R. 266), unless it is a house or part of a house let for the habitation of persons of the working classes (53 & 54 Vict. c. 70, s. 75; *Walker* v. *Hobbs*, (1889) 23 Q. B. D. 458; 59 L. J. Q. B. 93). On a letting of furnished apartments and furnished houses there is an implied warranty that they are fit for residential purposes (*Smith* v. *Marrable*, (1843) 11 M. & W. 5; 12 L. J. Ex. 223; 63 R. R. 493; *Wilson* v. *Finch Hatton*, (1877) 2 Ex. D. 336; 46 L. J. Ex. 489; *Manchester Co.* v. *Carr*, (1880) 5 C. P. D. 507; 49 L. J. C. P. 809).

An action of debt for *double value* lies, under 4 Geo. II. c. 28, against a tenant who wilfully holds over after the determination of his term, and after a written demand of possession. The plaintiff must prove the demise or tenancy, the determination of the term, the holding over, the demand and notice in writing, and the value; the defendant may show that the plaintiff has waived the demand and notice. Double value does not lie against a weekly tenant (*Lloyd* v. *Rosbee*, (1810) 2 Camp. 453; 11 R. R. 764).

Nearly the same remarks apply to debt for *double rent*, under the 11 Geo. II. c. 19, s. 18, under which a tenant who has given notice of his intention to quit and holds over after the expiration of the notice is liable to double rent. There, however, the notice need not be in writing (*Timmins* v. *Rowlinson*, (1765) 3 Burr. 1603). The statute only applies where the tenant may determine his tenancy by notice, and has properly done so (*Johnstone* v. *Hudlestone*, (1825) 4 B. & C. 922; 4 L. J. K. B. 71; 28 R. R. 505).

Where on expiration of a lease for a term of years the tenant holds over, it is a question of fact in each case whether the tenant holds upon the terms of the original lease (see *Wedd* v. *Porter*, (1916) 2 K. B. 91, 85 L. J. K. B. 1298).

Though the right to enforce covenants goes with the reversionary estate though severed, this is not so in the case of an expired lease, where by agreement the tenant holds over on an oral agreement as yearly tenant, on the terms of the lease so far as they are applicable to such a holding (*Blane* v. *Francis*, (1917) 86 L. J. K. B. 364).

Where tenant holds over with landlord's consent, express or implied, a new tenancy is created. Whether a tenant who holds over on the expiration of a term created by a lease, does so on the terms of the expired lease, is a question of fact (*Wedd* v. *Porter*, *supra*).

Wrongful Distress.]—If a landlord distrains for rent and sells, *no* rent being in arrear or due, the proper remedy is by action under 2 Wm. & M. sess. 1, c. 5, s. 5, for double the value of the things distrained. If *some* rent is due, and the landlord makes an excessive seizure, an action will lie under the Statute of Marlbridge (52 Hen. III. c. 4), whether a tender has or has not been made by the tenant of the sum really due (*Smith* v. *Ashforth*, (1860) 29 L. J. Ex. 259; 121 R. R. 889; *Bail* v. *Mellor*, (1850) 19 L. J. Ex. 279; *Loring* v. *Warburton*, (1858) E. B. & E. 507; 28 L. J. Q. B. 31; 113 R. R. 750; *Fell* v. *Whitaker*, (1871) L. R. 7 Q. B. 120; 41 L. J. Q. B. 78); or after tender, he may proceed by action of replevin (*Glynn* v. *Thomas*, (1856) 11 Ex. 870; 25 L. J. Ex. 125; 105 R. R. 836; *Gulliver* v. *Cosens*, (1845) 1 C. B. 788; 14 L. J. C. P. 215; 68 R. R. 816), or for trespass or conversion. The taking of an excessive distress is in itself unlawful (*Bail* v. *Mellor*, *supra*, *per* Parke, B.; *Fell* v. *Whitaker*, *per* Lush, J., (1871) L. R. 7 Q. B. 125; 41 L. J. Q. B. 78); and if the tenant pays money to get rid of the excessive distress (having first tendered the amount due) he may recover the excess, together with damages for the excessive seizure (*Johnson* v. *Upham*, (1859) 2 El. & El. 250; 28 L. J. Q. B. 252; 119 R. R. 706; *Fell* v. *Whitaker*, *supra*). The same principles apply where the seizure is not excessive; the tenant may at any time tender the amount due, with costs, and on the landlord's refusal to accept it he becomes a trespasser, and an action of trespass or replevin will lie against him. Formerly the landlord had a right to refuse payment after impounding, and to proceed to a sale, but since 2 Wm. & M. sess. 1, c. 5, s. 2, and 11 Geo. II. c. 19, a sale after tender is illegal (*Johnson* v. *Upham*, *supra*).

The mere claim of more rent than is due is not *per se* actionable, and, unless followed by an excessive seizure, no action lies (*Tancred* v. *Leyland*, (1851) 16 Q. B. 669; 20 L. J. Q. B. 316; 83 R. R. 663; *French* v. *Phillips*, (1856) 1 H. & N. 564; 26 L. J. Ex. 82); and if the tenant pays the amount claimed, although excessive, before any seizure, or even after a seizure which is not excessive, without making a tender of the amount really due, he cannot recover the excess (*Glynn* v. *Thomas*, *supra*).

Illegal Distress.]—The distress is illegal if entry is made in an illegal manner, as by breaking open a door or window (see *The Six Carpenters' Case*, (1611) 8 Co. 146a; 1 Sm. L. C. (12th edit.) 145), and in this case the damages recoverable are the whole value of the goods seized without any allowance in respect of the rent in arrear (*Attack* v. *Bramwell*, (1863) 3 B. & S. 520; 32 L. J. Q. B. 146; 129 R. R. 440). Breaking open the outer door makes the proceedings a trespass *ab initio* and wholly void, and the landlord may put in a subsequent distress for the same rent (*Grunnell* v. *Welch*, (1905) 2 K. B. 650; 74 L. J. K. B. 925; (C. A.), (1906) 2 K. B. 555; 75 L. J. K. B. 657). So, if privileged goods or things not distrainable be taken, their value is recoverable (*Harvey* v. *Pocock*, (1843) 11 M. & W. 740; 12 L. J. Ex. 434; 63 R. R. 741; *Keen* v. *Priest*, (1859) 4 H. & N. 236; 28 L. J. Ex. 157; 118 R. R. 406). An action for illegal distress lies against a bailiff under sect. 2 of the Lodgers' Goods Protection Act, 1871 (*Lowe* v. *Dorling*, (1905) 2 K. B. 501; 74 L. J. K. B. 794; (C. A.), (1906) 2 K. B. 772; 75 L. J. K. B. 1019). By a recent Act all goods and chattels of a tenant or his family which would be privileged from seizure under an execution from a county court are privileged from distress (51 & 52 Vict. c. 21, s. 4. This Act introduces some important changes in the law of distress). Chattels which are the property of the Crown are not distrainable for the rent of a subject (*Secretary for War* v. *Wynne*, (1905) 2 K. B. 845; 75 L. J. K. B. 25).

By the Law of Distress Amendment Act, 1908 (8 Edw. VII. c. 53), the

goods of most undertenants or lodgers, or those of any other person other than the tenant of or beneficially interested in the premises, are, subject to the owner of such goods complying with certain conditions, protected from seizure by the superior landlord (sect. 1). See this Act, Part V. *post*, p. 2011.

This Act does not protect the goods comprised in any bill of sale or hire purchase agreement (sect. 4).

Irregular Distress.]—The statutes which regulate the sale by landlords of goods distrained impose certain restrictions upon the right of sale (2 Wm. & M. sess. 1, c. 5, s. 2; 51 & 52 Vict. c. 21), the breach of any one of which is an irregularity, which entitles the tenant to maintain an action if he can prove special damage by reason of the irregularity, but not otherwise (*Rodgers* v. *Parker*, (1856) 18 C. B. 112; 25 L. J. C. P. 220; 107 R. R. 230; *Lucas* v. *Tarleton*, (1858) 3 H. & N. 116; 27 L. J. Ex. 246; 117 R. R. 619; and *Jay's Furnishing Co.* v. *Brand & Co.*, (1915) 1 K. B. 458; 84 L. J. K. B. 867). The landlord upon making the distress must leave a written notice of it, and of the cause of it, upon the premises. He must then wait five days or fifteen if requested (51 & 52 Vict. c. 21, s. 6), to give the tenant time to replevy, if he desire to do so. He must also, if requested, but not otherwise (51 & 52 Vict. c. 21, s. 5), cause the goods to be appraised. He is then at liberty to sell, but only for the best price that can be got, and he must leave the overplus, after satisfying the rent and charges, in the hands of the sheriff, under-sheriff or constable for the owner. If requested, the sale must be at a public auction-room (51 & 52 Vict. c. 21, s. 5).

If a landlord authorises an illegal distress, or actually authorises any other unlawful act of the broker distraining, he is liable to the same extent as if he had acted in person; and having authorised the distress he is responsible for any irregularity on the part of his bailiff in the conduct of it (*Haseler* v. *Lemoyne*, (1858) 5 C. B. N. S. 530; 28 L. J. C. P. 103; 116 R. R. 753). But he is not liable for wholly unlawful acts of the bailiff, committed without his authority, such as distraining upon the wrong premises or seizing fixtures.

Under the Law of Distress Amendment Acts every bailiff employed to distrain must be specially certificated by the county court judge as required by the Act, and the costs of distress are limited. The Act and the rules made under it will be found in Part V., pp. 2010–2017.

Where goods distrained for rent have been impounded on the premises under 11 Geo. II. c. 19, s. 10, it is not requisite that anyone should be left in possession (*Jones* v. *Biernstein*, (1899) 1 Q. B. 470; 68 L. J. Q. B. 267; affirmed (C. A.), (1900) 1 Q. B. 100; 69 L. J. Q. B. 1).

A landlord cannot become the purchaser of goods sold by him under a distress (*Moore, Nettlefold & Co.* v. *Singer Manufacturing Co.*, (1903) 72 L. J. K. B. 577; affirmed (C. A.), (1904) 1 K. B. 820; 73 L. J. K. B. 457).

Injuries to the Person.]—An action lies for an assault, or any other direct personal injury committed by the defendant on the plaintiff, as false imprisonment or obstruction of his personal liberty (*Bird* v. *Jones*, (1845) 7 Q. B. 742; 15 L. J. Q. B. 82; 68 R. R. 564). The plaintiff must prove the commission of the acts complained of by the defendant, and if he claims substantial damages, the damage resulting therefrom. He may recover not only for the damage that has actually occurred, but for such as probably will be the immediate result of the wrongful act (*Hodsoll* v. *Stallebrass*, (1840) 11 A. & E. 301; 9 L. J. Q. B. 132; 52 R. R. 350; *Nicklin* v. *Williams*, (1854) 10 Ex. 259; 23 L. J. Ex. 335).

The defendant may show that the act complained of was done under process or authority of law. In assault he may prove that the plaintiff assaulted him first, and that he, the defendant, only acted in self-defence, or that he acted in defence of his possession of a house or goods. He may also show that the damage sustained by the plaintiff is not as great as he alleges.

If the defendant relies on self-defence, the plaintiff may show in reply that the violence used was excessive, and more than the occasion would justify.

An action lies also for negligence of the defendant or his servants, by which the plaintiff is injured, as by the negligent driving of a carriage or sailing of a ship; so, if the plaintiff were a passenger in a public carriage, although the injury in part arose from the unskilful management of the carriage in which he was (*Rigby* v. *Hewitt*, (1850) 5 Ex. 240; 19 L. J. Ex. 291; 82 R. R. 652). Negligence means the omission to use such care and such precautions as a man of ordinary prudence might be expected to use for the protection of others (*Blyth* v. *Bham. Waterworks*, (1856) 11 Ex. 781; 25 L. J. Ex. 212; 105 R. R. 791). Whether there has in each case been negligence in this sense must always be a question of fact depending upon the particular circumstances of the case. The plaintiff cannot recover if he has been guilty of contributory negligence without which the injury would not have happened, and which substantially was the cause of the accident.

Though a plaintiff may have been guilty of negligence, and although that negligence may in fact have contributed to the accident which is the subject of the action, yet, if the defendant could in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him (*Radley* v. *L. & N. W. Rail. Co.*, (1876) 1 App. Cas. 754; 46 L. J. Ex. 573). Even though such negligence was prior in time to the contributory negligence of the plaintiffs (*British Columbia Electric Railway* v. *Loach*, (1916) 85 L. J. P. C. 23).

"**Duty.**"—Actionable negligence in law arises from the neglect of some duty which is owed to the person injured. See as to this: *Indermaur* v. *Dames* (1866) L. R. 1 C. P. 274; *Smith* v. *London and St. Katherine Docks Co.*, (1868) L. R. 3 C. P. 326; *Marney* v. *Scott*, (1899) 1 Q. B. 986; *Heaven* v. *Pender*, (1883) 11 Q. B. D. 503; *Caledonian Rail. Co.* v. *Mulholland*, (1898) A. C. 216; *Earl* v. *Lubbock*, (1905) 1 K. B. 253; *Elliott* v. *Roberts & Co., Ltd.* (1916) 2 K. B. 518; on appeal (1916) 85 L. J. K. B. 1689.

Master and Servant.]—The plaintiff must prove negligence upon the part of the defendant, or if the act be committed by a servant, prove the service and negligence on his part. A master is not liable for the wanton or malicious acts of his servant done to carry out the servant's own purposes (*M'Manus* v. *Crickett*, (1800) 1 East, 106; 5 R. R. 518; *Croft* v. *Alison*, (1821) 4 B. & A. 590; 23 R. R. 407), nor for unauthorised acts committed by him beyond the scope of his employment (*Joel* v. *Morison*, (1834) 6 C. & P. 501; 40 R. R. 814; *Beard* v. *London General Omnibus Co.*, (1900) 2 Q. B. 530; 69 L. J. Q. B. 895; *Engelhart* v. *Farrant & Co.*, (1897) 1 Q. B. 240; 66 L. J. Q. B. 122; *Ormiston* v. *Great Western Rail. Co.*, (1917) 1 K. B. 598; but the cases run very fine; see *Ricketts* v. *Thomas Tilling, Ltd.*, (1915) 1 K. B. 644; 84 L. J. K. B. 342). But for any act of the servant in the course of his employment, and done to effect the purpose for which he is engaged, the master is liable, even sometimes though the act be wilful and malicious and contrary to express orders (*Limpus* v. *London Omnibus Co.*, (1862) 1 H. & C. 526; 32 L. J. Ex. 34; see as to the

Employers' Liability Act, Part IV.). The owner of a vehicle may be liable for the negligence of the person he allows to drive or be in charge of it, though such person is not his servant (*Reichardt* v. *Shard*, (1915) 31 T. L. R. 24). *Quære*, whether a licensed drover is the servant of the person whose cattle he is driving (see *Milligan* v. *Wedge*, (1842) 12 A. & E. 737). If he is unlicensed he is for the time being the servant of the person who so employs him (see *Turnbull* v. *Wieland*, (1917) 33 T. L. R. 143.

Injury by Ferocious Animal.]—The owner of a wild animal, or of a tame one, if he knows of its ferocity or habit of doing injury, is answerable for all damage ensuing by its acts. But he is not liable without proof of such knowledge (*May* v. *Burdett*, (1846) 9 Q. B. 101; 16 L. J. Q. B. 64; 72 R. R. 189; *Cox* v. *Burbidge*, (1863) 13 C. B. N. S. 430; 32 L. J. C. P. 89; *Worth* v. *Gilling*, (1866) L. R. 2 C. P. 1; see *Baker* v. *Snell*, (1908) 2 K. B. 825; 77 L. J. K. B. 1090; *Heath's Garage, Ltd.* v. *Hodges*, (1916) 85 L. J. K. B. 485, and compare with this case *Turner* v. *Coates*, (1917) 1 K. B. 670; 86 L. J. K. B. 321; in Court of Appeal, (1916) 2 K. B. 370; 85 L. J. K. B. 1289). The owner of a dog which injures cattle or sheep is responsible in damages without proof of knowledge of the dog's mischievous propensity, or of neglect on the part of the owner (28 & 29 Vict. c. 60).

Trespass by Animals.]—Owners of animals must keep them from trespassing from their land to the land of adjoining owners at their peril, unless the owner of the adjoining land is bound by covenant or prescription to keep the fences between such lands in repair. The covenant must be one which creates a duty to the adjoining landowner. A covenant with his landlord is not sufficient (*Holgate* v. *Bleazard*, (1917) 1 K. B. 443; 86 L. J. K. B. 270).

Action by Executors of Persons Killed.]—When a person is killed by the wrongful act, neglect or default of another, an action may be brought in the name of the deceased's executor or administrator for the benefit of the deceased's wife, husband, parent, or child, amongst whom the damages are to be divided as the jury direct (9 & 10 Vict. c. 93, s. 1; see Part IV.). This Act, passed in 1845 and known as the Fatal Injuries Act, or more popularly Lord Campbell's Act, made the first inroad and to a limited extent only, on the common law principle that the death of a human being could not be complained of as an injury in a civil court (see *Commissioners for Executing the Office of Lord High Admiral of the United Kingdom* v. *Owners of Steamship Amerika*, (1917) A. C. 38; 86 L. J. K. B. 58), a decision of the House of Lords finally establishing the principle laid down in *Baker* v. *Bolton*, (1808) 1 Camp. 493.

Injuries to Land.]—An action of trespass lies when a trespass has been committed by the defendant or his agent, or by his cattle, on land of which the plaintiff can show that he is in immediate possession. The action will lie for any infringement of the plaintiff's exclusive enjoyment of the land, however trifling, whether any pecuniary loss be shown or not. The general owner of land may maintain trespass for injury to the subsoil, though he has let the herbage to another (*Cox* v. *Glue*, (1848) 5 C. B. 533; 17 L. J. C. P. 162; 75 R. R. 788). The ownership of wastes, rivers, walls, ditches, etc., is proved either by documentary evidence of title or acts of ownership. The plaintiff must prove that the trespass was committed by the defendant or his agent duly authorised, either by previous command or subsequent assent; in the latter case, the agent at the time of the trespass must have assumed to act for defendant (*Wilson* v. *Tumman*, (1843) 6 M. & G. 236;

6 Scott, N. R. 894 ; 12 L. J. C. P. 306 ; 64 R. R. 770). Evidence should be adduced of the extent and amount of damage done.

The defendant may disprove the commission of the trespass, either by denying the fact, or showing that it occurred by plaintiff's fault, as by defect of fences (but only where a duty exists to fence and such duty is owed to the defendant (see *Holgate* v. *Bleazard*, *ante*, p. 931)); or may show that the plaintiff was not possessed of the place in question at the time when the trespass was committed ; or he may dispute the plaintiff's title, or set up any title in himself which would limit the plaintiff's (as to the jurisdiction of the court to try the case where such a defence is raised, see sects. 56, 61, 64). He may show leave and licence from the plaintiff, express or implied from previous circumstances He may also show satisfaction to the plaintiff by payment or otherwise, or a release, or may rely on the Statute of Limitations.

If the plaintiff be not in present possession of the land an injury to which is complained of, but only entitled thereto in reversion, as, for instance, if he be the owner in fee and the land is leased, it is not every wrong or trespass that will entitle him to an action. He must prove that some injury has been done of a permanent character, such as to depreciate the value of the reversion (*Baxter* v. *Taylor*, (1832) 4 B. & Ad. 72 ; 2 L. J. K. B. 65 ; 38 R. R. 227 ; *Simpson* v. *Savage*, (1856) 1 C. B. N. S. 347 ; 26 L. J. C. P. 50 ; 107 R. R. 688 ; *Metropolitan Association* v. *Petch*, (1858) 5 C. B. N. S. 504 ; 27 L. J. C. P. 330 ; 116 R. R. 740).

An action lies for injuries and obstructions to incorporeal hereditaments, as disturbance of common or right of way, diversion of watercourses, obstructing the light around plaintiff's house. In all these cases the plaintiff must prove the existence of the right on his part, the obstruction thereof by the defendant, and the amount of damage he has sustained. But damage is not essential to give rise to a right of action for the infringement of an incorporeal right (*Harrop* v. *Hirst*, (1868) L. R. 4 Ex. 43 ; 38 L. J. Ex. 1).

The defendant may give in evidence the same defences which have been mentioned under trespass to land.

Injuries to Goods.]—Any direct act of interference with the plaintiff's exclusive possession and enjoyment of goods, any act done directly and wrongfully to the goods themselves, though it does not go the length of an actual appropriation of them to another, is a trespass for which an action will lie (*Fouldes* v. *Willoughby*, (1841) 8 M. & W. 540 ; 10 L. J. Ex. 364 ; 58 R. R. 803). And the plaintiff will recover as damages pecuniary compensation for the injury he has sustained.

Negligence.] —If an injury to goods be done by the defendant's negligence, an action will also lie ; and the principles laid down in the case of injuries to the person apply.

Conversion of Goods.] —If the plaintiff complains that the defendant has deprived him of his goods and appropriated them to his own use or that of some other person, this is more than a mere trespass, and entitles the plaintiff to recover as damages the whole value of the goods (*France* v. *Gaudet*, (1871) L. R. 6 Q. B. 199 ; 40 L. J. Q. B. 121).

A special property, as that of a bailee, is sufficient to support the action (*Nicholls* v. *Bastard*, (1835) 2 C. M. & R. 659 ; 5 L. J. Ex. 7), and against a wrong-doer mere possession, as that of a finder, is enough (*Armory* v. *Delamirie*, (1722) 1 Str. 504 ; 1 Sm. L. C. 396 (12th edit.) ; *Bridges* v. *Hawkesworth*, (1851) 15 Jur. 1079 ; 21 L. J. Q. B. 75 ; and see *South Staffordshire Waterworks Co.* v. *Sharman*, (1896) 2 Q. B. 44 ; 65 L. J. Q. B. 460).

The conversion may be actual, as by a wrongful sale, in which case no demand by the plaintiff need be proved (*Edwards* v. *Hooper*, (1843) 11 M. & W. 363; 12 L. J. Ex. 304), or by a refusal to deliver them when demanded (*Burroughes* v. *Bayne*, (1860) 3 H. & N. 296; 29 L. J. Ex. 185); this, however, is not of itself a conversion, but only evidence of such: in the latter case the defendant must have the power to deliver them when they are asked for (*Edwards* v. *Hooper*, *supra*); he is not guilty of a conversion because he does not at once restore the chattel, when it is not at the moment in his possession, and under his own control (*Canot* v. *Hughes*, (1836) 2 Scott, 663: 5 L. J. C. P. 177: *Towne* v. *Lewis*, (1849) 7 C. B. 608; 78 R. R. 787) *Clayton* v. *Le Roy*, (1911) 2 K. B. 1031. The plaintiff is entitled to recover as damages the value of the goods, and damages for their detention.

Defence —Lien.]— The defendant may disprove the plaintiff's property in the goods, or the conversion, or may show that he has delivered them up to the true owner (*Cheeseman* v. *Exall*, (1851) 6 Ex. 341; 20 L. J. Ex. 209; 86 R. R. 321), or he may give in evidence the Statute of Limitations, or show that he has a *lien* (see the proceedings open to a plaintiff against whom a *lien* is set up, *ante*, p. 458), general or particular, for work done upon the goods or by a special agreement with the plaintiff. Bankers, innkeepers, wharfingers, attorneys, factors, dyers, calico printers, packers and insurance brokers, have by usage liens upon goods entrusted to their charge, for their general balance. Carriers have a lien which terminates as soon as the goods are delivered, but whether general or particular is disputed. Generally a person who takes the article of another, with his consent, under control to work upon it for reward, as by repairing it, or doing something to benefit it, *e.g.*, a farrier who has shod a horse, the owner of a stallion which has covered a mare—has a lien upon the article for his reasonable charges (*Scarfe* v. *Morgan*, (1838) 4 M. & W. 270; 7 L. J. Ex. 324; 51 R. R. 568). Though a person cannot generally so act as to give a lien on goods the property of another, yet in some cases, even where an article sent for repair is not sent by the owner, a lien may arise against the owner. For such a case see *Green* v. *All Motors, Ltd.*, (1917) 1 K. B. 625; 86 L. J. K. B. 590. But where nothing has been *done on* the chattel there is no lien. Hence a livery stable keeper has no lien on a horse (*Yorke* v. *Grenaugh*, (1703) Ld. Ray. 866, 868; *Judson* v. *Etheridge*, (1833) 1 C. & M. 743; 2 L. J. Ex. 300; *Orchard* v. *Rackstraw*, (1850) 19 L. J. C. P. 303; 82 R. R. 509). But an innkeeper has a lien on a horse brought by a guest, though it is occasionally taken out (*Allen* v. *Smith*, (1862) 12 C. B. N. S. 638; 31 L. J. C. P. 306; 133 R. R. 458). An unpaid vendor of real property who has conveyed an estate has no lien on the title deeds (*Goode* v. *Burton*, (1847) 1 Ex. 189; 16 L. J. Ex. 309; 74 R. R. 633), nor a conveyancer on papers left in his possession (*Steadman* v. *Hockley*, (1846) 15 M. & W. 553; 15 L. J. Ex. 332). A lien cannot generally exist where possession is not continued, as where goods are to be paid for on credit, or where, as in the agistment of milch cows, the owner must by necessary implication have the occasional possession for the purpose of milking (*Jackson* v. *Cummins*, (1839) 5 M. & W. 342; 8 L. J. Ex. 265; 52 R. R. 737).

Detinue.]—Not only may a plaintiff who has been wrongfully deprived of his goods recover their value, but further, an action, known from early times as an action of detinue, lies for the recovery of the goods themselves together with damages for their detention.

The action lies against a person who wrongfully detained the goods, although he has since improperly parted with their possession (*Jones* v. *Dowle*, (1841) 9 M. & W. 19; 11 L. J. Ex. 52; 60 R. R. 652).

With respect to the evidence, what has been said with respect to the conversion of goods is applicable. The judgment in detinue is, however, materially different from that in other actions; it being not merely for damages for the injury sustained by the conversion, but in the alternative that the chattel shall be restored or the value paid; therefore, where there are separate parcels of goods, evidence should be adduced as to the value of each, and the judgment should declare the same accordingly; since the defendant may elect to give up some in specie, and pay damages for the rest (*Pawly* v. *Holly*, (1773) 2 W. Bl. 853; *Sandford* v. *Alcock*, (1842) 10 M. & W. 689; 12 L. J. Ex. 40).

Defamation.]—(These actions may be sent for trial to, but cannot be commenced in, a county court.) The plaintiff in an action of libel must prove the publication by the defendant of the matter complained of in print or writing, or by a picture or other fixed mode of representing ideas. Special provisions were formerly made by the 6 & 7 Will. IV. c. 76, to facilitate the proof of publication in the case of libels contained in newspapers. But these are all repealed by the 32 & 33 Vict. c. 24, except sect. 19 of the earlier Act, which is re-enacted by the latter. By that section, a suit will lie to discover the name of the printer, publisher or proprietor of a newspaper, or any matter relative to the printing or publishing of a newspaper, in order to assist an action of libel. And the defendant cannot plead or demur, but must make the discovery asked for; though the evidence so obtained cannot be used against the defendant except in the proceeding for which the discovery is made. In other cases the publication may be proved by showing that the defendant has written the words in question or caused them to be printed, and shown or given or sent them to any person, or that a copy has been sold at his shop, or that he has otherwise given currency to the document by himself or his agent. But a publication to the plaintiff himself only is not actionable (*Phillips* v. *Jansen*, (1798) 2 Esp. 624). As to letter addressed to one person, and opened by another in mistake see *Powell* v. *Gelston*, (1916) 85 L. J. K. B. 1783.

In an action of slander the plaintiff must prove the speaking of the words complained of by the defendant in the presence of some person other than the plaintiff. He must further prove that the words impute to him a criminal offence, or an infectious disease, or misconduct in a public office, or misconduct, negligence, or want of skill in the way of his profession, trade or business, or else that he has suffered special damage of a pecuniary or material character, such as the loss of a situation or the diminution of trade, except that words imputing unchastity to women are actionable without special damage (54 & 55 Vict. c. 51). See *Jones* v. *Jones and Wife*, (1916) 2 A. C. 481; 85 L. J. K. B. 1519.

If words written or spoken be not in their ordinary sense defamatory, the plaintiff must prove any circumstances which make them so. But malice need not in general be proved. The question whether the matter is libellous or not is a question for the jury.

By way of defence, the defendant may disprove the publication by him, or disprove the defamatory sense of the words published, or he may show that the publication was privileged, which is a defence in the absence of actual malice (*Clark* v *Molyneux* (C. A.), (1877) 3 Q. B. D. 237; 47 L. J. Q. B. 230; *Tompson* v. *Dashwood*, (1883) 11 Q. B. D. 43; *Davis* v. *Shepstone*, (1886) 11 App. Cas. 187; 55 L. J. P. C. 51); *Adam* v. *Ward*, (1917) 86 L. J. K, B. 849; 33 T. L. R. 277; or he may show that the defamatory matter is true; or he may give evidence of an apology in mitigation of damages (6 & 7 Vict. c. 96, s. 1); or if the libel be in a newspaper he may rely as a defence upon an apology and the payment into

court of amends (6 & 7 Vict. c. 96, s. 2; as to notice where a defendant means to rely on any of these special defences, see *ante*, p. 83).

In the case of communications *primâ facie* privileged, the plaintiff may still prove actual malice. And to prove the animus, evidence may be given of other libels and slanders than that sued for, whether earlier than it or later.

Injuries by Legal Proceedings.] —An action for false imprisonment lies where any one takes another into custody, or gives him in charge to a constable without lawful justification for doing so. The plaintiff must prove that the defendant gave him in charge. It is not enough to show that he gave information to a constable, if the latter has on his own judgment acted on that information by arresting the plaintiff. A usual mode of proving the giving in charge is by showing that the defendant signed the charge sheet.

It is not a false imprisonment to hold a person to the conditions he has voluntarily accepted, though it may involve an imprisonment: *Herd* v. *Weardale Steel, Coal, and Coke Co. and Others*, (1915) A. C. 67; 84 L. J. K. B. 121.

The defendant may deny that he gave the plaintiff in charge. If a constable, he may justify the arrest by showing that he had reasonable grounds for believing that a felony had been committed, and that the plaintiff was the felon. If he is not a constable, he must go a step further and show that a felony had been *in fact* committed, and that he had reasonable grounds for suspecting the plaintiff to have committed it (*Samuel* v. *Payne*, (1780) 1 Doug. 359; *Beckwith* v. *Philby*, (1827) 6 B. & C. 635; 5 L. J. M. C. 132; 30 R. R. 484; *Hadley* v. *Perks*, (1866) L. R. 1 Q. B. 444; 35 L. J. M. C. 177; *Walters* v. *W. H. Smith & Son*, (1914) 1 K. B. 595; 83 L. J. K. B. 335). In many other cases people are by statute authorised to arrest or give into custody those found committing offences of different kinds.

Malicious Prosecution.] — An action for malicious prosecution will lie although the defendant may not have taken the law into his own hands by arresting the plaintiff or giving him into custody, but may have simply put the law in motion, as by laying an information upon which a summons or warrant may have issued, or by preferring an indictment. In the first place, the plaintiff must prove the prosecution in the same way as other proceedings of courts are proved (*ante*, p. 911). He must show that the prosecution has terminated in his acquittal (*Arundell* v. *Tregono*, (1608) Yelv. 116); that the defendant was the prosecutor, and that the proceedings were malicious (*Purcell* v. *Macnamara*, (1808) 9 East, 361; 9 R. R. 578) and without reasonable and probable cause (*Johnstone* v. *Sutton*, (1786) 1 T. R. 510, 545). Malice means any indirect motive, any object other than the *bonâ fide* furtherance of justice; and malice or no malice is a question of fact. The absence of reasonable and probable cause may be evidence of malice, but not necessarily so (*Mitchell* v. *Jenkins*, (1833) 5 B. & Ad. 588; 3 L. J. K. B. 35; 39 R. R. 570). Whether there has been an absence of reasonable and probable cause is a question for the judge (*Panton* v. *Williams*, (1841) 2 Q. B. 169; 10 L. J. Ex. 545; 57 R. R. 631; *Lister* v. *Perryman*, (1870) L. R. 4 H. L. 521; 39 L. J. Ex. 177; *Abrath* v. *N. E. Rail. Co.*, (1886) 11 App. Cas. 247; 52 L. J. Q. B. 620). It is not necessary for the judge to put to the jury the question whether they think the defendant took reasonable care, and honestly believed the case he laid before the magistrates, unless there is evidence of the absence of such belief. A prosecution for which the Attorney-General has given his

fiat on a case fairly submitted to him, cannot be said to be prosecuted without reasonable and probable cause (*Bradshaw* v. *Waterlow & Sons, Ltd.*, (1916) 85 L. J. K. B. 318).

A malicious prosecution under the Public Health Act, 1875, for the abatement of a nuisance, is not of a sufficiently criminal nature to support the action (*Wiffin* v. *Bailey and Romford Urban Council*, (1915) 1 K. B. 600; 84 L. J. K. B. 688).

The defendant may give evidence in disproof of any of the allegations which the plaintiff has to prove, and in particular may bring forward any facts tending to show the absence of malice or the existence of reasonable and probable cause.

An action for malicious prosecution will lie against a corporation (*Cornford* v. *Carlton Bank*, (1899) 1 Q. B. 392; 68 L. J. Q. B. 196; (C. A.), (1900) 1 Q. B. 22; 68 L. J. Q. B. 1020; *Edwards* v. *Midland Rail. Co.*, (1880) 6 Q. B. D. 287; 50 L. J. Q. B. 281).

Seduction.]—(These actions may be sent for trial to, but cannot be commenced in, a county court.) In an action for seduction the plaintiff must prove that the person seduced was in his service at the time. In the case of a daughter, it is sufficient evidence of service to show that she was living with the plaintiff, her father, as a member of his family. It must be proved further, either that the defendant enticed the servant away from the plaintiff's service, or that he debauched the servant; and in the latter case it seems to be necessary to show further that the servant has been made pregnant, or ill, so as to be incapacitated from service (*Evans* v. *Walton*, (1867) L. R. 2 C. P. 615; 36 L. J. C. P. 307). Evidence of the circumstances of the seduction may be given in aggravation of damages.

The defendant may disprove any of the plaintiff's allegations, or may give evidence of the conduct of the plaintiff or the character of the servant in mitigation of damages.

Breach of Promise of Marriage.]—In an action for breach of promise of marriage the plaintiff must prove the promise. The promise need not be in writing. The breach must also be proved. This may be proved by showing that the plaintiff has tendered marriage to the defendant, has been refused, or that the defendant has married another person. As affecting the damages, the plaintiff may produce evidence of the pecuniary circumstances of the defendant; and the mental suffering inflicted on the plaintiff may be considered in assessing the damages (see *Hamlin* v. *G. N. Rail. Co.*, (1856) 1 H. & N. 408; 26 L. J. Ex. 20; 108 R. R. 649). The parties themselves are competent witnesses. But the plaintiff cannot recover unless his or her testimony be corroborated by some other material evidence in support of the promise (32 & 33 Vict. c. 68, s. 2; as to the construction of this section, see *Bessela* v. *Stern*, (1877) 2 C. P. D. 265; 46 L. J. C. P. 467).

The defendant may disprove the promise, or may show that a reasonable time for its performance has not elapsed; or that after the promise the defendant has discovered gross immorality on the part of the plaintiff (*Irving* v. *Greenwood*, (1824) 1 C. & P. 350); or that the engagement had been broken off by mutual consent, or, *semble*, that the plaintiff is unfit for marriage owing to mental or physical illness becoming known to the defendant since the date of the promise, but it is no defence that the defendant honestly and on reasonable grounds believed that the plaintiff was physically unfit for marriage if such was not the fact (*Jefferson* v. *Paskell*, (1916) 85 L. J. K. B. 398). *Quære*, whether such an action will ever lie after the death of the promissor, against his executor (*Quirk* v. *Thomas*, (1916) 1 K. B. 516).

EMERGENCY LEGISLATION.

CHAPTER IX.

The legislation necessitated by the war, referred to as "Emergency Legislation" in so far as it directly affects the County Courts of England.

EMERGENCY STATUTES, ORDERS AND RULES.

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POSTPONEMENT OF PAYMENTS ACT, 1914 (*a*).

[4 & 5 Geo. 5, c. 11. August 3, 1914.]

An Act to authorise His Majesty by Proclamation to suspend temporarily the Payment of Bills of Exchange and Payments in pursuance of other Obligations.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power to postpone payments by Royal Proclamation.

1.—(1) His Majesty may by Proclamation authorise the postponement of the payment of any bill of exchange, or of any negotiable instrument, or any other payment in pursuance of any contract, to such extent, for such time, and subject to such conditions or other provisions as may be specified in the Proclamation.

(2) No additional stamp duty shall be payable in respect of any instrument as a consequence of any postponement of payment in pursuance of a proclamation under this Act unless the proclamation otherwise directs.

(3) Any such proclamation may be varied, extended, or revoked by any subsequent proclamation, and separate proclamations may be made dealing with separate subjects.

(4) The proclamation dated the third (*b*) day of August, nineteen hundred and fourteen, relating to the postponement of payment of certain bills of exchange is hereby confirmed and shall be deemed to have been made under this Act.

Short title and duration.

2.—(1) This Act may be cited as the Postponement of Payments Act, 1914.

(2) This Act shall remain in force for a period of six months from the date of the passing thereof.

(*a*) (Extended, with adaptations, to Isle of Man. Order in Council, September 3rd, 1914.)

Note.—(*b*) This Act confirmed a previous Proclamation dated August 2, 1914 (by mistake said (*supra*, sect. 1, sub-s. 4) to be dated August 3, 1914), issued before the Act was passed relating to the postponement of bills of exchange only, known as the "Bills (Re-acceptance) Proclamation.'

The First General Proclamation under the Postponement of Payments Act, 1914 (4 & 5 Geo. 5, c. 11), dated August 6, 1914.

By the King.

A Proclamation for extending the Postponement of Payments allowed to be made by the Proclamation of the 2nd August, 1914 (*a*), to certain other payments.

Note.—(*a*) See *post*, p. 939.

Whereas under the Postponement of Payments Act, 1914, His Majesty has power by Proclamation to authorise the postponement of the payment of any bill of exchange or of any negotiable instrument or of any other payment in pursuance of any contract to such extent for such time and subject to such conditions or other provisions as may be specified in the Proclamation :

And whereas it is expedient that provision should be made for the purpose of such postponement of payment in addition to the provision already made by Our Proclamation, dated the second day of August, nineteen hundred and fourteen, relating to the postponement of payment of certain bills of exchange :

Now, therefore, We have thought fit, by and with the advice of Our Privy Council, to issue this Our Royal Proclamation, and We do hereby proclaim, direct, and ordain as follows :—

Save as hereinafter provided, all payments which have become due and payable before the date of this Proclamation or which will become due and payable on any day before the beginning of the fourth day of September nineteen hundred and fourteen in respect of any bill of exchange (being a cheque or bill on demand) which was drawn before the beginning of the fourth day of August, nineteen hundred and fourteen. or in respect of any negotiable instrument (not being a bill of exchange) dated before that time, or in respect of any contract made before that time, shall be deemed to be due and payable on a day one calendar month after the day on which the payment originally became due and payable, or on the fourth day of September, nineteen hundred and fourteen, whichever is the later date, instead of on the day on which the payment originally became due ; but payments so postponed shall, if not otherwise carrying interest (*a*), and if specific demand is made for payment and payment is refused, carry interest until payment as from the fourth day of August, nineteen hundred and fourteen, if they become due and payable before that day, and as from the date on which they become due and payable if they become due and payable on or after that day, at the Bank of England rate current on the seventh day of August, nineteen hundred and fourteen ; but nothing in this Proclamation shall prevent payments being made before the expiration of the month for which they are so postponed (*b*).

(*a*) See meaning of "not otherwise carrying interest" (*J. & P. Coats, Ltd.*, v. *Direction der Disconto Gesellschaft*, (1916) 85 L. J. K. B. 973).

NOTE.—(*b*) Does not apply to a c.i.f. contract (*Happe* v. *Manasseh*, (1915) 84 L. J. K. B. 1895). See *Credito Italiano* v. *Swiss Bankverein*, (1916) 85 L. J. K. B. 1477.

This Proclamation shall not apply to—

(1) Any payment in respect of wages or salary.

(2) Any payment in respect of a liability which when incurred did not exceed five pounds in amount (*c*).

NOTE.—(*c*) Each item when incurred must exceed £5. It is not sufficient that a number of items, incurred at different times, exceed £5 in total (*Auster* v. *London Motor Coach Works*, (1915) 84 L. J. K. B. 580).

(3) Any payment in respect of rates or taxes (*b*).

NOTE.—(*b*) The Proclamation applied to rent due and payable before the date of the Proclamation (*Durell* v. *Gread*, (1915) 84 L. J. K. B. 130).

(4) Any payment in respect of maritime freight.

(5) Any payment in respect of any debt from any person resident outside the British Islands, or from any firm, company or institution whose principal place of business is outside the British Islands, not being a debt incurred in the British Islands by a person, firm, company, or institution, having a business establishment or branch business establishment in the British Islands.

(6) Any payment (*c*) in respect of any dividend or interest payable in respect of any stocks, funds, or securities (other than real or heritable securities) in which trustees are, under section one of the Trustee Act, 1893, or any other Act for the time being in force, authorised to invest.

NOTE.—(*c*) A call on shares is a debt to which the Act and Proclamation applied See *Burgess* v. *O.H.N. Gases, Ltd.*, (1915) 31 L. J. K. B. 59.

(7) Any liability of a bank of issue in respect of bank notes issued by the bank (*d*).

NOTE.—(*d*) As to the effect of the Act and Proclamation upon a bank overdraft see *Allen* v. *London County and Westminster Bank*, (1915) 84 L. J. K. B. 1286.

(8) Any payment to be made by or on behalf of His Majesty or any Government Department, including the payment of old age pensions.

(9) Any payment to be made by any person or society in pursuance of the National Insurance Act, 1911, or any Act amending that Act (whether in the nature of contributions benefits, or otherwise).

(10) Any payment under the Workmen's Compensation Act, 1906, or any Act amending the same.

(11) Any payment in respect of the withdrawal of a deposit by a depositor in a trustee savings bank.

Nothing in this Proclamation shall affect any bills of exchange to which Our Proclamation dated the second day of August, nineteen hundred and fourteen, relating to the postponement of payment of certain bills of exchange applies (*e*).

NOTE.—(*e*) A debtor, by suspending payment of his debts, during the period during which the moratorium was in force, committed an act of bankruptcy. See *Sahler, In re*, (1915) 84 L. J. K. B. 1275.

Given at Our Court at Buckingham Palace, this sixth day of August, in the year of our Lord one thousand nine hundred and fourteen, and in the Fifth year of Our Reign.

God Save the King.

THE SECOND GENERAL PROCLAMATION UNDER THE POSTPONEMENT OF PAYMENTS ACT, 1914 (4 & 5 GEO. 5, C. 11), DATED AUGUST 12, 1914.

THE SECOND GENERAL PROCLAMATION.

1914. No. 1230.

BY THE KING.

A Proclamation for Postponement of Payments.

George, R.I.

Whereas it is expedient to extend Our Proclamation, dated the sixth day of August, nineteen hundred and fourteen (relating to the postponement of payments), so as to cover bills of exchange under certain circumstances, and also payments in respect of any debt from any bank whose principal place of business is in any part of His Majesty's Dominions or any British Protectorate :

Now, therefore, We have thought fit, by and with the advice of Our Privy Council, to issue this Our Royal Proclamation, and We do hereby proclaim, direct, and ordain as follows :

Notwithstanding anything contained in the said Proclamation, dated the sixth day of August, nineteen hundred and fourteen (relating to the postponement of payments), that Proclamation shall apply, and shall be deemed always to have applied—

(*a*) To any bill of exchange which has not been re-accepted under Our Proclamation, dated the second day of August, nineteen hundred and fourteen, as it applies to a bill of exchange, being a cheque or bill on demand, unless on the presentation of the bill the acceptor has expressly refused re-acceptance thereof, but with the substitution, as respects rate of interest, of the date of the presentation of the bill for the seventh day of August, nineteen hundred and fourteen ; and

(*b*) also to payments in respect of any debt from any bank whose principal place of business is in any part of His Majesty's Dominions or any British Protectorate, although the debt was not incurred in the British Islands and the bank had not a business establishment or branch business establishment in the British Islands.

Given at Our Court at Buckingham Palace, this Twelfth day of August, in the year of our Lord one thousand nine hundred and fourteen, and in the Fifth year of Our Reign.

God Save the King.

A Third General Proclamation, dated September 1, 1914, was proclaimed but was revoked by the Proclamation (*infra*) dated September 3, 1914.

The Third General Proclamation under the Postponement of Payments Act, 1914 (4 & 5 Geo. 5, c. 11), dated September 3, 1914.

1914. No. 1324.

By the King.

A Proclamation varying the Proclamations in respect of the Postponement of Payments, dated respectively the second day of August, the sixth day of August, and the twelfth day of August, and revoking the Proclamation, dated the first day of September, nineteen hundred and fourteen.

George, R.I.

Whereas under the Postponement of Payments Act, 1914, We have power, by Proclamation, to authorise the postponement of the payment of any bill of exchange, or of any negotiable instrument, or any other payment in pursuance of any contract, to such extent, and for such time, and subject to such conditions or other provisions as may be specified in the Proclamation :

And whereas, in pursuance of that power, We have issued Proclamations in relation to the postponement of payments due before We were in a state of war or due in respect of contracts made before that time, dated the sixth day of August, and the twelfth day of August, nineteen hundred and fourteen ; and on the second day of August, nineteen hundred and fourteen, We also issued a Proclamation which is confirmed by the said Postponement of Payments Act, 1914, and is deemed to have been issued under that Act :

And whereas, under the said Act, We have power to vary, extend or revoke any Proclamation under that Act by a subsequent Proclamation :

And whereas it is desirable in the best interests of Our Realm at the present juncture that all persons who can discharge their liabilities should do so without delay, but it is at the same time for certain purposes expedient that Our said Proclamations should be varied, and for that purpose We issued a Proclamation, dated the 1st day of September, nineteen hundred and fourteen :

And whereas it is expedient to revoke the last-mentioned Proclamation and to substitute therefor such variations of Our other Proclamations as are hereinafter set forth :

Now, therefore, We have thought fit, by and with the advice of Our Privy Council, to issue this Our Royal Proclamation, and We do hereby proclaim, direct, and ordain as follows :—

1. If on the presentation for payment of a bill of exchange which has before the fourth day of September, nineteen hundred and fourteen, been re-accepted under the terms of Our said Proclamation, dated the second day of August, nineteen hundred and fourteen, the bill is not paid, then, the said Proclamation shall, in its application to that bill, have effect as if the period of two calendar months had been in the Proclamation substituted for the period of one calendar month, and the sum mentioned in the form of re-acceptance under the said Proclamation shall be deemed to be increased by the amount of interest on the original amount of the Bill for one calendar month calculated at the Bank of England rate current on the date when the bill is so presented for payment as aforesaid.

2. Our said Proclamation, dated the sixth day of August, nineteen hundred and fourteen, as extended by Our said Proclamation, dated the twelfth day of August, nineteen hundred and fourteen, shall apply to payments which become due and payable on or after the fourth day of September and before the fourth day of October, nineteen hundred and fourteen (whether they become so due and payable by virtue of the said Proclamations or otherwise) in like manner as it applies to payments which become due and payable after the date of the said first-mentioned Proclamation and before the beginning of the fourth day of September, nineteen hundred and fourteen.

3. Nothing in this Proclamation shall affect the payment of interest under the Proclamations extended thereby, or prevent payments being made before the expiration of the period for which they are postponed.

4. Our said Proclamation, dated the first day of September, nineteen hundred and fourteen, is hereby revoked.

Given at Our Court at Buckingham Palace, this Third day of September, in the year of our Lord one thousand nine hundred and fourteen, and in the Fifth year of Our Reign.

God Save the King.

A Proclamation, dated September 30, 1914.

1914. No. 1446.

By the King.

A Proclamation varying the Proclamations in respect of the Postponement of Payments, dated respectively the 2nd August, 6th August, 12th August, and 3rd September, 1914.

George, R.I.

Whereas under the Postponement of Payments Act, 1914, We have power by Proclamation to authorise the postponement of the payment of any bill of exchange or of any negotiable instrument or any other payment in pursuance of any contract to such extent and for such time and subject to such conditions or other provisions as may be specified in the Proclamation :

And whereas in pursuance of that power We have issued Proclamations in relation to the postponement of payments due before We were in a state of war or due in respect of contracts made before that time, dated the sixth day of August, the 12th day of August, and the third day of September, nineteen hundred and fourteen (which are respectively referred to in this Proclamation as the first, second, and third General Proclamation), and on the second day of August nineteen hundred and fourteen We also issued a Proclamation which is confirmed by the said Postponement of Payments Acts, 1914, and is deemed to have been issued under that Act and is referred to in this Proclamation as the Bills (Re-acceptance) Proclamation :

And whereas under the Postponement of Payments Act, 1914, We have power to vary extend or revoke any Proclamation under that Act by a subsequent Proclamation :

And whereas it is desirable in the best interests of Our Realm at the present juncture that all persons who can discharge their liabilities should do so without delay, but it is at the same time expedient for the benefit of persons who cannot so discharge their liabilities that a further limited and final extension of the postponement of payments authorised by the said Proclamations should be made :

Now, therefore, We have thought fit, by and with the advice of Our Privy Council, to issue this Our Royal Proclamation, and We do hereby proclaim direct and ordain as follows :—

1. The first General Proclamation as extended by paragraph (*b*) of the second General Proclamation shall, subject to the limitations of this Proclamation, apply to payments which become due and payable on or after the fourth day of October and before the

fourth day of November nineteen hundred and fourteen (whether they so become due and payable by virtue of the said Proclamations or the third General Proclamation or otherwise) in like manner as it applies to payments which became due and payable after the date of the first General Proclamation and before the beginning of the fourth day of September nineteen hundred and fourteen.

Provided that, if the payment is one the date whereof has been postponed by virtue of any of the said General Proclamations, and is one which carries interest either by virtue of the terms of the contract or instrument under which it is due and payable or by virtue of the said General Proclamations, then the person from whom the payment is due shall not be entitled to claim the benefit of this Article unless, within three days after the date to which the payment has been postponed by virtue of the said General Proclamations, all interest thereon up to that date is paid.

This Article shall not apply to—

(*a*) Any payment in respect of rent;

(*b*) Any payment due and payable to or by a retail trader in respect of his business as such trader.

2. The Bills (Re-acceptance) Proclamation shall continue to apply to bills of exchange (other than cheques and bills on demand) accepted before the beginning of the fourth day of August nineteen hundred and fourteen, the date of the original maturity whereof is after the third day of October.

If on the presentation for payment of any such bill the bill is not paid and is not re-accepted under the said Proclamation, then, unless on such presentation the acceptor has expressly refused re-acceptance thereof, the bill shall for all purposes, including the liability of any drawer and indorser or any other party thereto, be deemed to be due and payable on a date one calendar month after the date of its original maturity instead of on the date of its original maturity, and to be a bill for the original amount thereof increased by the amount of interest thereon, calculated from the date of the original maturity to the date of payment at the Bank of England rate current on the date of its original maturity, and paragraph (*a*) of the second General Proclamation shall not apply to any such bill.

3. If on the presentation for payment of a bill of exchange, the date of maturity of which has before the fourth day of October nineteen hundred and fourteen become postponed either by virtue of the Bills (Re-acceptance) Proclamation or paragraph (*a*) of the second General Proclamation (whether or not the date of maturity has been further postponed by virtue of the third General Procla-

mation), the bill is not paid, then the date of maturity shall be deemed to be further postponed for fourteen days from the date of such presentation for payment, and the original amount of the bill shall be deemed to be further increased by the amount of interest on the original amount of the bill for fourteen days, calculated at the Bank of England rate current on the date of such presentation for payment.

4. Save as otherwise expressly provided, nothing in this Proclamation shall affect the application of the General Proclamations to payments to which those Proclamations apply, and nothing in this Proclamation shall prevent payments to which this Proclamation applies being made before the expiration of the period for which they are postponed thereunder.

Given at Our Court at Buckingham Palace, this Thirtieth day of September, in the year of Our Lord one Thousand nine hundred and fourteen, and in the Fifth year of Our Reign.

God Save the King.

The moratorium ordained and established by the Act and Proclamations above set out came to an end on the 4th of November, 1914. The Proclamations have been inserted for the reason that they may still have some effect upon the rights created by commercial contracts entered into before or during the period to which they apply.

COUNTY COURT RULE, dated September 10, 1914.

The Postponement of Payments Act, 1914.

The following rule shall have effect during the currency of any Proclamation issued under the Postponement of Payments Act, 1914, and for two months thereafter.

Order VII.

Order VII., rule 36, pars. 2, 3. Where judgment cannot be entered by reason of Proclamation under 4 & 5 Geo. 5, c. 11.

Plaint Note and Summons. Service. Default Summons and Service.

The following paragraphs shall be added to Order VII., Rule 36, viz. :—

(2) Where a default summons has been issued in an action in respect of a claim to which any Proclamation issued under or confirmed by the Postponement of Payments Act, 1914, applies, and notice of intention to defend has not been given or leave to defend has not been obtained, the period during which such Proclamation was or shall be in force shall be excluded in the computation of the time within which judgment may be entered.

(3) Where any such action has been struck out on default of judgment being entered, and the court is satisfied that the plaintiff was unable to have judgment entered by reason of any such Proclamation, or of any directions given for carrying any such Proclamation into effect, the court may, at any time before the expiration of the time limited for entering judgment (such

time to be computed) in accordance with the preceding paragraph, order the action to be reinstated (see *ante*, p. 420).

WM. L. SELFE.
WM. C. SMYLEY.
R. WOODFALL.
T. C. GRANGER.
H. TINDAL ATKINSON.

Approved by the Rules Committee of the Supreme Court.

KENNETH MUIR MACKENZIE,
Secretary.

I allow this rule, which shall come into operation forthwith.

HALDANE, C.

The 10th day of September, 1914.

COURTS EMERGENCY ACTS

GENERAL NOTE TO COURTS (EMERGENCY POWERS) ACTS, AND INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915.

Since the commencement of the war four statutes known as Courts (Emergency Powers) statutes have been passed, and also, intimately connected with these Acts and referring to, amending and qualifying them, the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

(These Acts are set out in full, *post*, the Courts (Emergency Powers) Act, 1914, on p. 951, the Courts (Emergency Powers) Act, 1916, on p. 955, the Courts (Emergency Powers) (No. 2) Act, 1916, on p. 956, the Courts (Emergency Powers) Act, 1917, on p. 958; the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, on p. 980).

The general objects of the first of these statutes, known as the Principal Act was (1) To forbid the enforcement of judgments or orders given or made in respect of money payable under contracts made before the war, except with the permission of the court (sect. 1 (1) (a)).

(2) To forbid any distress, the taking, resuming or entering into possession of property, realising any security, forfeiting any deposit, or lapsing any small life or endowment policy of insurance, for the purpose of enforcing the payment or recovery of money or in default of the payment or recovery of money, due or demandable in respect of contracts made before the war, except with permission of the court (sect. 1 (1) (b)).

EXCEPTIONS.]—A mortgagee in possession is allowed to realise his security. The security of pawnbrokers is not affected. Rent (less than £50 per annum) is within the protection of the Act, though due and payable in respect of a contract made after the war.

(3) To allow the courts having jurisdiction in bankruptcy to stay proceedings against the debtor on a bankruptcy petition (sect. 1 (3)).

(4) To prevent the recovery of possession of small tenements, under the Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74) (*i.e.*, in cases where the rent does not exceed £20) without permission of the court.

In all the above cases the court has to be satisfied that the failure to pay the money or debts, or to pay the same when due, is owing to circumstances attributable directly or indirectly to the war, in which case the discretion of the court to stay or defer the operation of proceedings is almost unlimited (sect. 1 (2), (3)).

Jurisdiction is by the rules given to the county court under (1), where the judgment or order has been given or made by that court. Under (2), where the value of the subject matter does not exceed £100 (the value of the

subject-matter is ascertained as directed in the rules : rule 1 (3)). Under (3), the county courts having jurisdiction in bankruptcy. Under (4), the county courts have jurisdiction equally with courts of summary jurisdiction.

Then, in order of time was enacted the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, the general purpose of which was to prevent the raising of rent, or the increase of mortgage interest in respect of certain small classes of houses or properties.

It applies to rent or mortgage interest accrued after November 25th, 1915. Subject to the exceptions in the Act, no increase of rent or interest beyond the standard rent or standard rate of interest is recoverable. The standard rent is that at which the house was let on August 3rd, 1914, and the standard interest the interest payable on the mortgage on the same date, if then created, if not the original rate of interest. As regards increase of rent the Act only applies to houses where the rent or rateable value does not exceed—

(*a*) In the metropolitan police district or city of London, thirty-five pounds a year ;

(*b*) Elsewhere in England, twenty-six pounds a year.

No fine, premium or other like sum for granting, renewing or continuing such a tenancy can be exacted after August 4th, 1914, and any sums so paid in pursuance of a contract made after November 25th, 1915, are made recoverable.

NOTE.—By the Courts (Emergency Powers) (No. 2), Act, 1916, power was given to the county courts to allow, in case of a lease of such a dwelling-house for twenty-one years or more, such a fine, etc., to be stipulated for, if the previous terms of tenancy were not thereby made more onerous, but now by the Courts (Emergency Powers) Act, 1917, sect. 4, the restriction does not apply at all to the lease of a dwelling-house for twenty-one years or more, and the provision in the Courts (Emergency Powers) (No. 2), Act, *supra*, is repealed.

No order for ejectment or recovery of the premises by the landlord can be made whilst the standard rent is paid, and the other conditions of the tenancy fulfilled, except for the reasons given in the Act (sect. 3).

The Act also contains restrictions designed to prevent the calling in of mortgage money due on a mortgage comprising one or more dwelling-houses of the class to which the Act applies whilst the standard interest is paid, and the covenants and conditions of the mortgage observed.

It is subject to exceptions (see Act).

The Act applies only to mortgages where the mortgaged property consists of or comprises one or more dwelling-houses to which the Act applies, or any interest therein. It is subject to exceptions (sect. 2 (4) (a), (b)). Rules have been made for regulating procedure in county courts under this Act (see p. 963).

NOTE.—The Act contains many small exceptions and qualifications which must be carefully studied before any proceedings are commenced or resisted under it.

The second Courts Emergency Act—the Courts (Emergency Powers) Amendment Act, 1916—was passed in the especial interests of officers and men of His Majesty's forces.

In the case of any such person, it is not necessary, in order that he may have the benefit of sect. 1, sub-s. 1, of the Principal Act that the money should be due or demandable in respect of a contract made before the war, so long as such contract in respect of which it is claimed was made before this Act came into operation, viz., April 11th, 1916 (now before he joined the forces, see Courts (Emergency Powers) Act, 1917, sect. 8.)

The discretionary powers given to the courts under sect. 1, sub-ss. 2 and 3, of the Principal Act may be exercised though the debtor's inability to pay may *not* be due to circumstances attributable directly or indirectly to the war (sect. 1 (b)).

This Act also gives power to county courts to allow an officer or man in His Majesty's forces to determine any tenancy from year to year or for any

longer period into which he may have entered, upon such notice and on such conditions as the court in its absolute discretion may think fit (sect. 2).

The third Courts Emergency Act—the Courts (Emergency Powers) (No. 2), Act, 1916—*inter alia*, extends the meaning of "enter into possession" in the Principal Act so as to include the appointment of a receiver of mortgaged property. As to "foreclosure" it forbids even the institution of foreclosure proceedings or proceedings for sale in lieu thereof (sect. 1, sub-s. 1).

NOTE.—It was decided under the Principal Act in *Farnol-Eades, Irvine & Co.* v. *The Company*, 84 L. J. Ch. 129, that a receiver could be appointed by the court, or a foreclosure action commenced without leave of the court first obtained. This is now altered.

It defines the meaning of mortgagee in possession (sect. 1, sub-s. 1 (c)).

In the case of a petition for winding up a company the court is given the same discretion as is given to the bankruptcy court when a petition in bankruptcy has been presented (sect. 1, sub-s. 2).

It also gave, by sect. 2, power to the county courts (now taken away, see *supra*) to allow a fine, premium, etc., to be stipulated for in the grant of a new lease of a dwelling-house for twenty-one years or upwards but, as above stated, this section is now repealed (see Courts (Emergency Powers) Act, 1917, sect. 4).

Power is also given by sect. 3 to "such court as may be provided" by rules or directions under the Principal Act (*a*), where a person is prevented from erecting a building on a site by circumstances attributable directly or indirectly to the war, or where the Treasury or Minister of Munitions thinks such a building undesirable during the war, and in consequence of delay there is danger of an adverse right to light being acquired by neighbouring premises, to order that a period of time, commencing at a date not earlier than May 25th, 1916, and ending not later than six months after the termination of the war, be excluded from the computation of time necessary to acquire a prescriptive right to light.

NOTE.—(*a*) By rule dated the 5th day of June, 1916, this jurisdiction is given to the High Court of Justice, Chancery Division.

The fourth Courts Emergency Act—the Courts (Emergency Powers) Act, 1917—gives extensive powers to "the court" (*a*).

NOTE.—It came into operation on July 10th, 1917. Rules made thereunder are incorporated in the Consolidated Rules.

Power is given to the court (*a*) to suspend or annul or stay proceedings upon building contracts or contracts for supply of materials for building work, entered into before August 4th, 1914, where owing to the prevention or restriction of or delay in the supply or delivery of materials, or the diversion or insufficiency of labour due to the war, the contract cannot be carried out without serious hardship. The court must consider the circumstances and position of the parties and any offer made by any party for the variation of the contract.

An offer made before the above date, and which is binding on the party so offering if accepted after this date is within the section (sect. 1, sub-s. 1).

A similar power is also given on the application of any party to any contract where any term of such contract cannot be enforced without serious hardship, owing to enactments made for the defence of the realm or the acquisition or user by the Crown of any ship or other property, to suspend or annul the contract or stay proceedings under such contract or any term thereof (sect. 1).

Work to be done under Act of Parliament, or Order having the force of an Act for supply of water, heat, light, traction or power is within the section, though the court cannot in these cases annul the contract (sect. 1).

Where, under a contract of tenancy any person is bound to do, or abstain from doing or under liability if he abstains from doing or does any act or

(*a*) As to "Court" to which applications are to be made, see *post*, p. 979.

thing, and who is by any restrictive enactment relating to the defence of the realm restricted in whole or in part, or ordered to do such act or thing, is not to be liable to any mandatory order or injunction or interdict or to be liable to pay any money, or incur any forfeiture or penalty in respect of the doing or omission to do such act or thing if and so far as his act or default is due to compliance with such enactments (sect. 2).

If the restriction is removed during the currency of the contract, the contract must be carried out as soon as possible.

If the restriction has not been removed before the termination of the contract, the person to whom the relief is given shall be liable to pay as damages a sum not more than would have been entailed in carrying out the contract (sect. 2).

Where, before or after the passing of this Act, the non-fulfilment of any contract (not a contract of tenancy) is due to compliance with any requirement, regulation, order, or restriction of any Government department, or competent naval or military authority, imposed for the purposes of the war, or any direction or advice issued or given by any Government department with the object of preventing transactions which would or might be contrary to national interests in the war, proof of such fact is to be a good defence in respect of the non-fulfilment of the contract.

NOTE.—A certificate by the appropriate Government department is sufficient evidence that such direction or advice was issued or given (sect. 3).

Section 4 provides that sect. 1, sub-s. 2, of the Increase of Rent and Mortgage Interest (War Restrictions) Act (as to payment of a fine, premium, etc., on grant, renewal or continuance of a tenancy) shall not apply to a lease of a dwelling-house for twenty-one years or upwards, and repeals sect. 2 of the Courts (Emergency Powers) (No. 2), Act, 1916, as useless (see *ante*, p. 948).

Section 5 allows money actually paid for rent or mortgage interest which, by virtue of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, would have been irrecoverable by the landlord or mortgagee, to be recovered from the person who received it or his personal representatives by the tenant or mortgagor who paid it.

The action to recover such money must be brought within six months of the payment, or if the payment was made before the passing of this Act, within six months after the passing thereof, or it may be deducted within six months from subsequent rent or mortgage interest accruing during such time.

NOTE.—The decision of the Court of Appeal in *Sharp Brothers and Knight* v. *Chant*, (1917) 86 L. J. K. B. 608, that money so paid was paid under a mistake of law, and was *not* recoverable is now reversed by the above section (sect. 5).

It is made an offence by this Act to put in a rent book or like document a statement that a tenant is in arrear with rent in respect of any sum which is irrecoverable, or if such entry exists, not to delete it, when asked by or on behalf of the tenant to do so (sect. 5, sub-s. 2).

Section 1, sub-s. 1 (*a*) of the Principal Act does not apply to a judgment or order for money or costs given or made in an action of tort.

Section 1, sub-s. 1 of the Principal Act is to apply to any sum of money due and payable by an officer or man in His Majesty's forces under a contract made before he joined the forces (sect. 8, see *ante*, p. 948).

(One or two other provisions either have no application to county courts or are noted in the other statutes to which they refer.)

NOTE.—By Order in Council, dated September 29th, 1917, the Minister of Munitions may declare a "Munitions Area" in which case it is an offence, without his consent, to take proceedings to recover possession of a dwelling-house occupied by a munition worker, if the conditions of tenancy are fulfilled, and the rent not in arrear.

COURTS (EMERGENCY POWERS) ACT, 1914.

[4 & 5 GEO. 5, c. 78.] (*a*)

AN ACT TO GIVE, IN CONNEXION WITH THE PRESENT WAR, FURTHER POWERS TO COURTS IN RELATION TO THE REMEDIES FOR THE RECOVERY OF MONEY, AND IN RELATION TO OTHER SIMILAR MATTERS.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power of courts to defer execution, &c.

1.—(1) From and after the passing of this Act no person shall—

(*a*) proceed to execution on, or otherwise to the enforcement of, any judgment or order of any court (whether entered or made before or after the passing of this Act) for the payment or recovery of a sum of money to which this sub-section applies, except after such application to such court and such notice as may be provided for by rules or directions under this Act (*b*) ; or

NOTE.—(*a*) Not to apply to a fine, or money payable under a recognizance or order of affiliation, or order enforceable as such. *See* Courts (Emergency Powers) Order, 1914 (dated September 17th, 1914, *post*, p. 962. This sub-section does not apply to Petition on a judgment to wind up a company (*In re A Company*, (1915) 1 Ch. 520 ; 84 L. J. Ch. 382).

An English company *de facto* controlled by alien enemies cannot sue in the English Courts if such a state of things is found to exist (*Daimler Co., Ltd.* v. *Continental Tyre and Rubber Co., Ltd.*, (1916) 2 A. C. 307 ; 85 L. J. K. B. 1333 ; but the mere fact that an essentially British company does business in an enemy country through a properly appointed agent there does not constitute it an alien enemy company (*Muhesa Rubber Plantations, Ld., In re*, (1917) 1 K. B. 48 ; 86 L. J. K. B. 204).

(*b*) The sub-section does not apply to money or costs recovered in tort (Courts (Emergency Powers) Act, 1917, sect. 6.

Proceedings may be taken in the English Courts against alien enemies for breach of contract as well where the cause of action accrued after the outbreak of war as where it accrued before the war (*Halsey and Another* v. *Lowenfeld* (*Leigh and Curzon, third parties*), (1916) 1 K. B. 143.

A contract between a German subject living and carrying on business in England, entered into since the war, and being one not prohibited by any Proclamation against trading with the enemy, may be enforced by the German subject in the English Courts, and this notwithstanding that such person has, subsequently to obtaining his licence to remain in this country, been interned (*Schaffenius* v. *Goldberg*, (1916) 1 K. B. 284 (*Nordman* v. *Rayner and Sturgess*, (1916) 33 T. L. R. 87). See also *Princess Thurn and Taxis* v. *Moffitt*, (1915) 1 Ch. 58 ; *Porter* v. *Freudenberg*, (1915) 1 K. B. 857).

(*b*) levy any distress, take, resume, or enter into possession of any property, exercise any right of re-entry, foreclose, realise any security (except by way of sale by a mortgagee in possession) (*a*), forfeit any deposit, or enforce the lapse of any policy of insurance to which this sub-section applies, for the purpose of enforcing the payment or recovery of any sum of money to which this sub-section applies, or, in default of the payment or recovery of any such sum of money, except after such application to such court and such notice as may be provided for by rules or directions under this Act. (*b*)

This sub-section was held not to apply to the commencement of a foreclosure action, or a debenture holder's action; or to preclude the court from appointing a receiver and manager if no such application has been made (*Farnot, Eades, Irvine & Co.* v. *The Company*, (1915) 1 Ch. 22; 84 L. J. Ch. 129; but see now Courts (Emergency Powers) (No. 2) Act, 1916, sect. 1, sub-s. 1 (a), *post*, p. 957. Nor is leave necessary to entitle the landlord to bring an action to recover possession of premises under a clause of re-entry for non-payment of rent (*Ness* v. *O'Neil*, (1916) 1 K. B. 706; 85 L. J. K. B. 836). Where the Master and Judge in Chambers have both exercised their discretion and refused to stay execution under this Act, the Court of Appeal will not interfere (*Lyric Theatre, London* v. *L. T. Lim.*, and *Cyril Theatrical Syndicate*, (1915) 84 L. J. K. B. 712).

NOTE.—(*a*) The exception above applies to personal as well as real property if the mortgagee is in possession (*Ziman Komata Reefs Gold Mining Co.*, (1915) 2 K. B. 163; 84 L. J. K. B. 1162). Shares bought by a stockbroker of a jobber for a client may, notwithstanding this section, be sold by the broker if they are not paid for, for even assuming that the shares are a "security" within the meaning of the sub-section the broker is a "mortgagee in possession" (*Foster* v. *Barnard*, (1916) 2 A. C. 154; 85 L. J. K. B. 1161 (H. L.)). See also *Hosack* v. *Robins*, (1917) 86 L. J. K. B. 117.

NOTE.—(*b*) See now Courts (Emergency Powers) (No. 2) Act, 1916, 6 & 7 Geo. V., c. 18, *post*, p. 956.

This sub-section shall not apply to any sum of money (other than rent not being rent at or exceeding fifty pounds per annum) due and payable in pursuance of a contract made after the beginning of the fourth day of August nineteen hundred and fourteen (*a*).

NOTE.—(*a*) As to officers and men in His Majesty's forces see Courts (Emergency Powers) Act, 1916, sect. 1 (a), *post*, p. 955; and Courts (Emergency Powers) Act, 1917, sect. 8, *post*, p. 961.

This sub-section applies to life or endowment policies for an amount not exceeding twenty-five pounds, or payments equivalent thereto, the premiums in respect of which are payable at not longer than monthly intervals, and have been paid for at least the two years preceding the fourth day of August nineteen hundred and fourteen.

See now 6 & 7 Geo. V. c. 13.

(2) If, on any such application, the court to which the application is made is of opinion that time should be given to the person liable to make the payment on the ground that he is unable immediately to make the payment by reason of circumstances attributable, directly or indirectly, to the present war, the court may, in its absolute discretion, after considering all the circumstances of the case and the position of all the parties, by order, stay execution or defer the operation of any such remedies as aforesaid, for such time and subject to such conditions as the court thinks fit (*a*).

NOTE.—(*a*) Where it was impossible to carry out a contract to deliver goods owing to the said goods being requisitioned for the war the vendors were excused (*In re arbitration between Shipton, Anderson & Co. and Harrison Bros. & Co.* (1915), 84 L. J. K. B. 2137; see also *Happe* v. *Manassch* (1915), 84 L. J. K. B. 1895); *Metropolitan Water Board* v. *Dick, Kerr & Co. Ltd.*, (1917) 2 K. B 1; 86 L. J. K. B. 675. See also, *Tennants (Lancashire), Ltd.* v. *C. S. Wilson & Co., Ltd.* (1917), A. C. 495; 86 L. J. K. B. 1191. Where a contract cannot be carried out at once, owing to a proclamation forbidding the export of the class of goods contracted for, the contract is not dissolved, but only suspended (*Andrew Millar & Co., Ltd.* v. *Taylor & Co.*, (1916) 85 L. J. K. B. 346; see also *Distington Hematite Iron Co., Ltd.* v. *Possehl & Co.*, (1916) 85 L. J. K. B. 919). See now as to contracts which cannot be carried out owing to restrictive legislation or Government requirements for the war or Government orders or advice, Courts (Emergency Powers) Act, 1917, *post*, p. 958. See, where contract is not wholly impossible (*Leiston Gas Co. v. Leiston-cum-Sizewell Urban Council*, (1916) 1 K. B. 912; 2 K. B. 428; *Wilson & Co., Ltd.* v. *Tennants (Lancashire), Ltd.*, (1917) 1 K. B. 208; *Bolckow, Vaughan & Co.* v. *Compania Minera De Sierra Minera* and *North Eastern Steel Co.* v. *The Same*, (1917) 86 L. J. K. B. 439; also *Smith Coney & Barrett* v. *Becker, Gray & Co.*, (1916) 2 Ch. 86, as to contract valid when made, and containing arbitration clause). As to a contract partially performed, and then the completion rendered impossible see *St. Enoch Shipping Co.* v. *Phosphate Mining Co.*, (1917) 86 L. J. K. B. 74.

(3) Where a bankruptcy petition has been presented against any debtor, and the debtor proves to the satisfaction of the court having jurisdiction in bankruptcy that his inability to pay his debts is due to circumstances attributable, directly or indirectly, to the present war, the court (*b*) may, in its absolute discretion, after considering all the circumstances of the case and the position of all the parties, at any time stay the proceedings under the petition for such time and subject to such conditions as the court thinks fit.

NOTE.—(*b*) The Court of Bankruptcy has exclusive jurisdiction as to staying proceedings on a bankruptcy petition (*In re Silber*, (1915) 2 K. B. 317; 84 L. J. K. B. 971). The sub-section (3) is not limited to petitions presented before the passing of the Act (*In re Silber, supra*). The Court has no power to exercise this discretion in favour of a debtor who is a subject of a foreign state at war with His Majesty, this being forbidden by sub-sect. 7, *infra* (see *Radeke, In re*, (1915) 84 L. J. K. B. 2111).

A similar power now exists in a court to which a petition to wind up a

company is presented (see Courts (Emergency Powers) (No. 2) Act, 1916, sect. 1, sub-s. 2, *post*, p. 957.

(4) This Act shall apply to all proceedings for the recovery of possession of tenements under the Small Tenements Recovery Act, 1838, as if they were in all cases proceedings for the payment or recovery of a sum of money due and payable on account of rent.

1 & 2 Vict. c. 74.

(5) The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving full effect to this Act, and may, by those rules or directions, provide for any proceedings for the purposes of this Act being conducted, so far as desirable, in private and for the remission of any fees.

(6) The powers given under this Act shall be in addition to, and not in derogation of, any other powers of any court.

(7) Nothing in this Act shall affect any right or power of pawnbrokers to deal with pledges, or give any power to stay execution or defer the operation of any remedies of a creditor in the case of a sum of money payable by, or recoverable from, the subject of a Sovereign or State at war with His Majesty.

(8) Any stay of execution or of other proceedings, and any postponement of the operation of the remedies of a creditor, which has been granted or ordered by any court since the commencement of the present war and before the passing of this Act shall be as valid as if this Act had been in operation when the stay or postponement was granted or ordered.

Short title, application, and duration.

2.—(1) This Act may be cited as the Courts (Emergency Powers) Act, 1914.

(4) His Majesty may, by Order in Council, at any time determine the operation of this Act, or provide that this Act shall have effect subject to such limitations as may be contained in the Order ; but, subject to the operation of any such Order in Council, this Act shall have effect during the continuance of the present war, and for a period of six months thereafter (*a*).

NOTE.—(*a*) Extended to the Isle of Man by Order in Council dated the 14th October, 1914.

COURTS (EMERGENCY POWERS) (AMENDMENT) ACT, 1916.

(6 & 7 Geo. V. c. 13.)

By this Act the benefits of the Principal Act, sect. 1, sub-sects. 1, 2, and 3, are extended, with the additions and modifications set out in the Act, to officers and men of His Majesty's Forces.

Power is also given to the County Court, in its absolute discretion, to determine yearly tenancies, or tenancies for longer periods on the application of the tenant, being an officer or man in His Majesty's Forces.

AN ACT TO AMEND THE COURTS (EMERGENCY POWERS) ACT, 1914, IN RELATION TO OFFICERS AND MEN OF HIS MAJESTY'S FORCES.

[17*th May*, 1916.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Modification of principal Act as respects members of His Majesty's forces.

4 & 5 Geo. 5, c. 78.

1. The Courts (Emergency Powers) Act, 1914 (hereinafter referred to as the "principal Act"), shall have effect in favour of officers and men of His Majesty's forces, with the following modifications, that is to say :—

(*a*) Sub-section (1) of section one shall apply to any sum of money due and payable in pursuance of a contract made before the commencement of this Act, whether such contract was made before or after the beginning of the fourth day of August nineteen hundred and fourteen :

(*b*) The discretionary powers conferred upon the courts by sub-sections (2) and (3) of section one may be exercised although the debtor's inability to pay may not be due to circumstances attributable directly or indirectly to the present war.

Power of county courts to determine leases to members of His Majesty's forces.

2. Any officer or man of His Majesty's forces who is the tenant of any premises under a tenancy from year to year, or for any longer period, may apply to the county court, or in Scotland the sheriff court, for the district in which he usually resides, or in which such premises are situate, in such manner as may be prescribed by rules or directions under the principal Act, for leave to determine such tenancy, and, upon any such application being made, the court may, in its absolute discretion, after considering all the circumstances of the case and the position of all the parties, by order authorise the applicant to determine the tenancy by such notice and upon such conditions as the court thinks fit, and thereupon such tenancy may, notwithstanding any provision in the tenancy agreement or lease, be determined accordingly.

Short title and commencement. 5 & 6 Geo. 5, c. 19.

3.—(1) This Act may be cited as the Courts (Emergency Powers) (Amendment) Act, 1916, and shall be read with the principal Act; and the principal Act, the Courts (Emergency Powers) (Ireland) Act, 1914, and this Act may be cited together as the Courts (Emergency Powers) Acts, 1914 and 1916.

(2) This Act shall have effect as from the eleventh day of April nineteen hundred and sixteen, and shall be deemed to have been in operation as from that date.

COURTS (EMERGENCY POWERS) (No. 2) ACT, 1916.

[6 & 7 Geo. V. c. 18.]

This Act extends the meaning of the expression "enter into possession," used in the principal Act so as to include the appointment of a receiver of mortgaged property. It also extends the provisions as to foreclosure in the principal Act, to proceedings for foreclosure or sale without leave of the court (see *Farnot, Eades, Irvine & Co.* v. *The Company*, *ante*, p. 949). It defines the expression "mortgagee in possession" as used in the principal Act. It also gives a similar power to that given to the court of bankruptcy by clause 1 (3) of the Principal Act, where a petition to wind up a company is presented (sect. 1, sub-s. 2).

By section 2 the county court could (notwithstanding the prohibition contained in the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. V., c. 97), s. 1 (2), *post*, p. 983) authorise the grant of a new lease for twenty-one years or upwards for which a fine, premium, or other like sum in addition to the rent is required if satisfied that the terms are on the whole not less favourable to the tenant than the terms on which the dwelling-house was previously let (*a*). This section is now repealed as the clause in the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, no longer applies to any lease of a dwelling-house for a term of twenty-one years or upwards (see Courts (Emergency Powers) Act, 1917, sect. 4, *post*, p. 960).

Section 3 contains provisions allowing the court (*b*) to declare that prescription in respect of light shall not be acquired in respect of adjoining or neighbouring premises, where a person entitled to build on land is unable to do so, by reason of the war, or where in the opinion of the Treasury or Minister of Munitions it is desirable that he should not build on such land.

AN ACT TO GIVE TO COURTS IN CONNECTION WITH THE PRESENT WAR FURTHER POWERS OF GRANTING RELIEF.

[1*st June*, 1916.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Amendment of principal Act as to

1.—(1) In sub-section (1) of section one of the Courts (Emergency Powers) Act, 1914 (hereinafter referred to as the principal Act)—

(*a*) Passed in consequence of the decision in *Rees* v. *Bute* (*Marquess*), (1916) 85 L. J. Ch. 421.

(*b*) The Chancery Division of the High Court, *ante*, p. 949.

(*a*) the expression "enter into possession" shall include the appointment of a receiver of mortgaged property; and mortgagees and companies.

(*b*) the provisions relating to foreclosure shall extend to the institution of proceedings for foreclosure or for sale in lieu of foreclosure (*a*); and 4 & 5 Geo. 5, c. 78.

(*a*) See *Hosack* v. *Robins*, (1917) 86 L. J. Ch. 117; on appeal, (1917) 86 L. J. Ch. 282.

(*c*) the expression "a mortgagee in possession" shall include a mortgagee who before the passing of the principal Act appointed a receiver who is still in possession or receipt of the rents and profits of the mortgaged property, but shall not include a mortgagee of property other than land or some interest in land, except in any case where the power of sale had arisen and notice of intended sale had been given prior to the fourth day of August nineteen hundred and fourteen.

(2) Where a petition has, whether before or after the passing of this Act, been presented for the winding up of any company, the court shall have the like discretion as to staying proceedings under the petition as by sub-section (3) of section one of the principal Act is conferred on courts having jurisdiction in bankruptcy in relation to bankruptcy proceedings.

(3) This section shall have effect as from the twenty-fifth day of May nineteen hundred and sixteen, and shall be deemed to have been in operation as from that date.

Power of county court to remove restrictions imposed by 5 & 6 Geo. 5, c. 97, s. 1 (2).

2.—(1) A county court may authorise the grant of a new lease for a term of twenty-one years or upwards of a dwelling-house to which the increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, applies, in consideration for which a fine, premium, or other like sum, in addition to the rent, is required, if the court is satisfied that the terms of the tenancy are on the whole not less favourable to the tenant than the terms on which the dwelling-house was previously let, and in such cases sub-section (2) of section one of the said Act shall not apply.

(2) This section shall be construed as one with the said Act.

Repealed. See Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, sect. 1, sub-s. 2, as amended by sect. 4 of the Courts (Emergency Powers) Act, 1917, *post*, p. 960.

NOTE.—Passed to meet the decision in the case of *Rees* v. *Marquess of Bute*, (1916) 2 Ch. 64; 85 L. J. Ch. 421; see note, *ante*, p. 956. Rules and Forms made to regulate an application under this section, dated June 26th, 1916, are now obsolete. See *post*, p. 998.

Power to court to suspend period for prescrip-

3.—Where on the application of a person entitled to build on any site it is proved to the satisfaction of such court as may be provided by rules or directions under the principal Act—

tion running in certain cases.

(*a*) that that person is prevented from erecting a building on the site by reason of circumstances attributable directly or indirectly to the present war, or that in the opinion of the Treasury or of the Minister of Munitions it is desirable in the national interests that he should not erect such a building during the present war; and

(*b*) that in consequence of the delay in erecting such building there is danger of a right to light being acquired by prescription in respect of any adjoining or neighbouring premises,

the court (*a*) may in its absolute discretion, after considering all the circumstances of the case and the position of all the parties, by order declare that a period, commencing at such date not earlier than the twenty-fifth day of May nineteen hundred and sixteen and ending at such date not later than six months after the termination of the present war as may be fixed by the court, shall be excluded in computing the period of the enjoyment of light required for the purpose of obtaining a prescriptive right whether under the Prescription Act, 1832, or otherwise.

(*a*) *Post*, p. 979.

2 & 3 Will. 4, c. 71.

Short title, construction and extent.

4.—(1) This Act may be cited as the Courts (Emergency Powers) (No. 2) Act, 1916, and save as otherwise expressly provided shall be construed as one with the principal Act, and the Courts (Emergency Powers) Acts, 1914 and 1916, and this Act may be cited together as the Courts (Emergency Powers) Acts, 1914 to 1916.

(2) Sub-section (1) of section one and sections two and three of this Act shall not apply to Scotland.

COURTS (EMERGENCY POWERS) ACT, 1917.

(7 & 8 Geo. 5, c. 25).

Powers of court to suspend or annul certain contracts.

1.—(1) Where, upon an application by any party to a contract for the construction of any building or work or for the supply of any materials for any building or work entered into before the fourth day of August, nineteen hundred and fourteen, the court is satisfied that, owing to the prevention or restriction of, or the delay in, the supply or delivery of materials, or the diversion or insufficiency of labour, occasioned by the present war, the contract cannot be enforced according to its terms without serious hardship, the court may, after considering all the circumstances of the case and the position of all the parties to the contract and any offer which may have been made by any party for a variation of the contract, suspend or annul the contract or stay any proceedings for the enforcement of the contract or any term thereof

or any rights arising thereunder on such conditions (if any) as the court may think fit.

See *post*, p. 079.

For the purpose of this subsection where an offer made before the fourth day of August nineteen hundred and fourteen was binding on a contracting party if accepted within a specified period expiring after that date and was so accepted after that date, the contract shall be deemed to have been entered into before that date.

(2) Where, upon an application by any party to any contract whatsoever, the court (*a*) is satisfied that, owing to any restriction or direction imposed or given by or in pursuance of any enactment relating to the defence of the realm or any regulation made thereunder, or owing to the acquisition or user by or on behalf of the Crown for the purposes of the present war of any ship or other property, any term of the contract cannot be enforced without serious hardship, the court may, after considering the circumstances of the case and the position of the parties to the contract and any offer which may have been made by any party for the variation of the contract, suspend or annul the contract or stay any proceedings for the enforcement of the contract or any term thereof or any rights arising thereunder on such conditions (if any) as the court may think fit.

This subsection shall apply to any obligation relating to the supply of water, heat, light, traction or power arising under any Act of Parliament, or order having the force of an Act of Parliament, in like manner as it applies to a contract, except that it shall not be lawful for the court to annul any such obligation.

(3) This section shall be construed as one with the Courts (Emergency Powers) Act, 1914. 4 & 5 Geo. 5, c. 78.

(*a*) See *post*, p. 979.

Relief in respect of certain contractual obligations.

2. Where, by virtue of any contract of tenancy, any person is bound to do or abstain from doing or is under any liability if he abstains from doing or does any act or thing, and by virtue of any enactment relating to the defence of the realm or any regulation made thereunder the doing of such act or thing is wholly or partially restricted or ordered, he shall not, during the continuance of the contract or on or after the termination thereof, be liable to any mandatory order or any injunction or interdict in respect of such act or thing, or be liable to pay any sum of money or incur any forfeiture or other penalty in respect of the failure to do or the doing of such act or thing if and in so far as the failure to do or the doing of such act or thing is attributable to compliance with such restriction or order as aforesaid :

Provided that the relief afforded by this provision from the

obligation to do any such act or thing in consequence of such a restriction as aforesaid shall be subject to the following provisions :—

(*a*) If the restriction is removed during the currency of the contract the obligation shall be fulfilled as soon as may be after the restriction is removed ;

(*b*) If the restriction has not been removed before the termination of the contract the person to whom the relief is given shall be liable to pay as damages a sum not exceeding the expenditure (if any) which would have been entailed by the fulfilment of the obligation.

Relief from liability when fulfilment of contract interfered with by action of Government department.

3. Where, before or after the passing of this Act, the non-fulfilment of any contract (not being a contract of tenancy) was or is due to the compliance on the part of any person with any requirement, regulation, order, or restriction of any Government department or of a competent naval or military authority made, issued, given, or imposed for purposes connected with the present war, or with any direction or advice issued or given by any Government department with the object of preventing transactions which, in the opinion of the department, would or might be contrary to national interests in connection with the present war, proof of that fact shall be a good defence to any action or proceeding in respect of the non-fulfilment of the contract. A certificate by the appropriate Government department shall be sufficient evidence that such direction or advice was issued or given and with such object as aforesaid.

Power to accept premiums on leases for 21 years or upwards.

4.—(1) Subsection (2) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall not apply to a lease of a dwelling-house for a term of twenty-one years or upwards.

6 & 7 Geo. 5, c. 18.

(2) Section two of the Courts (Emergency) Powers (No. 2) Act, 1916, is hereby repealed.

See *ante*, p. 956.

Provisions as to sums made irrecoverable by 5 & 6 Geo. 5, c. 97.

5.—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which by virtue of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, would have been irrecoverable by the landlord or mortgagee, the sum so paid shall at any time within six months after the date of payment, or, in the case of a payment made before the passing of this Act, within six months after the passing thereof, be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and may, without prejudice to any other method of recovery, be

deducted by such tenant or mortgagor from any rent or interest payable within such six months by him to such landlord or mortgagee.

(2) If any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of the said Act is irrecoverable, or if, where any such entry has before the passing of this Act been made by or on behalf of any landlord, the landlord on being requested by or on behalf of the tenant so to do, refuses or neglects to delete the entry, he shall on summary conviction be liable to a fine not exceeding ten pounds.

(3) This section shall be construed as one with the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

This section making rent and mortgage money already paid recoverable by the tenant or mortgagor was passed in consequence of the decision in *Sharp Brothers and Knight* v. *Chant*, (1917) 1 K. B. 71; 86 L. J. K. B. 808.

Exclusion of judgments in actions of tort from section one (1) (*a*) of 4 & 5 Geo. 5, c. 78.

6. The provisions of section one, subsection (1) (*a*) of the Courts (Emergency Powers) Act, 1914, shall not apply to any judgment or order for recovery or payment of any sum of money or costs given or made in any action of tort, or in Scotland in any action of reparation founded on delinquency, whether before or after the commencement of this Act.

Provision as to leases at less than rack rent.

7. In subsection (6) of section two of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, which relates to tenancies at less than rack rent, the word "standard" shall be omitted, and at the end of the subsection there shall be inserted the following words "and this Act shall apply in respect of such dwelling house as if no such tenancy existed or had ever existed."

Application of subsection (1) of section one of 4 & 5 Geo. 5, c. 78, to officers and soldiers.

8. The Courts (Emergency Powers) Act, 1914, shall have effect in favour of officers and men of His Majesty's Forces with the following modification (that is to say)—

Subsection (1) of section one shall apply to any sum of money due and payable in pursuance of a contract made before the officer or man has joined His Majesty's Forces.

See "General Note" at commencement of Emergency Legislation.

Relief from disqualification for membership of House of Commons in certain cases. 22 Geo. 3, c. 45. 41 Geo. 3, c. 52.

9.—(1) Whereas by reason of the emergencies of the present war members of the Commons House of Parliament have sometimes been, or may hereafter be, required to supply property to, or to permit the use thereof by, a Government department for purposes connected with the present war, it is hereby declared that none of the provisions of the House of Commons (Disqualification) Act, 1782, or of the House of Commons (Disquali-

fications) Act, 1801, shall be construed so as to extend to a contract or agreement entered into during the present war as to the price or compensation to be paid for any property so requisitioned or taken or as to any other terms on which any property so requisitioned or taken is to be handed over or supplied.

(2) This section shall not affect any legal proceedings instituted before the twenty-first day of February, nineteen hundred and seventeen.

Short title.

10. This Act may be cited as the Courts (Emergency Powers) Act, 1917. (*a*)

(*a*) Rules made under this Act, dated 4th of October, 1917, are incorporated with the Consolidated Rules.

THE COURTS (EMERGENCY POWERS) ORDER, 1914.

1914. No. 1404.

At the Court at Buckingham Palace, the 17th day of September, 1914.

PRESENT:

The King's Most Excellent Majesty in Council.

Whereas, under sub-section (4) of section two of the Courts (Emergency Powers) Act, nineteen hundred and fourteen, His Majesty has power, by Order in Council, to provide, amongst other things, that that Act shall have effect subject to such limitations as may be contained in the Order:

And whereas it is desirable that that Act shall have effect subject to the limitation hereinafter set out:

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows:—

1. The Courts (Emergency Powers) Act, nineteen hundred and fourteen, shall have effect subject to the following limitation, that is to say, that sub-section (1) of section one thereof shall not apply in the case of any proceedings for the levying of any fine, or for the enforcement of the payment of any sum due under a recognizance, or for the enforcement of any order of affiliation or any order enforceable in the same manner as an order of affiliation.

2. This Order may be cited as the Courts (Emergency Powers) Order, 1914.

ALMERIC FITZROY.

RULES.

COURTS (EMERGENCY POWERS) ENGLAND.

COUNTY COURTS.

THE CONSOLIDATED COUNTY COURTS (EMERGENCY POWERS) RULES, 1916, AS AMENDED BY THE RULES OF OCTOBER 4, 1917.

Preliminary to Consolidated Rules, 1916.

Citation, commencement, construction and application of rules.

The following rules under the Courts (Emergency Powers) Acts, 1914 to 1916, shall apply to the County Courts and to the City of London Court, which shall for the purposes of these rules be deemed to be a county court.

These rules may be cited as the Consolidated County Courts (Emergency Powers) Rules, 1916, and shall come into operation on the 11th day of September, 1916.

Rules 1 and 2 of the Courts (Emergency Powers) Rules, 1914, dated the 8th of September, 1914 (herein called the Principal Rules), shall continue to apply to the County Courts and to the City of London Court, subject to the modifications contained in these rules; and these rules shall be read and construed with the said rules, and expressions used therein shall have the same meaning as in those rules, which are for convenience of reference prefixed to these rules: but save in this paragraph provided the Principal Rules shall not apply to the County Courts or to the City of London Court.

On the coming into operation of these rules the following rules, viz.:—

The County Courts (Emergency Powers) Rules, 1914, dated November 20th, 1914;

The County Courts (Emergency Powers) Rules, 1915, dated February 15th, 1915;

The County Courts (Emergency Powers) Rules, 1915 (No. 2), dated March 22nd, 1915;

The County Courts (Emergency Powers) Rule, 1916, dated April 13th, 1916;

The County Courts (Emergency Powers) Rules, 1916 (No. 2), dated June 1st, 1916; and

The County Courts (Emergency Powers) Rules, 1916 (No. 3), dated June 26th, 1916;

shall be annulled, without prejudice to anything done thereunder, and these rules shall apply to all proceedings pending under the Principal Rules and the rules hereby annulled on the day when these rules come into operation.

Where any rule hereby annulled is referred to in the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916, or in any other rules, the reference to such rule shall be construed as referring to the rule hereby substituted for the same.

THE COURTS (EMERGENCY POWERS) RULES, 1914, RULES 1 AND 2.

(Dated September 8th, 1914.)

Definitions.

1. In these rules—

The expression "the Act" means the Courts (Emergency Powers) Act, 1914;

The expressions "paragraph (*a*)" and "paragraph (*b*)" mean respectively paragraph (*a*) and paragraph (*b*) of sub-section (1) of section 1 of the Act;

The expression "creditor" means any person who has obtained or is seeking to obtain any judgment or order for the payment or recovery of a sum of money to which paragraph (*a*) applies, or who is (apart from the provisions of the Act) entitled to enforce any of the remedies mentioned in paragraph (*b*); and the expression "debtor" has a corresponding meaning;

The expression "application" means an application to the court under section 1 of the Act.

Courts by which powers under Act to be exercised.

2.—(1) For the purposes of paragraph (*a*) the court to which application is made shall be the court by which the judgment or order for the payment or recovery of a sum of money has been given or made or in which it is being sought.

(2) For the purposes of paragraph (*b*) the court to which application is made may be—

(*a*) in any case whatever, the High Court;

(*b*) alternatively, in cases where the value of the subject-matter (as hereinafter defined) of the application does not exceed one hundred pounds, the county court; and

(*c*) as a further alternative, in the case of distress for rent where the amount of the yearly rent does not exceed twenty pounds, or in cases where it is sought to enforce either the lapse of a policy to which sub-section (1) of section 1 of the Act applies, or a hire-purchase agreement the original liability on which does not exceed twenty pounds, a court of summary jurisdiction.

(3) For the purposes of this rule, the value of the subject-matter of an application shall be deemed to be—

in the case of an application for leave to levy distress, the amount for which distress is proposed to be levied;

in the case of an application for leave to take, resume, or enter into possession of any property, or to exercise any right of re-entry, the amount of the sum sought to be recovered;

in the case of an application for leave to foreclose, or realise any security, the amount of the principal sum secured;

in the case of an application for leave to forfeit any deposit, the total amount payable in respect of which the deposit has been made; and

in the case of an application for leave to enforce the lapse of a policy of insurance to which sub-section (1) of section 1 of the Act applies, the amount ultimately recoverable under the policy.

(4) Applications shall, in the absence of special circumstances, be made to a county court or to a court of summary jurisdiction, as the case may be, where application to such a court is permitted by this rule.

The court may order any increased costs occasioned by disregard of this sub-rule to be borne by the applicant.

Where an application is made to the High Court which in the opinion of that court ought to have been made to a county court or to a court of summary jurisdiction, the case may, if thought fit, be remitted or transferred to the proper court; and where an application is made to a county court which in the opinion of that court ought to have been made to a court of summary jurisdiction, the county court may remit or transfer the case to a court of summary jurisdiction.

THE CONSOLIDATED COUNTY COURTS (EMERGENCY POWERS) RULES, 1916.

Applications under Paragraph (a).

Meaning of "paragraph (*a*)."
6 & 7 Geo. V., c. 13.
7 & 8 Geo. V., c. 28, s. 8.

1.—(1) For the purposes of these rules, the expression "paragraph (*a*)" includes the said paragraph as extended by section one of the Courts (Emergency Powers) (Amendment) Act, 1916, and section eight of the Courts (Emergency Powers) Act, 1917, in favour of officers and men of His Majesty's forces.

(2) In cases under paragraph (*a*), where no judgment or order has been already entered or made, application for leave to proceed to execution on or otherwise to the enforcement of the judgment or order may be made at the time when the judgment or order is entered or made: Provided that unless the debtor is present, either in person or by his solicitor, or by some person allowed by the court to appear for him, at the time when the judgment or order is entered or made, the application shall not be entertained, unless the creditor shall have served on the debtor a notice according to the form in the Appendix of his intention to make the application. Application where no judgment entered or order made. Form 1.

(3) Any such notice as in the preceding paragraph mentioned may be annexed to and served with the summons or other document originating the proceedings; or it may be served at any later time, not being less than two clear days before the judgment or order is entered or made, unless in any case the court gives leave for shorter service.

(4) Any such notice, if it is to be served otherwise than with the summons or other document originating the proceedings, shall be served in accordance with the practice of the court as to service of notice of an interlocutory application.

(5) Provided as follows:—

(i.) Notice of intention to apply under this rule shall not be served unless the creditor intends to apply at the time when the judgment or order is entered or made for an order for payment forthwith, or within fourteen days from the date of the judgment or order.

(ii.) Where any such notice is served, and an order is made for payment of a sum not exceeding twenty pounds, exclusive of costs, by instalments, or within a period longer than fourteen days from the date of the judgment or order, instead of an order for payment forthwith or within fourteen days, no costs of the notice shall be allowed against the debtor.

(iii.) In any case in which an order is made for payment by instalments, or within a period longer than fourteen days from the date of the judgment or order, either after notice has been served, or without notice having been served, leave to proceed shall not be given at the time when the judgment or order is entered or made: but in any such case, if default is made in payment, the creditor may proceed in accordance with Rule 2.

(6) Where leave to proceed is given at the time when the judgment or order is entered or made, and default is made in payment, a warrant of execution may be issued without further leave; or the creditor may proceed in accordance with Rule 2.

2. Where a judgment or order has been entered or made, and leave to proceed is not given at the time when the judgment or order is entered or made, the following provisions shall apply if default is made in payment, viz.:— Application after judgment entered or order made.

(i.) The creditor may issue a judgment summons in accordance with Rule 3, or a garnishee summons in accordance with Rule 5.

(ii.) If the creditor desires to apply for leave to proceed in any other way, he shall serve on the debtor a notice of his intention to apply for such leave, according to the form in the Appendix: Such notice shall be deemed to be a notice of an interlocutory application, and shall be served in accordance with the practice of the court as to service of notice of an interlocutory application. Form 3.

Judgment Summons and Order of Commitment.

3.—(1) A judgment summons may be issued as heretofore, and no application under the Act for the purpose of obtaining leave to issue such summons shall be required. Judgment summons.

(2) Paragraph 1 of Rule 2 of the Principal Rules shall not apply to any

case in which a creditor desires to issue a judgment summons under Order XXV., Rule 29 or Rule 30, of the County Court Rules in a court other than the court in which the judgment or order was obtained.

Issue of order of commitment.

4. Where an order of commitment has been made either before or after the passing of the Act, the following provisions shall apply :—

(i.) If the execution of the order of commitment has not been suspended pursuant to Order XXV., Rule 46, paragraph 2, of the County Court Rules, or if it has been suspended to enable the debtor to pay the amount in respect of the non-payment of which the order is made within a period not exceeding twenty-eight days from the date of the order, the order may in default of payment be issued without leave at any time within forty-two days from the date on which it was made, or, if it was made before the date when these rules come into operation, at any time within forty-two days from that date, but if not so issued it shall not afterwards be issued without leave of the judge granted on application made on notice served in accordance with Rule 2, paragraph (ii.)

(ii.) In any other case the order of commitment shall not be issued without leave of the judge granted on application made on notice served in accordance with Rule 2, paragraph (ii.).

Attachment of Debts.

Garnishee summons. Form 2.

5.—(1) A garnishee summons may be issued as heretofore: Provided that a notice according to the form in the Appendix shall be substituted for the notice which is by Order XXVI., Rule 4*b*, of the County Court Rules required to be served on the judgment debtor with a copy of the garnishee summons.

(2) The provisions of these rules as to applications for leave to proceed under paragraph (*a*) shall apply to applications for leave to proceed on any judgment entered or order made against a garnishee; and for the purposes of any such application the garnishee shall be deemed to be the debtor, and the forms in the Appendix shall be used with such modifications as may be necessary to adapt them to the case of a summons issued or a judgment or order entered or made against a garnishee.

(3) Paragraph 1 of Rule 2 of the Principal Rules shall not apply to any case in which a creditor desires to issue a garnishee summons under Order XXVI., Rule 2, of the County Court Rules against a garnishee who is not within the jurisdiction of the court in which the judgment or order was obtained.

Execution against Goods.

Application for leave to issue execution against goods.

6.—(1) An application for leave to issue execution against goods, if made at the time when the judgment or order is entered or made, may, where the judgment or order is entered or made by the registrar, be made to him, subject to the provisions of Rule 17.

(2) An application for leave to issue execution against goods, if made after the judgment or order has been entered or made, may be made to the registrar, subject to the provisions of Rule 17.

Rule 6a.

Conditions to be complied with on application for issue of execution without leave.

6a.—(1) Where in any proceedings application is made for the issue of a warrant of execution against goods without leave of the court, then, unless it sufficiently appears on the face of the proceedings that the judgment or order is for the payment or recovery of a sum of money to which the Courts (Emergency Powers) Acts, 1914 to 1916, as amended by the Courts (Emergency Powers) Act, 1917, do not apply, the warrant shall not issue without leave unless the following conditions are complied with.

(2).—The applicant shall be required to state in the præcipe, in the form appended to this Rule,

(*a*) whether the debtor is or is not an officer or a man of His Majesty's Forces, or that the fact is not known; and

(*b*) if it is stated that he is not, that the judgment or order is not for the payment or recovery of a sum of money payable in pursuance of a contract made before the beginning of the fourth day of August nineteen hundred and fourteen, or of a contract for rent not amounting to fifty pounds per annum made after the beginning of that day; or

(*c*) if it is stated that he is, that the judgment or order is not for the payment or recovery of a sum of money payable in pursuance of a contract made before the beginning of the eleventh day of April nineteen hundred and sixteen, or before the debtor joined the Forces, or of a contract for rent not amounting to fifty pounds per annum made after the beginning of that day, or on or after the date on which the debtor joined the Forces; or

(*d*) if it is stated that the fact is not known, that the payment or order is not for the payment or recovery of a sum of money payable in pursuance of a contract made before the beginning of the eleventh day of April, 1916, or of a contract for rent not amounting to fifty pounds per annum made made after the beginning of that day:

[*Form of Statement.*

(*a*) Debtor not an officer or a man of H.M.'s Forces; *or*
Debtor an officer [*or* a man] of H.M.'s Forces; *or*
Not known whether debtor an officer or a man of H.M.'s Forces.

(*b*) Debt not on contract before, or for rent under £50 per annum on contract on or after, 4th August, 1914.

(*c*) Debt not on contract before 11th April, 1916, or before the debtor joined the Forces, or for rent under £50 per annum on contract on or after 11th April, 1916, or on or after the date on which the debtor joined the Forces.

(*d*) Debt not on contract before, or for rent under £50 per annum on contract on or after, 11th April, 1916.

NOTE.—Added October 4, 1917. Annulling 6a of Rules of November 23, 1916.

Rule 6*b*.

Where execution issued without leave in case in which leave appears to be required.

2. Where execution has issued without leave, but it appears to the bailiff, from any information received by him, that the case is one in which by reason of the debtor being an officer or a man of His Majesty's Forces, or for any other reason, the warrant should not have issued without leave, he shall make a special return to the court from which the warrant issued, and to the judgment creditor, stating the information that he has received and his grounds for thinking that leave was required; and the warrant shall not be executed without leave of the court granted on application made in accordance with the rules as to applications for leave to issue execution; and those rules, with the necessary modifications, shall apply accordingly.

NOTE.—Additional Rule, November 23, 1916.

Appointment of Receiver.

Appointment of receiver.

7.—(1) These rules shall not affect *ex-parte* applications for the appointment of receivers; but if an order is made on any such application it shall be an *interim* order only (with or without an injunction), and such order shall be served on the debtor in accordance with Rule 22.

Form 3.

(2) A final order for the appointment of a receiver shall not be made unless notice of the intention of the creditor to apply for such order, according to the form in the Appendix, has been served on the debtor in accordance with these rules.

Other Applications for Leave to Proceed.

Other applications for leave to proceed.

8. Any other application for leave to proceed under paragraph (*a*), not in these rules provided for, shall be made to the judge.

Applications under Paragraph (b).

Meaning of "paragraph (*b*)."

9.—(1) For the purposes of these rules, the expression "paragraph (*b*)" includes—

(i.) the said paragraph as amended by sub-section one of section one of the Courts (Emergency Powers) (No. 2) Act, 1916; and

6 & 7 Geo. V., c. 18.

(ii.) the said paragraph as extended by section one of the Courts (Emergency Powers) (Amendment) Act, 1916, and section eight of the Courts (Emergency Powers) Act, 1917, in favour of officers and men of His Majesty's forces.

6 & 7 Geo. V., c. 13; 7 & 8 Geo. V., c. 25.

Amendment of Rule 2 of Principal Rules as to applications to county courts.

(2) Rule 2 of the Principal Rules shall have effect subject to the following modifications, viz.:—

(*a*) An application for leave to take, resume, or enter into possession of any property, or to appoint a receiver of mortgaged property, or to exercise any right of re-entry, may be made to the county court where

(i.) the amount of the sum for enforcing payment or recovery whereof, or in default of payment or recovery whereof, the remedy is sought to be enforced, does not exceed one hundred pounds: and

(ii.) In the case of lands, tenements, or hereditaments, neither the value of the premises nor the rent payable in respect thereof exceeds one hundred pounds a year.

(*b*) An application for leave to foreclose, or to sell in lieu of foreclosing, or to realise any security may be made to the county court where the amount of the principal sum secured does not exceed five hundred pounds.

To what court application may be made.

10.—(1) Applications to the county courts under paragraph (*b*) may be made:—

(i.) in the case of an application for leave to levy any distress, to the court in the district of which the premises are situate;

(ii.) in the case of an application for leave to take, resume, or enter into possession of any property, or to appoint a receiver of mortgaged property, or to exercise any right of re-entry, or to foreclose, or to sell in lieu of foreclosing, or to realise any security on any premises, to the court in the district of which the property or premises is or are situate;

(iii.) in any other case, to any court which would have jurisdiction in the matter without leave granted under section seventy-four of the County Courts Act, 1888, if the creditor were a plaintiff and the debtor a defendant in an action brought to enforce the remedy which the creditor desires to enforce.

51 & 52 Vict. c. 43, s. 74.

(2) Provided as follows:—

(i.) If in any case any other court would, if the creditor were a plaintiff and the debtor were a defendant in an action brought to enforce the remedy which the creditor desires to enforce, have jurisdiction in the matter if leave were granted under section seventy-four of the County Courts Act, 1888, to commence the action in such other court, the creditor may apply to such other court for leave to make his application therein, on filing an affidavit showing that the court would have such jurisdiction;

51 & 52 Vict. c. 43, s. 74.

(ii.) The provisions of Order V., Rule 13, of the County Court Rules shall, with the necessary modifications, apply to any application under this paragraph; and if leave is granted a copy of the affidavit, with a copy thereon of the order granting leave, shall be annexed to and served with the summons mentioned in the next following rule.

Application by summons.

11. Applications under paragraph (*b*) shall be made by means of a summons according to the form in the Appendix, entitled "In the Matter of the Courts (Emergency Powers) Acts, 1914 to 1917."

Form 5.

12. A summons under paragraph (*b*) shall be served on every person affected thereby four clear days at least before the day fixed for the hearing of the summons, unless the judge or registrar gives leave for shorter service. Service shall be effected in accordance with the County Court Rules as to service of notice of an interlocutory application. Service of summons.

13. An application under paragraph (*b*) may be made to the registrar, subject to the provisions of Rule 17. Application to registrar.

14. Where rent is claimed under section one hundred and sixty of the County Courts Act, 1888, and the bailiff is required to distrain for the same, leave so to distrain shall not be required. Distress for rent under 51 & 52 Vict. c. 43, s. 160.

Preparation, Filing, &c., of Notices and Summonses.

15. A notice of an application, or a summons (other than a judgment summons or a garnishee summons), shall be prepared by the applicant and filed with the registrar, with as many copies as there are parties to be served; Provided that any notice or summons, with the necessary copies, may, if the registrar so thinks fit, be prepared in his office: And the registrar shall examine, complete, seal, and where necessary sign the same, and shall, where notice of an application under paragraph (*a*) is pursuant to Rule 1 to be served with the original summons, annex the copy of the notice to the copy summons for service, and shall in any other case return the copies of the notice or summons to the applicant for service. Preparation, &c., of notices, summonses, and copies.

Substituted Service.

16. The practice of the courts as to substituted service of notices and summonses shall apply to notices of applications and summonses under these rules. Substituted service of notices and summonses.

Power to proceed on Notice, where party abroad or cannot be found.

Power to proceed on Notice, &c. where Party abroad or cannot be found.

3. In any case where any debtor or other party to any proceedings under the Emergency Rules is absent or abroad or cannot be found, or it is uncertain whether he is alive or dead, or it is otherwise difficult to serve him, the court may proceed on such notice or intimation of the proceedings, whether to any other person or by advertisement or otherwise, as the court shall in its absolute discretion think fit. And the provisions of this Rule shall be in addition to and by way of extension and enlargement of the ordinary powers and practice of the court as to proceeding *ex parte* and as to substituted service. Rule 16*a*. Power to proceed on notice, &c., where debtor or other party absent or abroad, or cannot be found.

NOTE.—Additional Rule, November 23, 1916.

Applications to Registrar.

17. Where under these rules an application may be made to the registrar, the following provisions shall apply:— Where application made to registrar.

(i.) the registrar may in any case refer the matter to the judge;

(ii.) where the amount of the subject-matter of the application exceeds five pounds, the registrar shall, on the application of either party, refer the matter to the judge; and

(iii.) the judge may vary or rescind any order made by the registrar, and may make such order as may be just.

Evidence in Support of Application.

Evidence in support of application.

18. It shall not be necessary in the first instance for a creditor to support any application either under paragraph (*a*) or under paragraph (*b*) by any affidavit or other evidence, except such evidence, if any, as may be required to show the nature and extent of the relief required by him. But the court may in any case make such requirements or give such directions as to evidence on the part of either party or both parties as the case shall require.

Power to Hear Cases in Private.

Power to hear cases in private.

19. The court may at any stage of the proceedings on an application under the Act order that the case shall thenceforward be heard in private.

Proceedings on Applications.

Ordinary practice of court to be followed.

20. The proceedings on any application under the Acts and these rules shall, so far as not expressly provided for by these rules, be conducted in accordance with the ordinary practice of the court in dealing with similar matters. In particular, the practice and procedure of the court with respect to the summoning of witnesses, and, on summonses under paragraph (*b*), with respect to discovery and inspection of documents, shall with the necessary modifications, apply to proceedings on applications under the Acts and these Rules.

Power to impose Conditions.

Power to require undertaking, security, &c.

21. The conditions on which under sub-section (2) of section 1 of the Act the court may stay execution or defer the operation of any of the remedies therein referred to may, if the court thinks fit, include the giving of any undertaking or the deposit in court or otherwise of any securities, or the appointment of a receiver or the granting of an injunction.

Orders on Applications.

Orders on applications.

22. An order giving leave to proceed under paragraph (*a*), if made pursuant to Rule 1 at the time when the judgment or order is entered or made, shall be entered in the minute book and be included in the judgment or order.

In any other case, where an order is made under either paragraph (*a*) or paragraph (*b*), the registrar shall make a note of the order on the notice of application or summons, but no order need be drawn up or served unless the order is made subject to conditions, or the court so directs. If the order is made subject to conditions, or the court so directs, an order shall be prepared and sealed by the registrar and delivered to the bailiff, who shall within twenty-four hours send the same, by post or otherwise, to the party against whom the order is made; but it shall not be necessary for the party in whose favour it is made to prove, previously to taking proceedings thereon, that it was posted or reached the opposite party.

Revocation or Variation of Orders.

Power to revoke or vary orders.

23. Any order made under the Acts or these rules may, should subsequent circumstances render it just so to do, be suspended, discharged, or otherwise varied or altered by the court which made the order, on application made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

Process issued, &c., pursuant to Order.

Process, &c. to show that leave has been granted.

24. Where process is issued by or any proceeding taken in the court pursuant to any order made under either paragraph (*a*) or paragraph (*b*), it shall be stated on the face of the process or proceeding that it is issued or taken by leave of the court.

Fees.

Fees. 25. The following fees shall be payable under the Treasury Order regulating Fees in the County Courts, on proceedings under the Acts and these rules, in lieu of all other fees heretofore prescribed on such proceedings, viz. :—

(1) On any notice of application under—
Rule 1, paragraph 2 ;
Rule 2, paragraph (ii.) ;
Rule 4, paragraph (ii.) ;
Rule 5, paragraph 2 ;
Rule 7, paragraph 2 ;
a fee under Schedule B, Part I., of the Fees Order, of 6*d.* in the £ orpart of a £ on the amount of the subject-matter of the application, not exceeding 2*s.* 6*d.*

The fee on a notice of application shall include drawing, sealing, and issuing the order (if any), other than an order for the appointment of a receiver, and the fee prescribed by paragraph 12 of Schedule B, Part I., of the Fees Order shall not be taken.

(2) On any summons under Rule 11—
(*a*) a fee under Schedule B of the Fees Order of 6*d.* in the £ or part of a £ on the amount of the subject-matter of the summons, not exceeding 2*s.* 6*d.*
(*b*) for drawing, sealing, and issuing the order (if any), a fee under Schedule B, Part I., of the Fees Order of 6*d.* in the £ or part of a £ on the amount of the subject-matter of the summons, not exceeding 2*s.* 6*d.*, and the fee prescribed by paragraph 12 of Schedule B, Part I., of the Fees Order shall not be taken.

(3) On summonses to witnesses, the fees prescribed by Schedule A of the Fees Order shall be taken.

(4) On applications for discovery or inspection of documents, and on applications for the revocation or variation of orders, fees in accordance with paragraph 2, sub-paragraph (*b*), of this rule shall be taken.

(5) The court may remit or excuse in whole or in part any fees paid or payable under this rule, other than the fee prescribed by paragraph 2, sub-paragraph (*a*).

NOTE—Amended by Rules of October 4, 1917.

Costs.

Costs. 26.—(1) The costs of any application under the Acts and these rules shall be in the absolute discretion of the court.

(2) The court may either fix the amount of such costs, or allow them on the scale applicable to an interlocutory application in an action for the amount of the subject-matter of the application ; provided that Column B of the scale shall apply to all cases above twenty pounds to the exclusion of Column C.

(3) Where the amount of the subject-matter does not exceed ten pounds, there may be allowed for all work done by a solicitor in relation to the application—
If the amount exceeds 2*l.*, but does not exceed 5*l.*, 3*s.*
If the amount exceeds 5*l.*, but does not exceed 10*l.*, 5*s.*

(4) The court may direct that any costs allowed shall be payable forthwith, or that they shall be included in the sum recovered under the judgment or order, or added to the costs of the proceedings authorised to be taken for the enforcement of the judgment or order, or, in the case of an application under paragraph (*b*), to the costs of any proceedings (other than proceedings by way of distress) authorised to be taken.

Forms.

Forms.

27.—(1) The forms in the Appendix hereto, with such modifications as may be necessary, shall be used for notices of applications to and summonses issued by the county courts, and for orders made under paragraph (*a*) or paragraph (*b*).

Notes to forms.

(2) Every such notice or summons shall have appended thereto a note according to the form in the said Appendix.

Additional note where debtor is or may be member of H.M.'s forces.

(3) And if the debtor is known to be or may be an officer or a man of His Majesty's forces, the notice or summons shall have appended thereto an additional note according to the form in the Appendix; and it shall be the duty of the registrar, before sealing any notice or summons, to satisfy himself whether such additional note is required.

Supply of forms.

(4) The registrar of any court may apply to the Treasury for any of the said forms to be printed and supplied to him, and if the application is granted may obtain such forms and supply the same without charge for the use of parties requiring the same.

Special Provisions as to Officers and Men of His Majesty's Forces.

Applications in case of contracts with members of H.M.'s forces before 11th April, 1916.

6 & 7 Geo. V., c. 13.

28. An application by a creditor under paragraph (*a*) or paragraph (*b*), as extended by section one of the Courts (Emergency Powers) (Amendment) Act, 1916, and section eight of the Courts (Emergency Powers) Act, 1917, with respect to any sum of money due and payable by a debtor who is an officer or a man of His Majesty's forces in pursuance of a contract made before the eleventh day of April nineteen hundred and sixteen (the date from which the Courts (Emergency Powers) (Amendment) Act, 1916, has effect), whether such contract was made before or after the beginning of the fourth day of August nineteen hundred and fourteen, or in pursuance of a contract made before the officer or man has joined His Majesty's Forces, shall be made in accordance with these rules, and these rules (and in particular paragraph 3 of Rule 27) shall apply accordingly.

NOTE.—Amended by Rules of October 4, 1917.

Application by members of H.M.'s forces to determine tenancies.

Form 7.

Application of Rules.

Costs.

Orders. Form 3;

29.—(1) An application under section two of the Courts (Emergency Powers) (Amendment) Act, 1916, by an officer or a man of His Majesty's forces who is the tenant of any premises under a tenancy from year to year or for any longer period, for leave to determine such tenancy, may be made to the court in the district of which the applicant usually resides, or to the court in the district of which the premises are situate, by means of a summons according to the form in the Appendix to these rules.

(2) The provisions of these rules as to summonses under paragraph (*b*), and the service thereof and proceedings, orders, fees, and costs thereon, shall apply to summonses issued under this rule.

(3) The court may in any case order the applicant to pay the costs of any such application.

(4) The form in the Appendix to these rules, with the necessary modifications, may be used for orders made on summonses issued under this rule.

APPENDIX.

1.

NOTICE OF APPLICATION FOR LEAVE TO PROCEED UNDER PARAGRAPH (*a*), WHERE JUDGMENT OR ORDER NOT YET ENTERED OR MADE.

The Courts (Emergency Powers) Acts, 1914 to 1917.

In the County Court of holden at .

No. of Plaint.

Between

A.B. Plaintiff.

and

C.D. Defendant.

TAKE NOTICE, that on the entry of any judgment or the making of any order in this action [*or* matter] for the payment or recovery of a sum of money by or from you the defendant I [*or* we] intend without any further notice to apply to the court under the Courts (Emergency Powers) Acts, 1914 to 1917, for leave to proceed to execution on or otherwise to the enforcement of such judgment or order, and for an order providing for the costs of the application.

[*Or, where a default summons has been issued, and a notice in the above form has not been served therewith, and notice of intention to defend has not been given, or leave to defend has not been obtained,*

TAKE NOTICE, that I [*or* we] intend to apply to the court at the office of the registrar situate at on the day of at the hour of in the noon, to have judgment entered up in this action.

And further take Notice, that I [*or* we] intend at the time and place above mentioned to apply without any further notice to the court under the Courts (Emergency Powers) Acts, 1914 to 1917, for leave to proceed to execution on or otherwise to the enforcement of such judgment, and for an order providing for the costs of the application.]

Dated this day of .

Plaintiff.

[*or*

Plaintiff's Solicitor.]

To the Registrar of the Court, and
To the Defendant (*naming him*).

NOTE.—The effect of the Courts (Emergency Powers) Act, 1914, is to prevent execution on or the enforcement of any judgment or order which may be entered or made against you the defendant in this action [*or* matter], if the court is of opinion that you are unable immediately to make the payment thereby directed by reason of circumstances attributable directly or indirectly to the present war. It is for you to attend in person or by your solicitor at the hearing of this action [*or* [matter] [*or* at the time and place above mentioned] and show this to the court if it is the case.

ADDITIONAL NOTE—*to be added where the debtor is known to be or may be an officer or a man of His Majesty's Forces*:—

And in the case of an officer or a man of His Majesty's Forces, the Courts (Emergency Powers) (Amendment) Act, 1916, as extended by section eight of the Courts (Emergency Powers) Act, 1917, provides that the principal Act shall apply to any sum of money due and payable in pursuance of a contract made before the 11th day of April, 1916, whether such contract was made before or after the beginning of the 4th day of August, 1914, or in pursuance of a contract made before the officer or man has joined His Majesty's Forces, and that the discretion of the court may be exercised although the debtor's inability to pay may not be due to such circumstances. If the latter Act applies to you, it is for you to bring to the notice of the court any facts calculated to induce the court to exercise its discretion in your favour.

2.

NOTICE TO BE SERVED ON DEBTOR WITH COPY OF GARNISHEE SUMMONS.

The Courts (Emergency Powers) Acts, 1914 to 1917.

In the County Court of holden at .

Between

A.B. Plaintiff

and

C.D. Defendant

and

M.N. Garnishee

TAKE NOTICE, that the garnishee summons, a copy of which is hereto annexed, was issued on the day of and served on the day of :

And that I [*or* we] intend to apply under the Courts (Emergency Powers) Acts, 1914 to 1917, to the court on the day of at the hour of in the noon, on the hearing of the said summons, for an order that I [*or* we] may be at liberty to proceed to the enforcement of the judgment [*or* order] given [*or* made] against you the defendant on the day of , in the above-mentioned action, by means of an order on M.N., the garnishee named in the said summons, to pay to me [*or* us] the debt alleged to be due from the garnishee to you, or so much thereof as may be sufficient to satisfy the sum due to me [*or* us] from you under the said judgment [*or* order], with the costs of the garnishee proceedings, and of the application and this notice.

AND FURTHER TAKE NOTICE, that if you have any cause to show why the court should not make an order according to my [*or* our] intended application you must appear at this court on the day and at the time above mentioned and show such cause accordingly.

Dated this day of .

Plaintiff.

[*or*

Plaintiff's Solicitor.]

To the Registrar of the Court, and

To the Defendant (*naming him*).

NOTE.—The effect of the Courts (Emergency Powers) Act, 1914, is to prevent execution on or the enforcement of the judgment [*or* order] in question, if the court is of opinion that you the defendant are unable immediately to make the payment thereby directed by reason of circumstances attributable directly or indirectly to the present war. It is for you to attend in person or by your solicitor at the time and place above mentioned and show this to the court if it is the case.

ADDITIONAL NOTE, *as under Form* 1 (*ante p.* 973) *is to be added where the debtor is known to be or may be an officer or a man of His Majesty's Forces.*

3.

NOTICE OF APPLICATION FOR LEAVE TO PROCEED UNDER PARAGRAPH (*a*) (OTHERWISE THAN BY JUDGMENT SUMMONS OR GARNISHEE SUMMONS), WHERE JUDGMENT OR ORDER ALREADY ENTERED OR MADE.

The Courts (Emergency Powers) Acts, 1914 to 1917.

In the County Court of , holden at .

No. of Plaint.

Between

A.B. Plaintiff

and

C.D. Defendant.

TAKE NOTICE, that I [*or* we] intend to apply under the Courts (Emergency

Powers) Acts, 1914 to 1917, to the court [*where application is intended to be made to the registrar at his office, add*, at the office of the registrar situate at] on the day of at the hour of in the noon, for an order that I [*or* we] may be at liberty to proceed to execution on the judgment [*or* order] given [*or* made] against you the defendant in this action [*or* matter] on the day of , for the payment of the sum of £ and £ costs, [*or, if the application is for the enforcement of the judgment or order otherwise than by way of execution*, for an order that I [*or* we] may be at liberty to proceed to the enforcement of the judgment [*or* order] given [*or* made] against you the defendant in this action [*or* matter] on the day of for the payment of the sum of £ and £ costs, by (*state the proceeding which the applicant desires to take*)] and for an order providing for the costs of the application.

Dated this day of

Plaintiff.
[*or*
Plaintiff's Solicitor.]

To the Registrar of the Court, and
To the Defendant (*naming him*).

NOTE.—The effect of the Courts (Emergency Powers) Act, 1914, is to prevent execution on or the enforcement of the judgment [*or* order] in question if the court is of opinion that you the defendant are unable immediately to make the payment thereby directed by reason of circumstances attributable directly or indirectly to the present war. It is for you to attend in person or by your solicitor at the time and place above mentioned and show this to the court if it is the case.

ADDITIONAL NOTE, *as under Form* 1 (*ante p.* 973), *is to be added where the debtor is known to be or may be an officer or a man of His Majesty's Forces.*

4.

ORDER ON APPLICATION UNDER PARAGRAPH (*a*).

The Courts (Emergency Powers) Acts, 1914 to 1917.

In the County Court of , holden at .

No. of Plaint.

Between

A.B. Plaintiff.

and

L.D. Defedannt.

On the application of [*add, if so*, and upon hearing the defendant] It is ordered that the plaintiff be at liberty to proceed to execution on the judgment [*or* order] given [*or* made] against the defendant in the above-mentioned action [*or* matter] on the day of for the payment of the sum of £ and costs; [*or* It is ordered that the plaintiff be at liberty to proceed to the enforcement of the judgment [*or* order] given [*or* made] against the defendant in this action [*or* matter] on the day of for the payment of the sum of £ and costs, by issuing the order of commitment made on the day of].

And it is ordered that the plaintiff be allowed the sum of £ for the fees and costs of this application, and that the said sum be added to the costs of the proceedings hereby authorised to be taken.

[*Add, if so ordered—*

And it is further ordered that the warrant of execution [*or* order of com-

mitment] shall not be put in force if the sum mentioned below be paid into Court on or before the day of , 191 [*or* by instalments of £ for every days, the first payment to be made on the day of 191 .]

Dated this day of 191 .

Registrar.

Amount payable under the judgment [*or* order] .. .. .. £

Costs of this application .. .. £

£

To the defendant.

5.

SUMMONS UNDER PARAGRAPH (*b*).

In the County Court of holden at .

In the matter of the Courts (Emergency Powers) Acts, 1914 to 1917.

To of .

TAKE NOTICE, that you are hereby summoned to attend this court [*or if the application is intended to be made to the registrar*, at the office of the registrar of this court situate at] on the day of at the hour of in the noon, on the hearing of an application on the part of of that notwithstanding the provisions of section 1, subsection 1 (*b*), of the Courts (Emergency Powers) Act, 1914, as amended by section 1 of the Courts (Emergency Powers) (No. 2) Act, 1916, the applicant may be at liberty to exercise the following remedy for the purpose of enforcing the payment or recovery of a sum of money due from you to the said [*or* in default of the payment or recovery of a sum of money due from you to the said], that is to say : [*here state the remedy which the applicant desires to enforce, according to examples in schedule*] and for an order providing for the costs of the application.

Dated this day of .

By the Court

Registrar.

NOTE.—The Courts (Emergency Powers) Act, 1914, as amended by section 1 of the Courts (Emergency Powers) (No. 2) Act, 1916, provides that during its operation certain remedies for the payment or recovery of money, or in default of the payment or recovery of money (including the remedy above mentioned), shall not be enforced except upon application to the court, and that if on any such application the court is of opinion that time should be given to the person liable to make the payment on the ground that he is unable immediately to make the payment by reason of circumstances attributable directly or indirectly to the present war the court may, in its absolute discretion, after considering all the circumstances of the case and the position of all the parties, by order defer the operation of any such remedies for such time and subject to such conditions as the court thinks fit.

If you desire to take advantage of the Act you should attend in person or by your solicitor at the time and place above mentioned and satisfy the court that your inability to pay is due to such circumstances.

ADDITIONAL NOTE, *as under Form* 1 (*ante p.* 973), *is to be added where the debtor is known to be or may be an officer or a man of His Majesty's Forces.*

SCHEDULE.

(*a*) that the said may be at liberty to levy a distress for rent amounting to due from you to him on premises situate at and known as ; *or*

(*b*) that the said may be at liberty to take, resume or enter into

possession of certain chattels held by you under a hire-purchase agreement, dated the day of , made between the said and you the said ; *or*

(*c*) that the said may be at liberty to resume or enter into possession of certain property situate at [*or* to appoint a receiver of certain property (*describing the same*) mortgaged by you to him]; *or*

(*d*) that the said may be at liberty to exercise his right of re-entry on certain property situate at and held by you under him ; *or*

(*e*) that the said may be at liberty to foreclose on or to sell in lieu of foreclosing or to realise a security for the sum of £ given by you to the said (*state particulars of security*) ; *or*

(*f*) that the said may be at liberty to forfeit a deposit of £ made under a contract made between him and you (*state nature of contract*) ; *or*

(*g*) that the said may be at liberty to enforce the lapse of a certain policy of insurance for the sum of £ granted to you by the said

[*or as the case may be*].

6.

ORDER ON SUMMONS UNDER PARAGRAPH (*b*).

In the County Court of holden at .

In the Matter of the Courts (Emergency Powers) Acts, 1914 to 1917.

No. of Application .

Between

A.B. Applicant,

and

C.D. Respondent.

Upon hearing the application of [*add, if so*, and upon hearing the respondent]

It is ordered that, notwithstanding the provisions of section 1, subsection 1 (*b*) of the Courts (Emergency) Powers Act, 1914, as amended by section 1 of the Courts (Emergency Powers) (No. 2) Act, 1916, the applicant be at liberty to exercise the following remedy for the purpose of enforcing the payment or recovery of a sum of money due to him from the respondent [*or* in default of the payment or recovery of a sum of money due to him from the respondent], that is to say—

[*here state the remedy which the applicant is to be at liberty to enforce, according to examples in Schedule*]

Here add conditions, if any, as e.g.—

Unless the rent [*or as the case may be*] due to the applicant amounting to the sum of £ be paid to the applicant on or before the day of 191 [*or* by an instalment of £ on the day of 19 , and the balance by instalments of £ for every days after that date].

[*or as the case may be.*]

And it is ordered that the applicant be allowed the sum of £ for fees and costs on this application, and that the respondent do pay the said sum to the applicant on or before the day of 191 [*or, if so ordered* (*see Rule* 26), and that the said sum be added to the costs of the proceedings hereby authorised to be taken].]

Dated this day of , 191 .

Registrar.

To the Respondent (*naming him*).

SCHEDULE.

(*a*) That the applicant be at liberty to levy a distress for rent amounting to £ due from the respondent to him on premises situate at and known as ; *or*

(*b*) that the applicant be at liberty to take resume or enter into possession of certain chattels held by the respondent under a hire-purchase agreement, dated the day of , made between the applicant and the respondent ; *or*

(*c*) that the applicant be at liberty to resume or enter into possession of certain property situate at [*or* to appoint a receiver of certain property (*describing the same*) mortgaged to him by the respondent] ; *or*

(*d*) that the applicant be at liberty to exercise his right of re-entry on certain property situate at and held by the respondent under him ; *or*

(*e*) that the applicant be at liberty to foreclose on or to sell in lieu of foreclosing or to realise a security for the sum of £ given by the respondent to him (*state particulars of security*) ; *or*

(*f*) that the applicant be at liberty to forfeit a deposit of £ made under a contract made between him and the respondent (*state nature of contract*) ; *or*

(*g*) that the applicant be at liberty to enforce the lapse of a certain policy of insurance for the sum of £ granted to the respondent by the applicant ;

[*or as the case may be.*]

7.

SUMMONS BY OFFICER OR MAN OF HIS MAJESTY'S FORCES FOR LEAVE TO DETERMINE TENANCY.

In the County Court of holden at .

In the Matter of the Courts (Emergency Powers) (Amendment) Act, 1916.

Between

A.B. (*address and description*) Applicant,

and

C.D. (*address and description*) Respondent.

To , of

TAKE NOTICE, that you are hereby summoned to attend this court [*or, if the application is intended to be made to the registrar,* at the office of the registrar of this court situate at] on the day of at the hour of in the noon, on the hearing of an application on the part of , an officer [*or* a man] of His Majesty's Forces, for an order under section 2 of the above-mentioned Act authorising the applicant to determine his tenancy of certain premises known as and situate at , of which you are the landlord and the applicant is the tenant, under a tenancy from year to year [*or* (*state terms of tenancy*)], by such notice and under such conditions as the court shall think fit, and for an order providing for the cost of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above-mentioned such proceedings will be taken and order made as the court may think just.

Dated this day of .

By the Court,

Registrar.

To (*the Respondent, naming him*)

8.

ORDER ON APPLICATION FOR LEAVE TO DETERMINE TENANCY

In the County Court of holden at .

In the matter of the Courts (Emergency Powers) (Amendment) Act, 1916.

Between

A.B. (*address and description*) Applicant,

and

C.D. (*address and description*) Respondent.

On the application of , an officer [*or* a man] of His Majesty's Forces, and upon hearing ,

This Court doth pursuant to section 2 of the above-mentioned Act order that the applicant be at liberty and he is hereby authorised to determine the tenancy of certain premises known as and situate at , of which the respondent is landlord and the applicant is tenant under a tenancy from year to year [*or* (*state terms of tenancy*)] upon giving to the respondent notice in writing of his intention to determine the same, and upon the following conditions, that is to say :—

(*here set out any conditions imposed.*)

[*or* This court doth order that the application of the applicant for an order under section 2 of the above-mentioned Act authorising the applicant to determine his tenancy of certain premises known as and situate at of which the respondent is landlord and the applicant is tenant under a tenancy from year to year [*or* (*state terms of tenancy*)], be and the same is hereby dismissed.]

Add, if so ordered,

And it is ordered that the applicant A.B. [*or* the respondent C.D.], be allowed as against the respondent C.D. [*or* the applicant A.B.] his costs of this application, which are hereby allowed at the sum of £ .

And it is ordered that the respondent [*or* the applicant] do pay the said sum of £ to the applicant [*or* the respondent] on or before the day of

Dated this day of

By the Court,

Registrar.

To (*the Applicant and the Respondent, naming them.*)

COURTS (EMERGENCY POWERS) (No. 2) ACT, 1916.

I, STANLEY OWEN LORD BUCKMASTER, Lord High Chancellor of Great Britain, in pursuance of sub-section five of section one of the Courts (Emergency Powers) (No. 2) Act, 1916, and every other power enabling me in that behalf, hereby direct that the Court empowered by the said section three to suspend the period for prescription running in certain cases specified in the said section shall be in England the High Court of Justice, Chancery Division.

Dated this 5th day of June, 1916.

(Signed) BUCKMASTER, C.

THE COURTS (EMERGENCY POWERS) ACTS, 1914—1917.

DIRECTIONS DATED EIGHTH OF NOVEMBER, 1917, GIVEN BY THE LORD CHANCELLOR UNDER SECTION 1 OF THE COURTS (EMERGENCY POWERS) ACT, 1917 (7 & 8 GEO. 5, c. 25), SECTION 1.

1. For the purposes of section 1 of the Courts (Emergency Powers) Act, 1917, the court to which application is made may be :— Court to which applications may

(1) In the case of an application to stay proceedings, or an applica-

be made under 7 & 8 Geo. 5, c. 25, s. 1.

tion by way of defence, counterclaim, or cross application in any proceedings, the court in which the proceedings are pending:

(2) In other cases:

(*a*) the High Court; or

(*b*) alternatively, where the subject-matter of the contract in respect of which the application is made does not exceed £100, the County Court or the City of London Court.

Subject-matter of contract.

2. For the purposes of this direction the subject-matter of the contract shall be the price or consideration which if the contract were or had been carried out, would be or would have become due or payable or receivable under it to or by the party seeking relief.

Rule 2 (4) of Courts (Emergency Powers) Rules, 1914, to apply.

3. Paragraph 4 of Rule 2 of the Courts (Emergency Powers) Rules, 1914, shall apply to applications under this direction.

Palatinate Courts.

4. Any application which may under this direction be made to the Chancery Division of the High Court may in cases within the jurisdiction of a Palatinate Court be made to that Court.

Application to County Court, how to be made.

5. Any application which may under this direction be made to a County Court or the City of London Court shall be made:—

(1) in cases under paragraph (1) sub-paragraph (1) by summons, defence, counterclaim, or cross-summons entitled in the proceedings and "in the matter of the Courts (Emergency Powers) Act, 1917."

(2) in any other case, by summons in accordance with the rules for the time being in force in the County Court as to applications under paragraph (b) of sub-section 1 of Section 1 of the Courts (Emergency Powers) Act, 1914.

(3) and those rules shall, with the necessary modifications, apply to any summons or cross-summons under this rule.

INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915. (*a*)

[5 & 6 Geo. 5, c. 97.]

This Act was passed with the general purpose of preventing the raising of rents, or the increase of mortgage interest, in respect of certain classes of houses, during the continuance of the war.

It applies only to houses where the rent reserved, or the rateable value, does not exceed—

(*a*) In the Metropolitan Police district, or in the City of London, thirty-five pounds a year;

(*b*) Elsewhere in England, twenty-six pounds a year.

It only affects rent accrued after the 25th November, 1915.

The Act fixes a "standard rent," and a "standard rate of interest." The former is the rent for which the house was let on the 3rd of August, 1914, if then let; the latter the rate of the interest payable under the mortgage on the 3rd of August, 1914, if then created.

Subject to the exceptions contained in the Act, any rent beyond the "standard rent" or any interest higher than the "standard rate of interest" is irrecoverable.

Where, however, the rent had been increased since the war but before the Act was passed, and the tenant, in ignorance of the law continued to pay the increased rent after the 25th day of November, 1915 (sect. 1 (1),

(*a*) See notes on p. 950.

proviso (1)) it was held by the Court of Appeal—reversing the decision of a Divisional Court—that, the payments having been made voluntarily, the rule that voluntary payments made under mistake of law are irrecoverable prevented the tenant from using such payments as a set-off in an action brought against him by his landlord for other rent accrued subsequently (*Sharp Brothers and Knight* v. *Chant*, (1917) 1 K. B. 771; 86 L. J. K. B. 608) —but see now Courts (Emergency Powers) Act, 1917, sect. 5, which reverses this decision.

No fine, premium, or other like sum could be exacted for granting, renewing, or continuing such a tenancy after the 4th day of August, 1914.

(See now Courts (Emergency Powers) (No. 2) Act, 1916 (6 & 7 Geo. 5, c. 18, s. 2; and Courts (Emergency Powers) Act, 1917, sect. 4).

No order for ejectment, or for the recovery by the landlord of any such dwelling-house, can be made whilst the rent reserved by the statute—"the standard rent"—continues to be paid, except for the causes set out in the Act itself.

The Act also contains somewhat similar restrictions designed to prevent the calling in of mortgage money due on a mortgage comprising one or more dwelling-houses of the class to which the Act applies, or any interest thereon. It is subject to exceptions set out in the Act.

The Act is to remain in force during the continuance of the war and a period of six months thereafter.

NOTE.—The County Courts have now special jurisdiction given to them by the Courts (Emergency Powers) (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 13, s. 2), to determine leases under tenancies from year to year, or any longer periods, granted to officers or men in His Majesty's forces on such terms as the Court in its absolute discretion may see fit. See *ante*, p. 955.

AN ACT TO RESTRICT, IN CONNECTION WITH THE PRESENT WAR, THE INCREASE OF THE RENT OF SMALL DWELLING-HOUSES AND THE INCREASE OF THE RATE OF INTEREST ON, AND THE CALLING IN OF, SECURITIES ON SUCH DWELLING-HOUSES.

[23*rd December*, 1915.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Restriction on raising rent or rate of mortgage interest.

1.—(1) Where the rent of a dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the commencement of the present war, or is hereafter during the continuance of this Act, increased above the standard rent or the standard rate of interest as hereinafter defined, the amount by which the rent or interest payable exceeds the amount which would have been payable had the increase not been made shall, notwithstanding any agreement to the contrary, be irrecoverable :

Provided that—

(i.) This subsection shall not apply to any rent or mortgage interest which accrued due before the twenty-fifth day of November nineteen hundred and fifteen; and

(ii.) Where the landlord has since the commencement of the

present war incurred, or during the continuance of this Act incurs, expenditure on the improvement or structural alteration of a dwelling-house (not including expenditure on decoration or repairs), an increase of rent at a rate not exceeding six per cent. per annum on the amount so expended shall not be deemed to be an increase for the purposes of this Act; and

(iii.) Any transfer to a tenant of any burden or liability previously borne by the landlord shall for the purposes of this Act be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which a dwelling-house is held are on the whole more favourable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this Act, and if any question arises under this proviso the question shall be determined by the county court, whose decision shall be final and conclusive; and

(iv.) Where the landlord pays the rates chargeable on, or which but for the enactments relating to compounding would be chargeable on, the occupier of any dwelling-house, an increase of the rent of the dwelling-house shall not be deemed to be an increase for the purposes of this Act if the amount of the increase does not exceed any increase in the amount for the time being payable by the landlord in respect of such rates over the corresponding amount paid in respect of the yearly, half-yearly or other period which included the third day of August nineteen hundred and fourteen, and for the purposes of this proviso the expression "rates" includes water rents and charges; and

(v.) Where the rate of mortgage interest has been increased in compliance with, or in consequence of, a notice in writing demanding either repayment of the mortgage or an increased rate of interest given prior to the fourth day of August nineteen hundred and fourteen, such increase shall not be deemed to be an increase for the purposes of this Act; and

(vi.) Wherever an increase of rent is by this Act permitted, no such increase shall be due or recoverable until the

expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, accompanied—

(*a*) where the increase of rent is on account of such expenditure as is mentioned in proviso (ii.) to this subsection, by a statement of the improvements or alterations effected and of their cost; and

(*b*) where the increase of rent is on account of an increase in rates, by a statement showing particulars of the increased amount charged in respect of rates on the dwelling-house; and

(*c*) where such a notice has been served on any tenant the increase may be continued without service of any fresh notice on any subsequent tenant.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any dwelling-house to which this Act applies require the payment of any fine, premium, or other like sum in addition to the rent (*a*), and where any such payment has been made in respect of any such dwelling-house after the twenty-fifth day of November nineteen hundred and fifteen, then the amount shall be recoverable by the tenant by whom it was made from the landlord, and may without prejudice to any other method of recovery be deducted from any rent payable by him to the landlord, but this provision shall not apply to any payment under an agreement entered into before the fourth day of August nineteen hundred and fourteen.

NOTE.—The above section now does not apply to the lease of a dwelling-house for a term of 21 years or upwards. See Courts (Emergency Powers) Act, 1917, sect. 4 (1).

(*a*) See *Rees* v. *Marquess Bute*, (1916) 2 Ch. 64, 85 L. J. Ch. 421, where this provision was held to apply to a lease for ninety-nine years at a nominal rent; but see now Courts (Emergency Powers) (No. 2) Act, 1916 (6 & 7 Geo. 5, c. 18), s. 2 (1), passed to meet this decision.

The decision in *Sharp, Brothers and Knight* v. *Chant*, *ante* p. 981, that rent voluntarily paid in ignorance of this Act could not be recovered or set-off against future rent accruing due, is reversed by the Courts (Emergency Powers) Act, 1917, sect. 5.

(3) No order for the recovery of possession of a dwelling-house to which this Act applies or for the ejectment of a tenant therefrom shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this Act and performs the other conditions of the tenancy, except on the ground that the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or that the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, or on some other ground

which may be deemed satisfactory by the court making such order, and where such order has been made but not executed before the passing of this Act the court by which the order was made may, if it is of opinion that the order would not have been made if this Act had been in operation at the date of the making of the order, rescind or vary the order in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) It shall not be lawful for any mortgagee under a mortgage to which this Act applies, during the continuance of this Act, and so long as interest at the standard rate is paid (*a*) and is not more than twenty-one days in arrear, and the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed, (*b*) and so long as the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance, to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money there by secured :

(*a*) "So long as interest at the standard rate is paid": interest is not paid merely from the fact that the mortgagee is in possession and in receipt of the rent (*Walters* v. *Smith*, (1917) 33 T. L. R. 154).

NOTE.—Applies retrospectively where writ for foreclosure or sale issued before the Act came into operation (*Welby* v. *Parker*, (1916) 2 Ch. 1).

(*b*) "Covenants by the mortgagor are performed." Mortgagor out of possession cannot rely on the fact that he cannot enter to do repairs required by his covenant (*Walters* v. *Smith*, *supra*).

Provided that this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exerciseable by a mortgagee who was at the twenty-fifth day of November nineteen hundred and fifteen a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage :

Provided also that if, in the case of a mortgage of a leasehold interest, the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this subsection shall not apply to such mortgage.

Interpretation and application.

2.—(1) For the purposes of this Act except where the context otherwise requires :—

(*a*) The expression "standard rent" means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let:

(*b*) The expression "standard rate of interest" means in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest:

(*c*) The expression "rateable value" means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a house or part of a house first assessed after that date, the rateable value at which it was first assessed:

(*d*) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor:

(*e*) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 and 1897. 38 & 39 Vict. c. 87. 60 & 61 Vict. c. 65.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where either the annual amount of the standard rent or the rateable value of the house or part of the house does not exceed—

(*a*) in the case of a house situate in the metropolitan police district, including therein the city of London, thirty-five pounds;

(*b*) in the case of a house situate in Scotland, thirty pounds; and

(*c*) in the case of a house situate elsewhere, twenty-six pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies: Provided that this Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(3) Where, for the purpose of determining the standard rent or rateable value of a dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed or the rateable value of the property in which that dwelling-house is comprised, a county court may, on

application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein except that it shall not apply—

(*a*) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage, or

(*b*) to an equitable charge by deposit of title deeds or otherwise.

(5) Where this Act has become applicable to any dwelling-house or any mortgage thereon it shall continue to apply thereto whether or not the dwelling-house continues to be a dwelling-house to which this Act applies.

(6) Where the standard rent payable in respect of any tenancy of a dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house.

NOTE.—By the Courts (Emergency Powers) Act, 1917, sect. 7, the word "standard" is to be omitted, and at the end of the subsection the following words are to be added: "and this Act shall apply in respect of such dwelling house as if no such tenancy existed or had ever existed."

NOTE.—The meaning of this addition seems obscure.

Rules as to procedure.

3. The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may by those rules or directions provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

Application to Scotland and Ireland.

4.—(1) This Act shall apply to Scotland, subject to the following modifications :—

"Mortgage and incumbrance" mean a heritable security; "fine" means grassum or consideration other than rent; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security; "covenant" means obligation; "mortgaged property" means the heritable subject or subjects included in a heritable security; "rateable value" means yearly value according to the valuation roll; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year

ending fifteenth day of May nineteen hundred and fifteen; "assessed" means entered in the valuation roll; "committed waste" means "wilfully destroyed the property"; "land" means lands and heritages; "enactments relating to compounding" include the House-letting and Rating (Scotland) Act, 1911; "rate" means assessment as defined in the last-mentioned Act; "Lord Chancellor" means the Court of Session; "rules" means act of sederunt; and "county court" means the sheriff. 1 & 2 Geo. 5, c. 53.

(2) This Act shall apply to Ireland subject to the following modifications:—

(*a*) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor;

(*b*) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891; 54 & 55 Vict. c. 66.

(*c*) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may on the application of the landlord or tenant make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise.

Short title and duration.

5.—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

(2) This Act shall continue in force during the continuance of the present war and for a period of six months thereafter and no longer, but the expiration of this Act shall not render recoverable any rent or interest which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS), ENGLAND.

THE INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) RULES, 1916, DATED JANUARY 29TH, 1916, MADE BY THE LORD CHANCELLOR UNDER THE INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915 (5 & 6 GEO. 5, C. 97).

Preliminary.

5 & 6 Geo. 5, c. 97.

The following Rules under the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (in these Rules referred to as the Act), shall apply to the County Courts and to the City of London Court, which shall for the purposes of these Rules be deemed to be a county court.

4 & 5 Geo. 5, c. 78.

Rule 3 of these Rules, as to applications under the Courts (Emergency Powers) Act, 1914, shall apply also to the High Court; and the Rules made under that Act shall have effect subject to that Rule.

These Rules may be cited as the increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916, and shall come into operation on the fourteenth day of February, 1916.

Applications under Section 1, sub-section 1, proviso (iii.); Section 1, sub-section 4, proviso 2; or Section 2, sub-section 3.

Applications under 5 & 6 Geo. 5, c. 97, s. 1, sub-s. 1, proviso (iii.); or s. 2, sub-s. 3.

1. An application to the county court under the Act—

(*a*) to determine any question as to the increase of rent of a dwelling-house to which the Act applies, pursuant to proviso (iii.) to sub-section 1 of section 1; or

(*b*) to apportion the rent or rateable value of the property in which any dwelling house to which the Act applies is comprised, pursuant to sub-section 3 of section 2,

may be made to the court in the district of which the dwelling house is situate.

Applications under s. 1, sub-s. 4, proviso 2.

2.—(1) An application to the county court under the Act for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest to which the Act applies, pursuant to the second proviso to sub-section 4 of section 1, may be made—

(*a*) to the court in the district of which the mortgaged property is situate; or

(*b*) to the court in the district of which the mortgagor resides or carries on business; or

51 & 52 Vict. c. 43, s. 84.

(*c*) if the mortgagee resides or carries on business in the district of any court mentioned in section 84 of the County Courts Act, 1888, and the mortgagor resides or carries on business in the district of any other court mentioned in the said section, either to the court in the district of which the mortgagee resides or carries on business, or to the court in the district of which the mortgagor resides or carries on business.

Applications under Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), and Rules, how affected by these Rules.

3.—(1) Subject to the provisions of this Rule, the Courts (Emergency Powers) Rules, 1914, and the County Courts (Emergency Powers) Rules, 1914, as to applications to the High Court or to the county court for leave to foreclose or realize any security to which the Courts (Emergency Powers) Act, 1914, applies, shall cease to apply to mortgages of leasehold interests to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, applies: and this Rule shall apply in lieu thereof.

(2) An application under the last preceding Rule for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest

shall if and so far as an application for leave to foreclose or realize the security is required under the Courts (Emergency Powers) Act, 1914, be deemed to be also an application for leave to foreclose or realize the security under that Act, and no separate application under that Act shall be necessary.

(3) If during the progress of the proceedings on any such application it shall be made to appear to the court that the mortgage is one to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, does not apply, but that leave to realize or enforce the security is required under the Courts (Emergency Powers) Act, 1914, and that the amount of the principal sum secured by the mortgage does not exceed five hundred pounds, the application may proceed in the county court as an application for leave to foreclose or realize the security under the last mentioned Act and the County Courts (Emergency Powers) Rules, 1914, and those Rules shall apply accordingly; but if the amount of the principal sum secured by the mortgage exceeds five hundred pounds the application shall not proceed under the last mentioned Act, unless the respondent consents to the county court having jurisdiction in the matter, in which case the court shall have jurisdiction to deal with the application as an application for leave to foreclose or realize the security under the last mentioned Act and Rules, and those Rules shall apply accordingly.

(4) If it shall be made to appear to the court that the mortgage is one to which neither of the above mentioned Acts applies, the application shall be struck out.

Applications by summons Forms 1–3.

4. An application under these Rules shall be made by means of a summons according to such one of the forms in the Appendix as shall be applicable to the case, entitled "In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915."

Preparation, Filing, &c. of Summonses.

Preparation, &c., of summons and copies.

5. The summons shall be prepared by the applicant and filed with the registrar, with as many copies as there are parties to be served: Provided that any summons, with the necessary copies, may, if the registrar so thinks fit, be prepared in his office: and the registrar shall examine, complete, seal, and sign the summons and copies, and return the copies to the applicant for service.

Service and Substituted Service.

Time for service.

6.—(1) The summons shall be served on every person affected thereby four clear days at least before the day fixed for the hearing of the summons, unless the judge or registrar gives leave for shorter service.

Mode of service.

(2) Service shall be effected in accordance with the provisions of Order LIV., Rules 2 and 3, of the County Court Rules as to service of notice of an interlocutory application.

Substituted service.

(3) The practice of the courts as to substituted service of summonses and notices shall apply to summonses under these Rules.

Applications to Registrar.

Application to registrar.

7. Any application under these Rules may be made to the registrar, subject to the following provisions:—

(*a*) The registrar may in any case, and shall on the application of either party, made on the hearing of the application, and before the registrar has given his decision, refer the matter to the judge:

(*b*) The judge may vary or rescind any determination or order made by the registrar, and may make such determination or order as may be just:

(*c*) An application for variation or rescission shall be made on notice in writing in accordance with the County Court Rules as to interlocutory applications; and the notice shall be filed within four clear days from the date of the determination or order of the registrar, and if it is not so filed no such application shall be allowed to be made without leave of the judge.

Evidence in Support of Application.

Evidence in support of application.

8. No affidavit in support of the application shall be used, except by leave of the court, but the court shall hear oral evidence tendered by either party.

Power to hear Cases in Private.

Power to hear cases in private.

9. The court may at any stage of the proceedings on an application under the Act order that the case shall thenceforward be heard in private.

Transfer of Proceedings.

Transfer of proceedings. 51 & 52 Vict. c. 43, ss. 75, 85. C.C. Rules, Order VIII., Rule 9.

10. If during the progress of the proceedings on any application it shall be made to appear to the judge that the same could be more conveniently heard in some other court, it shall be competent to the judge to transfer the same to such other court; and in any such case the provisions of section 85 of the County Courts Act, 1888, and of Order VIII., Rule 9, of the County Court Rules shall apply.

Determination of Questions submitted.

Determination of questions submitted.

11. On the hearing of the application, or at any adjournment thereof, the court, on proof of the service of the summons, if the respondent does not appear, shall—

(*a*) determine the question as to the increase of rent of the dwelling house; or

(*b*) apportion the rent or rateable value of the property in which the dwelling house is comprised; or

(*c*) make or refuse an order authorising the mortgagee to call in or enforce the mortgage; or

(*d*) make such other determination or order in the matter as the court shall think fit.

Power to impose Conditions.

Power to impose conditions on application by mortgagee.

12. On an application for an order authorising a mortgagee to call in and enforce a mortgage, the court may, after considering all the circumstances of the case and the position of all the parties, make or refuse to make the order subject to such conditions as the court may think fit.

Certificates or Orders on Applications.

Certificate or order on application.

13. When the court has given its decision on any application, a certificate of the determination of the court, or, in the case of an application for an order authorising a mortgagee to call in and enforce a mortgage, an order in accordance with the decision of the court, shall be prepared and sealed and signed by the registrar, and duplicates thereof shall be delivered to the bailiff, who shall within twenty-four hours send the same, by post or otherwise, to the parties; but it shall not be necessary for the party in whose favour a certificate or order is made to prove, previously to taking proceedings thereon, that it was posted or reached the opposite party.

Revocation or Variation of Orders.

Power to revoke or vary orders.

14. Any determination or order made under the Act and these Rules may, should subsequent circumstances render it just so to do, be suspended

discharged, or otherwise varied by the court in which the determination or order was made, on application made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

General Provisions as to Procedure on Applications.

15. Subject to the provisions of the Act and these Rules, the practice and procedure of the court in an action, and in particular the practice and procedure with respect to the summoning of witnesses, and on an application for the apportionment of rent or rateable value, or for an order authorising a mortgagee to call in and enforce a mortgage, with respect to discovery and inspection of documents, shall, with the necessary modifications, apply to proceedings on an application under the Act. Ordinary practice of the court to be followed.

16.—(1) The following fees shall be payable under Schedule B, Part I., of the Treasury Order regulating Fees in the County Courts, on applications under the Act and these Rules, in lieu of all other fees on such proceedings, viz.:— Fees.

	s.	d.
On an application for the determination of a question as to the increase of rent of a dwelling house—		
6*d.* in the £ or part of a £, calculated on four weeks' standard rent of the dwelling house, but not exceeding	2	6
On an application for the apportionment of rent or rateable value	10	0
On an application for an order authorising a mortgagee to call in and enforce a mortgage	20	0

The foregoing fees shall include drawing, sealing, and issuing the certificate or order, and the fee prescribed by paragraph 12 of Part I. of Schedule B of the Fees Order shall not be taken.

(2) On summonses to witnesses, the fees prescribed by Schedule A of the Fees Order shall be taken.

(3) On applications for discovery or inspection of documents, and on applications for variation of certificates or orders, the fees prescribed by paragraphs 10 and 12 of Part I. of Schedule B of the Fees Order shall be taken.

(4) The court may remit or excuse in whole or in part any fee paid or payable under this Rule.

Costs.

17.—(1) The costs of any application under the Act and these Rules shall be in the absolute discretion of the court. Costs.

(2) The court may either fix the amount of such costs, or allow them on the scale applicable to an interlocutory application in an action for an amount equal to—

(*a*) in the case of a question as to the increase of rent, the amount of which fees are payable under Rule 16; or

(*b*) in the case of an application to apportion rent or rateable value, one-half of the annual rent or rateable value apportioned to the dwelling house; or

(*c*) in the case of an application for an order authorising a mortgagee to call in and enforce the mortgage, the amount of the principal sum secured: Provided that Column B of the Scale shall apply in all cases above twenty pounds, to the exclusion of Column C.

(3) Where the amount does not exceed ten pounds, there may be allowed for all work done by a solicitor in relation to the application—

	s.	d.
If the amount exceeds £2 but does not exceed £5	6	8
If the amount exceeds £5 but does not exceed £10	10	0

(4) The court may direct that any costs allowed shall be payable by the opposite party, or, in the case of an application for an order authorising a mortgagee to call in and enforce a mortgage, that they shall be included in the security; and any order directing payment of costs shall be included in

the certificate or order, and shall be enforceable in the same manner as an order for payment of costs made in an action.

Forms.

Forms.

18.—(1) The Forms in the Appendix hereto, with such modifications as may be necessary, shall be used for summonses, certificates and orders under the Act and these Rules.

(2) The registrar of any court may apply to the Treasury for any of the said forms to be printed and supplied to him, and if the application is granted may obtain such forms and supply the same without charge for the use o parties requiring the same. f

Proceedings for the Recovery of Rent or Mortgage Interest, or for the Recovery of Possession of Tenements or Ejectment of Tenants.

On proceedings for recovery of rents or mortgage interest, or for recovery of possession or ejectment, regard to be had to s. 1 of Act.

19. Where proceedings are taken in the county court for the recovery of rent of any dwelling house to which the Act applies, or of interest on a mortgage to which the Act applies, or for the recovery of possession of any dwelling house to which the Act applies, or for the ejectment of a tenant from any such dwelling house, the court shall, before making an order for the recovery of such rent or interest, or for recovery of possession or ejectment, satisfy itself that such order may properly be made, regard being had to the provisions of section 1 of the Act.

Applications for rescission or variation of orders under s. 1, sub-s. 3.

20. An application to the court for the rescission or variation, pursuant to subsection 3 of section 1 of the Act, of an order for recovery of possession or ejectment made but not executed before the passing of the Act, may be made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

The 29th day of January, 1916.

BUCKMASTER, C.

We, the undersigned, two of the Commissioners of His Majesty's Treasury, do hereby, with the consent of the Lord Chancellor, order that the several fees specified in Rule 16 of the foregoing Rules shall be taken on the proceedings therein mentioned, in lieu of all other fees for the proceedings therein set forth.

GEO. H. ROBERTS.
GEOFFREY HOWARD.

I concur in the above order as to fees.

BUCKMASTER, C.

The 4th day of February, 1916.

APPENDIX.

1.

Summons for Determination of Question as to Increase of Rent.

In the County Court of , holden at .
In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.
No. of Application .

Between

A.B. (*address and description*) Applicant,

and

C.D. (*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the

hearing of an application on the part of of , for the determination, pursuant to the above-mentioned Act, of a question which has arisen as to the increase of rent of a certain dwelling house [*or* of part, that is to say (*here specify the part*) of a certain dwelling house], to which the said Act applies, situate at and known as , of which the applicant is the tenant and you the respondent are the landlord [*or* of which you the respondent are the tenant and the applicant is the landlord], on the transfer to the tenant of certain burdens and liabilities previously borne by the landlord [*or* in respect of the transfer to the landlord of certain burdens and liabilities previously borne by the tenant], and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

2.

Summons for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

No. of Application .

Between

A.B. (*address and description*) Applicant,

and

C.D. (*address and description*) Respondent.

To

of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of of , for an order that, notwithstanding the provisions of the above-mentioned Act, the said may be at liberty to call in and enforce a certain mortgage to which the said Act applies, dated the day of , granted by you the respondent to the applicant [*or* to and assigned by him to the applicant] on certain leasehold property situate at , and known as , on the ground that the security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

3.

Summons for Apportionment of Rent or Rateable Value of Property.

In the County Court of , holden at .
In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

No. of Application .

Between

A.B. (*address and description*) Applicant,

and

C.D. (*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of of , for the apportionment of the rent on the 3rd day of August, 1914 [*or* (*if the property was last let before or first let after the 3rd August, 1914, insert the date at which it was so let;* see *Act, Section* 2 (1) (*a*)] [*or* the rateable value on the 3rd day of August, 1914 [*or* (*if the property was first assessed after that date, insert the date at which it was first assessed*)] of certain property situate at , and known as , and comprising a certain dwelling house [*or* part, that is to say (*here specify the part*) of a certain dwelling house] situate at , and known as , for the purpose of determining the standard rent [*or* the rateable value] of the said dwelling house [*or* of the above-mentioned part of the said dwelling house] for the purposes of the above-mentioned Act, and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

4.

Certificate on Application for Determination of Question as to Increase of Rent.

In the County Court of , holden at .
In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

No. of Application .

Between

A.B. (*address and description*) Applicant,

and

C.D. (*address and description*) Respondent.

On the application of , and upon hearing ,

This Court doth pursuant to the above-mentioned Act determine—

(*a*) that as the result of the transfer to the applicant, A.B., [*or* the respondent, C.D.,] the tenant of a certain dwelling house [*or* of part, that is to say (*here specify the part*) of a certain dwelling house] to which the said Act applies, situate at , and known as , of the following burdens and liabilities

formerly borne by the respondent, C.D., [*or* by the applicant, A.B.,] the landlord, that is to say (*here specify the burdens and liabilities transferred*) the terms on which the said premises are held are on the whole less favourable to the tenant than the previous terms, and that the rent of the said premises has thereby been increased for the purposes of the said Act by the sum of a week [*or* are on the whole not less favourable to the tenant than the previous terms, and that the rent of the said premises has not been increased for the purposes of the said Act]:

[*or* (*b*) that as the result of the transfer to the applicant, A.B., [*or* the respondent, C.D.,] the landlord of a certain dwelling house [*or* of part, that is to say (*here specify the part*) of a certain dwelling house] to which the said Act applies, situate at , and known as , of the following burdens and liabilities previously borne by the respondent, C.D., [*or* the applicant, A.B.,], the tenant, that is to say (*here specify the burdens and liabilities transferred*) , and the increase of rent in respect of such transfer, the terms on which the said premises are held are on the whole more favourable to the tenant than the previous terms, and that the increase of rent in respect of such transfer is to be deemed not to be an increase of rent for the purposes of the said Act [*or* are on the whole less favourable to the tenant than the previous terms, and that the increased rent in respect of such transfer is to be deemed to be an increase of rent for the purposes of the said Act to the extent of a week]]

[*or as the case may be*].

[*Add, if so ordered,*

And it is ordered that the respondent, C.D., [or the applicant, A.B.,] do, on or before the day of , 19 , pay to the applicant, A.B., [or to the respondent, C.D.,] his costs of this application, which are hereby allowed at the sum of £].

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and respondent, naming them*).

51.

Order on Application for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

No. of Application

Between

A.B. (*address and description*) Applicant,

and

C.D. (*address and description*) Respondent.

On the application of , and upon hearing ,

This Court being satisfied that the security of the applicant on certain leasehold property situate at , and known as , under a certain mortgage to which the above-mentioned Act applies, dated the day of , granted by the respondent to the applicant [*or* to , and

assigned by him to the applicant], is seriously diminishing in value, or is otherwise in jeopardy, and that it is reasonable that the said mortgage should be called in and enforced, doth pursuant to the above-mentioned Act order that notwithstanding the provisions of the said Act the applicant, A.B., be at liberty and he is hereby authorised to call in and enforce the said mortgage.

[*If any conditions imposed, add* subject to the following conditions, that is to say :—].

[*Or*, It is ordered that the application of the applicant, A.B., for an order authorising him to call in and enforce a certain mortgage to which the above-mentioned Act applies, on certain leasehold property situate at and known as , dated the day of , 19 , granted by the respondent, C.D., to the applicant, A.B., [*or* to , and assigned by him to the applicant, A.B.,] be and the same is hereby dismissed.

[*Add, if so ordered,*

And it is ordered that the applicant, A.B., be allowed as against the respondent, C.D., his costs of this application, which are hereby allowed at the sum of £ .

And it is ordered that the said sum of £ be added to the security created by the said mortgage [*or* that the respondent, C.D., do pay the said sum of £ to the applicant, A.B., on or before the day of , 19 .]

[*Or*, And it is ordered that the applicant, A.B., do, on or before the day of , 19 , pay to the respondent, C.D., his costs of this application, which are hereby allowed at the sum of £ .]

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and respondent, naming them*).

6.

Certificate on Application for Apportionment of Rent or Rateable Value.

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

No. of Application .

Between

A.B. (*address and description*) Applicant,

and

C.D. (*address and description*) Respondent.

On the application of , and upon hearing ,

This Court, for the purpose of determining the standard rent [*or* rateable value] of a certain dwelling house [*or* of part, that is to say (*here specify the part*) of a certain dwelling house] to which the above-mentioned Act applies, situate at , and known as , and comprised in a certain property known as , doth pursuant to the above-mentioned Act declare that the rent at which the said property was let on the 3rd day of August, 1914 [*or if the property was last let before that date or first let after that date*, on the day of , 19 (*the date on which it was so let*)], shall be apportioned between the said dwelling house [*or* the said part of the said dwelling house] and the rest of the said property as follows, viz. :—

£ to the said dwelling house [*or* the said part of the said dwelling house]; and

£ to the remainder of the said property.

[*or* doth pursuant to the above-mentioned Act declare that the rateable value of the said property on the 3rd day of August, 1914 [*or if the property was first assessed after that date* on the day of , 19 (*the date on which it was first assessed*)], shall be apportioned between the said dwelling house [*or* the said part of the said dwelling-house] and the rest of the said property as follows, viz. :—

£ to the said dwelling house [*or* the said part of the said dwelling house]; and

£ to the remainder of the said property.

[*Add, if so ordered,*

And it is ordered that the respondent, C.D., [*or* the applicant, A.B.,] do, on or before the day of , 19 , pay to the applicant, A.B., [*or* to the respondent, C.D.,] his costs of this application, which are hereby allowed at the sum of .]

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and respondent, naming them*).

7.

Notice of Application for Suspension, Discharge, or Variation of Determination or Order.

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

In the County Court of , holden at .

No. of Application .

Between

A.B. (*address and description*) Applicant,

and

C.D. (*address and description*) Respondent.

TAKE NOTICE, that the applicant, A.B., [*or* the respondent, C.D.,] intends to apply to the Judge of this Court on the day of , 19 , at the hour of in the noon, to suspend [discharge *or* vary] the determination [*or* order] made in this matter on the day of , 19 , whereby it was determined [*or* ordered *or* declared] that (*here recite determination or order*) and for an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that the grounds of my intended application are that the following circumstances have arisen since the date of the said determination [*or* order] which render it just that the said determination [*or* order] should be suspended [discharged *or* varied], viz. :—

(*here set out circumstances*)

Dated this day of , 19 .

(Signed)
Applicant [*or* Respondent],
[*or* Applicant's [*or* Respondent's] Solicitor].

To (*the respondent or applicant, naming him*),
and to Messrs.
his solicitors,
and to the Registrar of the Court.

8.

Order on Application for Suspension, Discharge, or Variation of Determination or Order.

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

In the County Court of , holden at

No. of Application

Between

A.B. (*address and description*) Applicant,

and

C.D. (*address and description*) Respondent

On the application of for the suspension [discharge *or* variation] of the determination [*or* order] made in this matter on the day of 19 , whereby it was determined [*or* ordered *or* declared] that

(*here recite determination or order*)

and upon hearing ,

It is ordered that the said determination [*or* order] be and the same is hereby suspended [*or* discharged *or* varied] as follows :—

(*here set out terms of order for suspension, discharge, or variation*)

[*Or*, It is ordered that the application of the said be and the same is hereby dismissed.]

[*Add order as to costs, if any :* see Form 6.]

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and the respondent, naming them*).

INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS), ENGLAND.

THE INCREASE OF RENT AMD MORTGAGE INTEREST (WAR RESTRICTIONS) RULES, 1916 (No. 2), DATED JUNE 26, 1916, MADE BY THE LORD CHANCELLOR UNDER THE INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915 (5 & 6 GEO. 5, C. 97), AS AMENDED BY THE COURTS (EMERGENCY POWERS) (No. 2) ACT, 1916 (6 & 7 GEO. 5, C. 18).

NOTE.—These Rules and Forms referred solely to the granting by a county court of a lease of twenty-one years or upwards under sect. 2 of the Courts (Emergency) (No. 2) Act, in consideration for which a fair premium or other like sum could be stipulated for, if the Court thought right. They were annulled by the County Courts (Emergency Powers) Rules, 1917, as section 2 of the Courts (Emergency Powers) (No. 2) Act, 1916, is now repealed by sect. 4 of the Courts (Emergency Powers) Act, 1917. The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, does not now apply to any lease of a dwelling house for 21 years or upwards.

THE ARMY ACT, 1881.

[44 & 45 Vict. c. 58.] (amended.)

THE ARMY (SUPPLY OF FOOD, FORAGE AND STORES) ACT, 1914.

[4 & 5 Geo. 5, c. 26.]

THE ARMY AMENDMENT ACT, 1915.

(5 Geo. 5, c. 26.]

THE ARMY (AMENDMENT) No. 2 ACT.

[5 & 6 Geo. 5, c. 58.]

General effect of the above Acts.

By the Army Act, 1881, Section 115, sub-sections 1 and 2 and 7 (as amended) power was conferred upon His Majesty by order, distinctly stating that a case of emergency exists, and signed by a Secretary of State to authorise any general or field officer commanding His Majesty's regular forces in any military district or place in the United Kingdom to issue a requisition (hereinafter referred to as a requisition of emergency).

Sub-section 7 enacts that where a Proclamation ordering the Army Reserve to be called out on permanent service (*a*), or an order for the embodiment of the Militia is in force the order of His Majesty authorising an officer to issue a requisition of emergency may authorise him to extend such requisition to the provision of carriages, animals, vessels and aircraft for the purpose of being purchased as well as of being hired on behalf of the Crown.

The officer so authorised is empowered to issue a requisition of emergency under his hand, reciting the order, for the provision and sale of carriages, including motor cars and other locomotives, animals, vessels, used for transit on any canal or navigable river, and aircraft (*b*).

On such requisition a justice shall issue his warrant to enforce the furnishing or sale of such articles requisitioned.

Section 115, sub-section 4 (as amended), provides that the Secretary of State (*c*) should make due payment for such articles requisitioned, and further provides that any difference respecting the amount of payment should be determined by a county court judge having jurisdiction in any place in which such articles were furnished, or through which they passed in pursuance of the requisition.

By section 4 (3A) of the Army Annual Act, 1914 (4 Geo. 5, c. 2), section 115 of the Army Act is amended as follows :—The requisition may authorise any officer mentioned therein to require any carriages and horses so furnished to be delivered at such place (not being more than one hundred miles in the case of a motor-car or other locomotive, and not being more than ten miles in the case of any other carriage or horse, from the premises of the

(*a*) This Proclamation was made on August 4th, 1915. See Pulling's Manual of Emergency Legislation, p. 87.

(*b*) Extended to "food, forage and stores of every description." See *post*, p. 1000.

(*c*) See now Army Amendment Act, 1915, sect. 2, *post*, p. 1000.

owner) and at such time as may be specified by any officer mentioned in the requisition. It is the duty of the constable executing a warrant issued by a justice of the peace under the section upon the demand of an officer producing the requisition of emergency to insert in his order such time and place for delivery of any vehicle or horse to which the order relates as may be specified by such officer, and the obligation of owners to furnish carriages and horses shall include an obligation to deliver the carriages and horses at such place and time as may be specified in such order, and the provisions of the Act are to have effect as if references therein to the furnishing of carriages and horses included, as respects any such carriage or horse as aforesaid, delivery at such time and place as aforesaid.

At the outbreak of the present war orders were issued by His Majesty declaring that a state of emergency existed, and authorising General or Field officers to issue requisitions of emergency under the Act.

NOTE.—See these Orders, Pulling's Manual of Emergency Legislation, pp. 90—93.

By the Army (Supply of Food, Forage, and Stores) Act, 1914 (4 & 5 Geo. 5, c. 26) (*supra*), section 1, it is declared that the power of requisitioning carriages, horses, vessels, and aircraft in case of emergency conferred by the Army Act, shall extend so as to include a power of requisitioning food, forage and stores of all descriptions, and accordingly at the end of sub-section (2) of section 115 of the Army Act there shall be inserted the words "and also of food, forage and stores of every description," and all the other provisions of that section and also the provisions of sections 31, 116, 117, 119, and 121 of the Army Act shall, so far as applicable, apply in relation to food, forage, and stores as they apply in relation to vessels.

By the Army (Amendment) Act, 1915 (5 Geo. 5, c. 26) (*supra*), it is provided :—

Amendment of s. 115 of the Army Act.

Section 2.—(1) For subsection (4) of section one hundred and fifteen of the Army Act, which relates to the impressment of carriages, animals, and other things in the case of emergency, the following subsection shall be substituted :—

(4) The Army Council shall cause due payment to be made for carriages, animals, vessels, and aircraft furnished in pursuance of this section, and if any difference arises respecting the amount of payment for any carriage, animal, vessel, or aircraft the amount shall be such as may be fixed by a certificate of a county court judge having jurisdiction in any place in which such carriage, animal, vessel, or aircraft was furnished or through which it travelled in pursuance of the requisition ; and for the purpose of fixing such amount the provisions set out in the Sixth Schedule to this Act shall have effect.

Where a sum has been paid or tendered by or on behalf of the Army Council under this sub-section, that sum shall be deemed to be the amount due, unless within three weeks from the date of payment or tender an application is made to a county court judge for his certificate.

(2) After the Fifth Schedule to the Army Act the Schedule to this Act shall be inserted as the Sixth Schedule.

(3) This section shall apply whether the article requisitioned was requisitioned before or after the passing of this Act:

Provided that in its application to articles requisitioned before the passing of this Act a reference to three weeks from the passing of this Act shall be substituted for the reference to three weeks from the date of payment or tender.

The Provisions of the Sixth Schedule are as follows:—

PROVISIONS AS TO DETERMINING AMOUNT TO BE PAID FOR ARTICLES REQUISITIONED.

1. Subject to the provisions of this schedule an application to a county court judge for a certificate shall be made in manner provided by rules of court, and shall be heard by the judge, without a jury, and his decision shall not be subject to appeal.

2. Subject to the provisions of this schedule, and to rules of court, the judge shall on such application act in accordance with the law regulating, and shall have the powers attaching to, the exercise of his ordinary jurisdiction.

3. The amount fixed by the certificate shall be such amount as appears to the county court judge to be the fair market value of the article requisitioned on the day on which it was required to be furnished as between a willing buyer and a willing seller, and where the owner of a carriage or horse has been required to deliver it at a distance from his premises shall include such sum as the judge may consider reasonable to cover the cost of such delivery.

4. No court fees shall be payable on the application, but the judge may, if he thinks fit, order either party to pay such sum as he may consider proper by way of costs to the other party, which sum shall be added to or deducted from the amount fixed by the county court judge as the value of the article requisitioned, and the amount to be included in the certificate shall be adjusted accordingly.

5. If the amount already paid by the Army Council exceeds the amount specified in the certificate, the county court judge shall certify the amount of the excess and shall order the amount so certified to be paid to the Army Council, which order shall be enforceable in like manner as a judgment of a county court.

The Schedule to the Army (Amendment) (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 58) (*supra*), makes amendments in the Army Act, 1881, consequential on the passing of the Army (Supply of Food, Forage and Stores) Act, 1914, by adding or substituting the words "food forage or stores" or the word "articles" for the words "vessels or aircraft," or "carriages, animals, vessels and aircraft," and for the words in sect. 115 (4) "through which it travelled" the words "through which it travelled or was carried."

Procedure.

Procedure is regulated by Order L., rule 14, of the County Court Rules, as now settled by Order dated the 19th of May, 1915, *post*, p. 1002.

The effect of the above statutes, provisions and rules, is that the county court judge alone determines all disputes as to the price to be paid by the Army Council when carriages, horses, vessels, aircraft, food, forage, and stores of any description are requisitioned by Army officers with authority, for the purposes of the war.

The claim is enforced in the usual way, though no court fees are payable on the application, but the judge has power to order the costs of either party to the dispute to be paid by the other.

There is no appeal. (As to right of Crown to requisition lands and buildings, see *Petition of Right of X., In re*, (1915) 84 L. J. K. B. 1961.)

PROCEDURE BEFORE COUNTY COURT JUDGE.

County Court, England.

Procedure.

County Court Rule, dated May 19, 1915, as to Applications for Certificates under the Army Act, 1881, section 115, sub-section 4, and the Acts amending the same, and the Naval Billeting, &c., Act, 1914.

ORDER L.

Proceedings under Acts conferring Jurisdiction on the Courts.

Order L., Rule 14, and Order L., Rule 59 (dated the 22nd day of March, 1915) are hereby annulled (*a*), and the following Rule shall stand as Order L., Rule 14.

Note.—(*a*) Order 50, rule 14, was the old rule made under the Army Act, 1881. Order 50, rule 59, was a new rule dated March 22nd, 1915, but was annulled by the above Order 50, rule 14, which regulates the present procedure.

The Army Act, 1881, 44 & 45 *Vict* c. 58, *s.* 115, *and the Acts amending the same. The Naval Billeting, &c., Act*, 1914.

Application for certificate under 44 & 45 Vict. c. 58, s. 115. 4 & 5 Geo. 5, c. 70. 5 Geo. 5, c. 26, s. 2.

(1) An application to a judge for a certificate under sub-section 4 of section 115 of the Army Act, 1881, and the Acts amending and extending the same (herein referred to as the Act), fixing the amount of payment for any carriage, animal, vessel, or aircraft, may be made to any judge mentioned in the said sub-section in accordance with the provisions of this rule.

(2) The application may be made either in or out of Court on notice in writing according to the form in the Appendix, which shall be served on the opposite party ten clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

Form 453.

(3) Service of notice of the application may be effected in accordance with Order LIV., Rules 2 and 3.

(4) Where the notice of the application is to be served on the Army Council, it may be served on the Permanent Secretary to the War Office or on the Solicitor to the Treasury.

(5) No affidavit in support shall be used, except by leave of the judge, but the judge shall hear oral evidence tendered by either party.

(6) On the hearing of the application, or at any adjournment thereof, the judge shall fix the amount in accordance with the said sub-section, and shall specify the amount in a certificate which shall be signed in duplicate and sent to the parties; but no order directing payment shall be inserted in the certificate except in the cases mentioned in the next following paragraph and in paragraph 5 of the Sixth Schedule to the Act.

(7) If the judge orders any sum to be paid by way of costs to the Army Council, pursuant to paragraph 4 of the Sixth Schedule to the Act, and such sum exceeds the amount payable by the Army Council as the value of the article requisitioned, the judge shall certify the amount of the excess, and shall order the amount so certified to be paid to the Army Council, and the order shall be enforceable in like manner as a judgment of the County Court.

(8) Subject to the provisions of the Act and this Rule, the practice and procedure of the Court in an action, and in particular the practice and procedure with respect to the summoning of witnesses, and with respect to discovery and inspection of documents, shall, with the necessary modifications, apply to proceedings on an application for a certificate.

4 & 5 Geo. 5, c. 70.

(9) This Rule shall apply to cases in which the provisions of the Act are by the Naval Billeting, &c., Act, 1914, extended to the impressment of any carriage, animal, vessel, or aircraft for the purposes of any naval forces; and in any such case the words "the Admiralty" shall be substituted for the words "the Army Council" or "the War Office" wherever they occur in this Rule or in the form in the Appendix.

APPENDIX.

453.

NOTICE OF APPLICATION FOR CERTIFICATE UNDER THE ARMY ACT, 1881, AND THE ACTS AMENDING AND EXTENDING THE SAME. Order L Rule 14

In the County Court of , holden at .

The Army Act, 1881, s. 115, and the Acts amending and extending the same.

Between

A.B. Applicant,
(*address and description*)

and

The Army Council Respondents.
(*or as the case may be.*)

TAKE NOTICE—

That , of , intends to apply to the Judge at (*state where application is to be made*) on the day of , at the hour of in the noon, for a certificate fixing the amount of payment for a certain carriage [animal, vessel, *or* aircraft (*as the case may be*)] furnished in pursuance of the Army Act, 1881, s. 115, and the Acts amending and extending the same.

Dated this day of .

(*Signed*)

Applicant.
[*or* Solicitor for the Applicant.]

To the Registrar of the Court
and to the Army Council
(*or as the case may be*).

Submitted to the Lord Chancellor by the County Court Rules Committee.

WM. L. SELFE.
W. C. SMYLY.
ROBERT WOODFALL.
T. C. GRANGER.
H. TINDAL ATKINSON.

Approved by the Rules Committee of the Supreme Court.

KENNETH MUIR MACKENZIE,
Secretary.

I allow this Rule which shall come into operation forthwith.

The 19th day of May, 1915.

HALDANE, C.

NAVAL BILLETING ACT, 1914.

[4 & 5 GEO. 5, c. 70.]

Section 1.—(1) Where a Proclamation has been issued by His Majesty (*a*) calling out all or any of the men of the naval reserves in case of war or emergency the Admiralty may by order distinctly

NOTE.—(*a*) Proclamation dated the 3rd of August, 1914, see Pulling's Manual of Emergency Legislation, pp. 206—207.

stating that a case of emergency exists, authorise any commander in chief or flag officer whose flag is flying at any naval port or station in the United Kingdom to issue a billeting requisition, or a requisition of emergency.

(2) Where—

(*a*) (Relates to billeting.)

(*b*) An order authorising the issue of a requisition of emergency has been so made the provisions of section one hundred and fifteen of the Army Act (which relates to the impressment of carriages and other things in cases of emergency) and the other provisions of the Army Act relating to the impressment of carriages and other things thereby applied, shall extend to the impressment of carriages, animals, vessels, aircraft, food, forage and stores required for the purposes of such naval forces aforesaid; subject to . . . and to such other modifications and exceptions necessary to adapt the said provisions to the naval forces as the Admiralty may by regulations prescribe.

Note.—See these Regulations, *infra*.

The effect of the above section is to give the county court judge sole jurisdiction to fix the price to be paid, in cases of dispute, for articles impressed for the naval service in the same manner as under the Army Act (s. 115) (as extended), he has jurisdiction to fix the price of articles requisitioned for Army purposes. See Army Act, 1881, Emergency Legislation, *ante*, p. 999.

Modifications of Sect. 115 of the Army Act necessary to adapt its Provisions to the Naval Forces.

The Admiralty has issued the following order under the powers of modification of this Army Act, given by sect. 1 (2) (*b*) of the Naval Billeting Act, 1914 (*supra*).

Naval Requisitions of Emergency—Modifications effected in the Army Act as applied to Naval Requisitions of Emergency by the Naval Billeting, &c. Act, 1914.

1914. No. 1469.

Section 115 of the Army Act and the other provisions of the Army Act relating to the impressment of carriages and other things applied by that section, shall, in their application to the impressment of carriages, animals, vessels, aircraft, food, forage, and stores, required for the purposes of officers and men of His Majesty's Naval Forces borne on the books of any of His Majesty's ships in commission when employed on detached service in case of war or emergency, have effect as modified and set forth hereunder.

115.—(1) Where a Proclamation has been issued by His Majesty calling out all or any of the men of the Naval Reserves

in case of war or emergency, the Admiralty may by order distinctly stating that a case of emergency exists authorise any commander-in-chief or flag officer whose flag is flying at any port or station in the United Kingdom to issue a requisition of emergency.

(2) The officer so authorised may issue a requisition of emergency under his hand reciting the said order, and requiring justices of the peace to issue their warrants for the provision, for the purpose mentioned in the requisition, of such carriages and animals as may be provided under the foregoing provisions, and also of carriages of every description (including motor cars and other locomotives, whether for the purpose of carriage or haulage), and of horses of every description, whether kept for saddle or draught, and also of vessels (whether boats, barges, or other) used for the transport of any commodities whatsoever upon any canal or navigable river and also of aircraft of every description, and also of food, forage, and stores of every description.

(3) A justice of the peace, on demand by an officer of the portion of His Majesty's naval forces mentioned in a requisition of emergency, or by an officer of the Admiralty authorised in this behalf, and on production of the requisition, shall issue his warrant for the provision of such carriages, animals, vessels, aircraft, food, forage, and stores as are stated by the officer producing the requisition of emergency to be required for the purpose mentioned in the requisition; the warrant shall be executed in the like manner, and all the provisions of this Act as to the provision or furnishing carriages and animals, including those respecting fines on officers, justices, constables, or owners of carriages or animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of this Act, a warrant for the provision of carriages and animals, and shall apply to vessels, aircraft, food, forage, and stores, as if the expression carriages included vessels, aircraft, food, forage, and stores.

(3A) A requisition of emergency may authorise any officer mentioned therein to require any carriages and horses furnished in pursuance of this section to be delivered at such place (not being more than one hundred miles in the case of a motor car or other locomotive, and not being more than ten miles in the case of any other carriage or horse, from the premises of the owner) and at such time as may be specified by any officer mentioned in the requisition, and in such case it shall be the duty of a constable executing a warrant issued by a justice of the peace under this section upon the demand of an officer producing the requisition of emergency to insert in his order such time and place for delivery

of any vehicle or horse to which the order relates as may be specified by such officer, and the obligation of owners to furnish carriages and horses shall include an obligation to deliver the carriages and horses at such place and time as may be specified in such order, and the provisions of this Act shall have effect as if references therein to the furnishing of carriages and horses included, as respects any such carriage or horse as aforesaid, delivery at such time and place as aforesaid.

(4) The Admiralty shall cause due payment to be made for carriages, animals, vessels, aircraft, food, forage, and stores, furnished in pursuance of this section, and any difference respecting the amount of payment for any carriage, animal, vessel, aircraft, food, forage, and stores, shall be determined by a county court judge having jurisdiction in any place in which such carriage, animal, vessel, aircraft, food, forage, and stores, was furnished or through which it travelled in pursuance of the requisition.

(5) Canal, river, or lock tolls are hereby declared not to be demandable for vessels while employed in any service in pursuance of this section or returning therefrom. And any toll collector who demands or receives toll in contravention of this exemption shall on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

(6) A requisition of emergency, purported to be issued in pursuance of this section and to be signed by an officer therein stated to be authorised in accordance with this section, shall be evidence, until the contrary is proved, of its being duly issued and signed in pursuance of this Act, and if delivered to an officer of His Majesty's naval forces or of the Admiralty shall be a sufficient authority to such officer to demand carriages, animals, vessels, aircraft, food, forage, and stores, in pursuance of this section, and when produced by such officer shall be conclusive evidence to a justice and constable of the authority of such officer to demand carriages animals, vessels, aircraft, food, forage, and stores, in accordance with such requisition; and it shall be lawful to convey on such carriages, animals, vessels, and aircraft, not only the baggage, provisions, and naval stores of the detachments mentioned in the requisition of emergency, but also the officers, men, servants, and other persons of and belonging to the same.

(7) The order of the Admiralty authorising an officer to issue a requisition of emergency may authorise him to extend such requisition to the provision of carriages, animals, vessels, aircraft, food, forage, and stores, for the purpose of being purchased, as well as of being hired, on behalf of the Crown.

(8) Where a justice, on demand by an officer and on production of a requisition of emergency, has issued his warrant for the

provision of any carriages, animals, vessels, aircraft, food, forage, and stores, and any person ordered in pursuance of such warrant to furnish a carriage, animal, vessel, aircraft, food, forage, or stores, refuses or neglects to furnish the same according to the order, the said officer may seize (and if need be by force) the said carriage, animal, vessel, aircraft, food, forage, or stores, and may use the same in like manner as if it had been furnished in pursuance of the order, but the said person shall be entitled to payment for the same in like manner as if he had duly furnished the same according to the order.

* * * * * * *

Other Provisions of the Army Act Applied by Section 115 *thereof.*

112.—(1) The constable or constables shall execute such warrant, and persons having carriages, animals, vessels, aircraft, food, forage, or stores suitable for the said purpose shall, when ordered by a constable in pursuance of such warrant, furnish the same in a state fit for use.

* * * * * * *

(4) The warrant ordering carriages, animals, drivers, vessels, aircraft, food, forage, or stores to be provided shall specify the number and description thereof, and also, when not required to be provided for the purpose of being purchased, the places from and to which the same are to travel, and the distances between such places.

* * * * * * *

(6) A fee of one shilling and no more shall be paid for the warrant by the officer applying for the same and shall be paid to the clerk of the justice.

Offences in relation to Impressment of Carriages, &c.

31. Every person subject to the Naval Discipline Act who commits any of the following offences (in this Act referred to as offences in relation to the impressment of carriages); that is to say,

(1) Wilfully demands any carriages, animals, vessels, aircraft, food, forage or stores, which are not actually required for the purposes authorised by this Act; or

* * * * * * *

(3) Constrains any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages to travel against the will of the person in charge thereof beyond the proper distance, or

to carry against the will of such person any greater weight than he is required by the said provision to carry ; or

(4) Does not discharge as speedily as practicable any carriage, animal, vessel, or aircraft furnished in pursuance of the provisions of this Act relating to the impressment of carriages ; or

(5) Compels the person in charge of any such carriage, animal, vessel, or aircraft, or permits him to be compelled, to take thereon any baggage or stores not entitled to be carried, or, except where the carriage or animal is furnished upon a requisition of emergency, to take thereon any man or servant (except such as are sick), or any woman or person ; or

(6) Ill-treats or permits such person in charge to be ill-treated ; or

(7) Uses or offers any menace to or compulsion on a constable to make him provide any carriage, animal, vessel, aircraft, food, forage or stores, which he is not bound in pursuance of the provisions of this Act relating to the impressment of carriages to provide, or tending to deter or discourage him from performing any part of his duty in relation to the providing of carriages, animals, vessels, aircraft, food, forage or stores, or tending to induce him to do anything contrary to his said duty ; or

(8) Forces any carriage, animal, vessel, aircraft, food, forage or stores, from the owner thereof,

shall, on conviction summarily or by court-martial, be liable to dismissal from His Majesty's service with disgrace or such other punishment inferior in degree as is mentioned in section fifty-two of the Naval Discipline Act.

116. Any constable who—

(1) Neglects or refuses to execute any warrant of a justice, requiring him to provide carriages, animals, vessels, air craft, food, forage or stores ; or

(2) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve any person from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing any carriage, animal, vessel, aircraft, food, forage or stores ; or

(3) Orders any carriage, animal, vessel, aircraft, food, forage or stores, to be furnished for any person or purpose or on any occasion for and on which it is not required by this Act to be furnished,

shall, on summary conviction, be liable to a fine of not less than twenty shillings nor more than twenty pounds.

117. A person ordered by any constable in pursuance of this Act to furnish a carriage, animal, vessel, aircraft, food, forage or stores who—

(1) Refuses or neglects to furnish the same according to the orders of such constable and this Act; or

(2) Gives or agrees to give to a constable or to any officer any money or reward whatsoever to be excused from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing, or in lieu of furnishing, any carriage, animal, vessel, aircraft, food, forage or stores in pursuance of this Act; or

(3) Does any act or thing by which the execution of any warrant or order for providing or furnishing carriages, animals, vessels, aircraft, food, forage, or stores is hindered,

shall, on summary conviction, be liable to pay a fine of not less than forty shillings nor more than ten pounds.

118.—(1) Any officer or man who commits any offence in relation to the impressment of carriages for which he is liable to be punished under Part One of the Naval Discipline Act, other than an offence in respect of which any other remedy is given by this part of this Act to the person aggrieved, shall, on summary conviction, be liable to a fine not exceeding fifty pounds nor less than forty shillings.

(2) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to the Admiralty.

119.—(1) The following persons; that is to say,—

(*a*) If any officer or man fails to comply with the provisions of this part of this Act in respect of carriages or animals, or to the making up of an account of the sum due, the person to whom the sum is due; or

(*b*) If the owner or driver of any carriage, animal, vessel, aircraft, food, forage or stores furnished in pursuance of this part of this Act suffers any ill-treatment from any officer or man, the person suffering such ill-treatment, but, when there is an officer commanding such officer or man present at the place only after first making due complaint, if practicable to such commanding officer,

may apply to a court of summary jurisdiction, and such court, if satisfied on oath of such failure or such ill-treatment, and of the amount fairly due to the applicant, including the costs of his application to the court of summary jurisdiction, shall certify the

same to the Admiralty, who shall forthwith cause the amount due to be paid.

(2) Provided that the Admiralty, if it appears to them that the amount named in such certificate is not justly due, or is in excess of the amount justly due, may direct a complaint to be made to a court of summary jurisdiction for the county, borough, or place for which the court giving the certificate acted, and the court after hearing the case may by order confirm the said certificate, or vary it in such manner as to the court seems just.

120.—(1) A constable shall observe the directions given to him for the due execution of this part of this Act by the police authority and the police authority, or any member thereof, and every justice of the peace may, if it seem necessary, and in the absence of a constable shall, themselves or himself exercise the powers and perform the duties by this part of this Act vested in or imposed on a constable, and in such case every such person is in this part of this Act included in the expression "constable."

* * * * * * *

121. If any person—

(1) Forges or counterfeits any requisition of emergency, or knowingly produces to a justice or constable any requisition of emergency so forged or counterfeited; or

(2) Personates or represents himself to be an officer authorised to demand any carriage, animal, vessel or aircraft, food, forage or stores; or

(3) Produces to a justice or constable a requisition which he is not authorised to produce, or a document falsely purporting to be a requisition,

he shall be liable, on summary conviction, to imprisonment for a period not exceeding three months, with or without hard labour, or to a fine not less than twenty shillings and not more than five pounds.

Procedure before County Court Judge.

For the procedure to be adopted when a dispute as to price of articles requisitioned for the naval forces is to be settled by the county court judge, see Order 50, rule 14, being the same procedure as that provided for applications under the Army Act. See *ante*, p. 1002.

TRADING WITH THE ENEMY ACT, 1914.

[4 & 5 Geo. 5, c. 87.]

Amended by 5 & 6 Geo. 5, c. 79.

Note.—These Statutes do not directly affect the county courts.

TRADING WITH THE ENEMY AMENDMENT ACT, 1914.

[5 GEO. 5, c. 12.]

This Act appoints a Custodian of enemy property (in England the Public Trustee) and regulates his powers and duties.

Under section 5 (2) of the Act a county court in which judgment has been recovered against an enemy, had power to authorise the Custodian of enemy property to pay out of the property of the enemy held by him, the whole, or any specified part of any debts due by that enemy, and specified in the order.

NOTE.—This power is now apparently taken away from county courts altogether, and confined to the High Court or a judge thereof. See sect. 12 of Trading with the Enemy Amendment Act, 1916 (5 & 6 Geo. 5, c. 105) *post*, p. 1013.

The material parts of section 5 are as follows :—

(2) The property held by the Custodian under this Act shall not be liable to be attached or otherwise taken in execution, but the Custodian may, if so authorised by an order of the High Court or a judge (*a*) *by whose order any property belonging to an enemy was vested in the Custodian under this Act, or of any court in which judgment has been recovered against an enemy* (*b*), pay out of the property paid to him in respect of that enemy the whole or any part of any debts due by that enemy and specified in the order :

NOTE.—(*a*) The rules made to regulate the procedure on an application to the county court to deal with enemy property in the hands of the public Trustee (*post*, p. 1013) are now useless.

NOTE.—(*b*) See sect. 12 of 5 & 6 Geo. 5, c. 105, *post*, p. 1013.

Provided that before paying any such debt the Custodian shall take into consideration the sufficiency of the property paid to or vested in him in respect of the enemy in question to satisfy that debt and any other claims against that enemy of which notice verified by statutory declaration may have been served upon him.

(3) The receipt of the Custodian or any person duly authorised to sign receipts on his behalf for any sum paid to him under this Act shall be a good discharge to the person paying the same as against the person or body of persons in respect of whom the sum was paid to the Custodian.

(4) The Custodian shall keep a register of all property held by him under this Act which register shall be open to public inspection at all reasonable times free of charge.

(5) In England and Ireland the Lord Chancellor and the Lord Chancellor for Ireland may by rules, and in Scotland the Court of Session may by act of sederunt, make provision for the practice and procedure to be adopted for the purposes of this and the last preceding section.

Invalidity of assignment of debts, &c. by enemy.

6.—(1) No person shall by virtue of any assignment of any debt or other chose in action, or delivery of any coupon or other security transferable by delivery, or transfer of any other obligation, made or to be made in his favour by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights or remedies against the person liable to pay, discharge or satisfy the debt, chose in action, security or obligation, unless he proves that the assignment, delivery, or transfer was made by leave of the Board of Trade or was made before the commencement of the present war, and any person who knowingly pays, discharges or satisfies any debt, or chose in action, to which this sub-section applies, shall be deemed to be guilty of the offence of trading with the enemy within the meaning of the principal Act:

Provided that this sub-section shall not apply where the person to whom the assignment, delivery or transfer was made, or some person deriving title under him, proves that the transfer, delivery or assignment or some subsequent transfer, delivery or assignment, was made before the nineteenth day of November, nineteen hundred and fourteen, in good faith and for valuable consideration nor shall this sub-section apply to any bill of exchange or promissory note.

(2) No person shall by virtue of any transfer of a bill of exchange or promissory note made or to be made in his favour by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights or remedies against any party to the instrument unless he proves that the transfer was made before the commencement of the present war, and any party to the instrument who knowingly discharges the instrument shall be deemed to be guilty of trading with the enemy within the meaning of the principal Act:

Provided that this sub-section shall not apply where the transferee, or some subsequent holder of the instrument, proves that the transfer, or some subsequent transfer, of the instrument was made before the nineteenth day of November, nineteen hundred and fourteen, in good faith and for valuable consideration.

(3) Nothing in this section shall be construed as validating any assignment, delivery or transfer which would be invalid apart from this section or as applying to securities within the meaning of section eight of this Act.

TRADING WITH THE ENEMY AMENDMENT ACT, 1916.

[5 & 6 Geo. 5, c. 105.]

12. In subsection (2) of section five of the Trading with the Enemy Amendment Act, 1914, for the words "by whose order any property belonging to an enemy was vested in the Custodian under this Act or in any court in which judgment has been recovered against an enemy" there shall be substituted the word "thereof."

TRADING WITH THE ENEMY.

THE COUNTY COURTS TRADING WITH THE ENEMY (APPLICATION OF PROPERTY) RULES, 1915, DATED FEBRUARY 15, 1915, MADE BY THE LORD CHANCELLOR FOR COUNTY COURTS UNDER THE TRADING WITH THE ENEMY AMENDMENT ACT, 1914 (5 GEO. 5, C. 12).

(NOTE.—Apparently now useless, see *ante*, p. 1011).

Preliminary.

Preliminary. The following Rules under the Trading with the Enemy Amendment Act, 1914, shall apply to the County Courts and the City of London Court (which shall for the purposes of these Rules be deemed to be a County Court) in substitution for Rules 1 and 5 to 10 of the Trading with the Enemy (Vesting and Application of Property) Rules, 1915, dated January 11, 1915.

These Rules may be cited as the County Courts Trading with the Enemy (Application of Property) Rules, 1915, and shall come into operation on the 16th day of February, 1915.

Definitions.

Definitions. 1. In these Rules—

The expression "the Act" means the Trading with the Enemy Amendment Act, 1914.

The expression "the custodian" has the same meaning as in the Act; and the expression "enemy" has a meaning corresponding with that given to "enemies" in the Act.

References to sections and sub-sections are references to sections and sub-sections of the Act.

Applications under section five, sub-section 2.

Applications under sect. 5 (2). 2.—(1) Any application under section five (2) of the Act for payment out of property vested in the custodian of any debt or debts shall, if made to a county court in which judgment has been recovered against an enemy, be made to and dealt with by the court as follows:—

(2) It shall be made by interlocutory application in the proceeding in which judgment has been recovered.

(3) Notice of the application shall be addressed to and served on the custodian and on every other person affected thereby four clear days at least before the day fixed for the hearing of the application, unless in any case the judge or registrar gives leave for shorter service. Service shall be effected in accordance with the County Court Rules as to service of notice of an interlocutory application.

(4) The application shall be made to the judge.

Evidence in Support of Application.

Evidence in support of application. 3. It shall not be necessary in the first instance for a creditor to support the application by any affidavit or other evidence, except such evidence, if

any, as may be required to show the nature and extent of the relief required by him. But the judge may in any case make such requirements or give such directions as to evidence on the part of any party as the case shall require.

Power to Hear Cases in Private.

Power to hear cases in private.

4. The judge may at any stage of the proceedings on any application order that the case shall thenceforward be heard in private.

Orders on Applications. Transfer to High Court.

Orders on applications.

5.—(1) If on the hearing of any application under these Rules the custodian makes no objection to making the payment or some part thereof, or if it shall otherwise appear clear to the judge that the payment or some part thereof ought to be made and can be made without prejudice to other persons owning debts or claims against the enemy in question, then and in either of the said cases the judge may make an order authorising payment accordingly, but so nevertheless as not to prejudice or affect the duty of the custodian under the proviso to section five (2).

Transfer to High Court.

(2) In any other case than those provided for by the last preceding sub-rule, and also in any case thereby provided for where a partial payment only has been ordered, the judge of the court in which judgment has been recovered shall not order any payment or any further payment, as the case may be, but he shall, unless he is satisfied that the application should be dismissed, order the same to be transferred to the judge of the High Court by whose order the property was vested in the custodian, to be further dealt with by him.

Transmission of record.

(3) Where any application is transferred pursuant to this rule, the registrar shall transmit the record in accordance with Order XXXIII., Rule 7, of the County Court Rules.

Dispensing with Notice. Substituted Service.

Dispensing with notice.

6. Any application under these Rules may be proceeded with and heard and dealt with by the judge if thought fit in the absence of an enemy or any other party who may be or appear to be abroad, or whose whereabouts may not be known, or whose presence may otherwise be difficult to secure, and without service of any notice on any such party or any intimation to such party, other than such, if any, as the judge shall think fit. And this sub-rule shall be in addition to and by way of extension and enlargement of the ordinary powers and practice of the court as to proceedings *ex parte* and as to substituted service.

Substituted service.

Preparation, Filing, &c., of Notices.

Preparation, &c., of notices and copies.

7. A notice of an application shall be prepared by the applicant and filed with the registrar, with as many copies as there are parties to be served; Provided that any notice, with the necessary copies, may, if the registrar so thinks fit, be prepared in his office; And the registrar shall examine, complete, seal, and where necessary sign the same, and shall return the copies to the applicant for service.

Orders on Applications.

Orders on applications.

8. Where an order is made on an application under these Rules, the order shall be prepared and sealed by the registrar and delivered to the bailiff, who shall within twenty-four hours send the same, by post or otherwise, to the custodian and to the party against whom the order is made: but it shall not be necessary for the party in whose favour it is made to prove, previously to taking proceedings thereon, that it was posted or reached the opposite party.

Revocation or Variation of Orders.

Power to revoke or vary orders.

9. Any order made under these Rules may, should subsequent circumstances render it just so to do, be suspended, discharged or otherwise varied

or altered on interlocutory application to the judge of the court in which the order was made.

Fees.

Fees. 10. The following fee shall be payable under Schedule B, Part I., of the Treasury Order regulating Fees in the County Courts, on proceedings under these Rules, viz. :—

On any notice of application, 2*s.* 6*d.*

The fee prescribed by this Rule shall include drawing, sealing, and issuing the order, and the fee prescribed by paragraph 12 of Schedule B, Part I., of the Fees Order shall not be taken ; but this Rule shall not affect the fees payable on orders for substituted service.

The judge may remit or excuse in whole or in part any fees paid or payable under this Rule.

Proceedings on Applications.

Ordinary practice of court to be followed. 11. The proceedings on any application under these Rules shall, so far as not expressly provided for by these Rules, be conducted in accordance with the ordinary practice of the court in dealing with similar matters.

Costs.

Costs. 12.—(1) The costs of any application under these Rules shall be in the discretion of the judge.

(2) The judge may either fix the amount of such costs, or allow them on the scale applicable to an interlocutory application in the action in which the application is made ; provided that Column B of the scale shall apply to all cases above twenty pounds to the exclusion of Column C.

(3) Where the amount of the subject-matter does not exceed ten pounds, there may be allowed for all work done by a solicitor in relation to the application—

If the amount exceeds 2*l.*, but does not exceed 5*l.* 3*s.*

If the amount exceeds 5*l.*, but does not exceed 10*l.* 5*s.*

(4) The judge may direct that any costs allowed shall be payable forthwith, or that they shall be included in the sum recovered under the judgment or order.

The 15th day of February, 1915.

HALDANE, C.

We, the undersigned, two of the Commissioners of His Majesty's Treasury, do hereby, with the consent of the Lord Chancellor, order that the fees specified in Rule 10 of the foregoing Rules shall be taken on the proceedings therein mentioned, in lieu of all other fees for the proceedings therein set forth.

WALTER R. REA.
CECIL BECK.

I concur in the above order as to fees.

HALDANE, C.

INJURIES IN WAR (COMPENSATION) ACT, 1914.

[4 & 5 GEO. 5, c. 30.]

By this Act His Majesty by Order in Council may frame a scheme for compensation for personal injuries suffered by persons (not in the naval or military forces of the Crown) whilst employed for war purposes afloat by the Admiralty or Army Council, and for their widows and dependants.

The only matter in which this Act may affect the county courts is the provision (sect. 1 (3)) that a person so entitled to compensation shall not in

addition be entitled to recover compensation under the Workmen's Compensation Act, 1906, or damages at common law, or under the Employers' Liability Act, 1880, or any other statute except so far as the Order in Council otherwise provides.

Order approving scheme gazetted 10th August, 1914, cancelled by fresh order approving scheme dated 27th May, 1915 (applying as from 3rd August, 1914). See Pulling's Emergency Legislation, Part 4, p. 258. By a later Act (5 Geo. 5, c. 18), like benefits are conferred on persons employed in warlike operations on shore out of the United Kingdom, subject to like restrictions.

A similar statute (5 Geo. 5, c. 24) gives like benefits to persons employed in warlike operations afloat by or under the Postmaster-General in Telegraph work afloat or whilst being carried afloat to or from any place where they have been or are about to be employed in such work, or whilst employed afloat in connection with the conveyance or sorting of letters or parcels. The benefits are conferred subject to the same restrictions.

NOTE.—Apparently no scheme under these later Acts has been published.

Extension of s. 11 of principal Act to certain pensions, &c., 4 & 5 Geo. 5, c. 30. 5 Geo. 5, c. 18. 5 Geo. 5, c. 24.

By the National Insurance (Part I. Amendment) Act, 1915 (5 Geo. 5, c. 29), sect. 2, "Where any pension, grant or allowance, has been granted to any insured person in pursuance of the Injuries in War (Compensation) Act, 1914, or the Injuries in War (Compensation) Act, 1914 (Session 2), or the Injuries in War (Compensation Act, 1915, or any similar Act which may hereafter be passed and with respect to which regulations made by the Insurance Commissioners with the consent of the Treasury provide that this section shall apply, then as from the prescribed date such pension, grant or allowance shall, for the purposes of section eleven of the National Insurance Act, 1911, be treated as if it were compensation under the Workmen's Compensation Act, 1906.

6 Edw. 7, c. 58.

THE STATUTORY COMPANIES (REDEEMABLE STOCK) ACT, 1915.

[5 & 6 GEO. 5, c. 44.]

AN ACT TO ENABLE CERTAIN STATUTORY COMPANIES TO CREATE AND ISSUE PREFERENCE SHARES OR STOCK, AND DEBENTURES OR DEBENTURE STOCK, SO AS IN EACH CASE TO BE REDEEMABLE.

[19th May, 1915.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Issue of redeemable preference or debenture stock.

1.—(1) Where a statutory company as defined by this Act are authorised to raise any preference or debenture stock, they may create and issue that stock so as to be redeemable on such terms

and conditions as may be specified in a resolution of the company passed at a special meeting convened for the purpose.

(2) If it is so provided in the resolution the statutory company may—

(*a*) call in and pay off the stock or any part thereof at any time before the fixed date of redemption ; and

(*b*) redeem the stock or any part thereof, either by paying off the stock or by issuing to any stockholder, subject to his consent, other stock in substitution therefor ; and may, for the purpose of providing money for paying off the stock or of providing substituted stock, create and issue new stock (either redeemable or irredeemable) or reissue stock originally created and issued under this section, provided that the creation and issue for the purpose of any particular class of stock does not make the total nominal amount of that stock issued exceed the amount of that class of stock which the company are for the time being authorised to create.

(3) The company may set aside out of revenue, after providing for the payment of interest on any loan, or on any guaranteed, preference or debenture stock of the company, and for other fixed charges and obligations, such sums as they may consider proper for the purpose of forming a fund for the redemption at maturity of any redeemable preference or debenture stock which, under the conditions of the creation and issue of that stock, is to be redeemed wholly or partly in cash ; and the company may invest any sums so set apart, and the income therefrom, in any securities in which trustees are for the time being by law authorised to invest trust funds, or in any other securities (not being securities of the company except as hereinafter provided) in which they may be authorised to invest those sums by a resolution passed at a general meeting of the company.

Any sums so set apart shall be applied for the redemption at maturity of any redeemable preference or debenture stock for the redemption of which they have been set apart, but may, if the directors of the company think fit, be also at any time applied in the purchase of any such stock at a price not exceeding the redemption price, and any stock so purchased shall be cancelled.

(4) A resolution of a statutory company, passed before the commencement of this Act and after the outbreak of the war, for the creation or issue of redeemable stock shall, for the purposes of this Act, have the same effect as if this Act had been in operation at the time when the resolution was passed.

(5) This Act shall apply only to stock authorised to be created or to be issued before the outbreak of the present war, or after the

outbreak of the present war, and before the commencement of this Act; and redeemable stock shall not be created or issued, in pursuance of the powers given by this Act, during the continuance of the present war and a period of twelve months thereafter except with the consent of the Treasury.

Interpretation and construction.

2.—(1) In this Act, unless the context otherwise requires,—

The expression "statutory company" means any railway company, canal company, dock company, water company, or other company incorporated by special Act, who are for the time being authorised under such an Act to construct work, own, or carry on any railway, canal, dock, water, or other public undertaking, and includes any person or body of persons so authorised.

The expression "special Act" includes any certificate or order having the force of an Act.

(2) The provisions of this Act shall apply to preference shares in the same manner as they apply to preference stock, and to debentures in the same manner as they apply to debenture stock.

(3) The powers given by this Act shall be deemed to be in addition to, and not in derogation of, any other powers under any other Act; and those powers may be exercised in the same manner as if this Act had not passed.

Short title.

3. This Act may be cited as the Statutory Companies (Redeemable Stock) Act, 1915.

NOTE.—As to other restrictions on fresh capital issues, see under heading "Fresh Issues of Capital," Pulling's Emergency Legislation, Part 3, pp. 404—407, and Part 4, pp. 255—256.

MINISTRY OF MUNITIONS ACT, 1915.

[5 & 6 GEO. 5, c. 51.]

Seal, style, and acts of Minister.

Sect. 4.—(1) The Minister of Munitions may adopt an official seal and describe himself generally by the style and title of the Minister of Munitions, and the seal of the Minister shall be officially and judicially noticed and shall be authenticated by the signature of the Minister or of a secretary or some person authorised by the Minister to act in that behalf.

(2) Every document purporting to be an Order or other instrument issued by the Minister of Munitions and to be sealed with the seal of the Minister authenticated in manner provided by this section or to be signed by the secretary or any person authorised as aforesaid shall be received in evidence and be deemed to be

such Order or instrument without further proof, unless the contrary is shown.

(3) A certificate signed by the Minister of Munitions that any Order or other instrument purporting to be made or issued by him is so made or issued shall be conclusive evidence of the fact so certified.

(4) Where in connection with the undertaking of any duties or powers by the Minister of Munitions it appears to the Minister of Munitions and the department or authority concerned that in any notice, order, contract, or other document the name of the Minister of Munitions should be substituted for the name of any department or authority, or that the name of any officer of the Ministry of Munitions should be substituted for the name of any officer of any such department or authority, the Minister of Munitions may order that the substitution shall take effect, subject to any limitations contained in the order, and, where such an order is made, the notice, order, contract, or document shall have effect in accordance with the order.

NOTE.—And see sect. 18 of Munitions of War Act, 1915 (5 & 6 Geo. 5, c. 54).

WAR LOAN (TRUSTEES) ACT, 1915.

[5 & 6 GEO. 5, c. 56.]

This Act gives the county courts power to order sums of money paid into court, or already in court, or under the control of the court to be invested in War Loan securities.

Section 2 is as follows :—

Investment of sums in court.

2. It is hereby declared that any sum paid into any court, or otherwise under the control of any court, may, without prejudice to any other mode of investment, be invested in securities created under the War Loan Act, 1915 ; and any sums paid into court, or otherwise under the control of the court, before the passing of this Act may, in pursuance of any order of the court, or in accordance with rules of court, be realised and re-invested in those securities.

EXECUTION OF TRUSTS (WAR FACILITIES) ACT, 1914.

[5 Geo. 5, c. 13.]

An Act to facilitate the execution of Trusts during the present War.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power to delegate the execution of trusts by power of attorney.

1.—(1) A trustee (whether a sole trustee or a trustee with others) may, notwithstanding any rule of law or equity to the contrary, by power of attorney, attested by one or more witnesses, delegate to any person capable of being appointed to be a trustee of the trust (*a*) the execution during any period for which the trustee is engaged on war service within the meaning of this Act, and a further period of one month thereafter, of any trust of which he is trustee.

Note.—(*a*) A co-trustee is not a person capable of being appointed to be a trustee of the trust, therefore the Act does not enable one of two trustees to delegate his power to his co-trustee : *Wells and Hopkinson's Contract*, (1916) 2 Ch. 289 ; 85 L. J. Ch. 686.

(2) For the purposes of this Act a trustee shall be deemed to be engaged on war service :—

(*a*) If he is engaged on active service in connection with the present war as a member of any of the military or naval forces of the Crown ; and

(*b*) If he is engaged on service in any work abroad, in connection with the present war, of the British Red Cross Society, or the Saint John's Ambulance Association, or any other body with similar objects ; and

(*c*) If in connection with the present war he is a prisoner of war in the enemy's country or is interned in the country of a neutral Power.

(3) All jurisdiction and powers of any court shall apply to the donee of a power of attorney given under this Act so far as respects the execution of the trust in the same manner as if the donee were a trustee of the trust.

(4) A statutory declaration by the donee of a power of attorney under which the execution of a trust is delegated, that the donor is engaged on war service within the meaning of this Act, or that in any transaction the donee is acting in execution of the trust, shall be accepted as sufficient evidence of the fact by any person dealing with the donee.

Supplemental provisions as to powers of attorney given under Act. 44 & 45 Vict. c. 41.

2.—(1) A power of attorney given under this Act may be deposited at the Central Office of the Supreme Court or proper office of the Supreme Court of Judicature in Ireland under section forty-eight of the Conveyancing Act, 1881, without any such verification of its execution as is therein required; and, notwithstanding anything in any Act or rules, the Bank of England, the Bank of Ireland, the Paymaster-General, the Accountant-General of the Supreme Court of Judicature in Ireland, and any other person, shall not refuse to act on the authority of any such power of attorney, although the power is not attested by two witnesses, or fails in any other respect to comply with any formality required by law or practice.

(2) The donee of a power of attorney given under this Act may, for the purpose of the transfer of any inscribed stock, himself delegate to an attorney the power to transfer.

(3) The fact that it appears from any power of attorney given under this Act, or from any evidence required for the purposes of any such power of attorney, or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

(4) In this section the expression "stock" includes shares and any fund, annuity, or security transferable in books kept by any person or by any instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein.

Extension of Act to certain persons abroad not actually engaged on war service.

3. The powers conferred by this Act on trustees in relation to any period for which they are engaged on war service, may also be exercised by any trustee not engaged on war service in relation to any period during which, being abroad, he is for any reason connected with the present war unable to return from abroad to the United Kingdom; and this Act shall have effect, in its application to such trustees, with the necessary modifications.

Short title and application.

4.—(1) This Act may be cited as the Execution of Trusts (War Facilities) Act, 1914.

(2) This Act shall not apply to Scotland.

(3) This Act shall not apply to any trustee under an implied or constructive trust.

EXECUTION OF TRUSTS (WAR FACILITIES) AMENDMENT ACT, 1915.

[5 & 6 Geo. 5, c. 70.]

An Act to amend and extend the provisions of the Execution of Trusts (War Facilities) Act, 1914.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Powers of tenant for life under Settled Land Acts. 5 & 6 Geo. 5, c. 13.

1. A tenant for life or a person having the powers of a tenant for life within the meaning of the Settled Land Acts, 1882 to 1890, shall be deemed to be a trustee within the meaning of the Execution of Trusts (War Facilities) Act, 1914, (hereinafter referred to as the principal Act) and accordingly may in pursuance of the principal Act by power of attorney delegate the exercise of all or any of his statutory powers under the Settled Land Acts, 1882 to 1890, and also all or any of the powers (if any) conferred upon him by the settlement in extension of such statutory powers : Provided that such delegation shall only be made to the trustees of the settlement for the purposes of the said Acts or to one or more of them.

Executors and administrators.

2. For removing doubts it is hereby declared that an executor or administrator of a deceased person is, in relation to the administration of the estate of the deceased, a trustee within the meaning of the principal Act, and that he may appoint as his attorney his co-executor or co-administrator (if any), or any other person who would be capable of being appointed by a court of competent jurisdiction to be administrator with the will annexed or administrator of such deceased person, if no executor or administrator existed :

Provided that for the purpose of this provision, a person shall not be deemed to be incapable of being appointed administrator by reason only that some other person would have, according to the law or practice of the court, a prior claim to be so appointed.

Revocation of powers of attorney.

3.—(1) In favour of any person dealing with the donee of a power of attorney made under the principal Act or this Act, any act done or instrument executed by the attorney shall, notwithstanding that the power has become revoked by the act of the donor of the power or by his death or otherwise, be as valid and effectual as if the donor of the power were alive and of sound mind and had himself done such act or executed such instrument, unless such person had actual notice of the revocation of the power or of

the death or unsoundness of mind of the donor of the power before such act was done or deed executed.

(2) In favour of a person dealing with the attorney any such statutory declaration made by the attorney as is mentioned in sub-section (4) of section one of the principal Act shall be conclusive evidence of the facts therein declared.

Powers of trustees in case of death of infant engaged on war service.

4. Where an infant who has been engaged on war service within the meaning of sub-section (2) of section one of the principal Act, or who, having been abroad but not actually engaged on war service, has been for any reason connected with the present war unable to return from abroad to the United Kingdom, has died, all acts and instruments purporting to be done or executed on his behalf under the provisions of section sixty of the Settled Land Act, 1882, after the date of his death shall, in favour of any person who had not at the time the act was done or the instrument executed actual notice of the death, be as valid and effectual as if such infant were still living.

Persons reported missing presumed to be alive.

5. A trustee or infant to whom the principal Act or this Act applies shall, for the purposes of those Acts, be presumed to remain alive until definite news of his death has been received or such death has been presumed by a court of competent jurisdiction, and the fact that he is reported "missing" or "missing and believed to be killed" shall not be construed as giving to persons having knowledge of such report actual notice of his death, although in fact it has occurred.

Short title and construction.

6. This Act may be cited as the Execution of Trusts (War Facilities) Amendment Act, 1915, and shall be construed as one with the principal Act; and this Act and the principal Act may be cited together as the Execution of Trusts (War Facilities) Acts, 1914 and 1915.

WAR RISKS (INSURANCE BY TRUSTEES) ACT, 1916.

[6 Geo. 5, c. 6.]

This Act gives power to trustees to insure the trust property against war risks by hostile aircraft, or bombardment, or any operations of war, or defence, whether executed by or against the enemy.

An Act to facilitate the Insurance against War Risks of Property subject to Trusts. [19*th April*, 1916].

Power of trustees to

1. The power of a trustee to insure against loss or damage by fire under section eighteen of the Trustee Act, 1893, shall, during

insure property against war risks.

56 & 57 Vict. c. 53.

the continuance of the present war, include, and shall be deemed as from the fourth day of August nineteen hundred and fourteen to have included, a power to insure against war risks up to the full value of the building or property insured; and that section shall apply with the necessary modification of the limit on the amount to be insured.

In this Act the expression "war risks" means loss or damage attributable to hostile aircraft or to bombardment or to any operations of war or defence, whether executed by or against the enemy.

Short title.

2. This Act may be cited as the War Risks (Insurance by Trustees) Act, 1916.

REGISTRATION OF BUSINESS NAMES ACT, 1916.

[6 & 7 Geo. 5, c. 58.]

By this Act all firms, and persons carrying on business in names other than their own must be registered. One of the penalties of non-registration is that such firm or person cannot sue on its business contracts.

The High Court or the county court where the action is brought in the county court, may give relief against this penalty on being satisfied that the failure to register was accidental or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable that relief should be granted.

Firms and persons to be registered.

1. Subject to the provisions of this Act—

(*a*) Every firm having a place of business in the United Kingdom and carrying on business under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than the true Christian names of individuals partners or initials of such Christian names (*a*);

Note.—(*a*) Similar provisions as to Directors of Companies are contained in the Companies (Particulars as to Directors) Act, 1917. See *post*, p. 1034.

(*b*) Every individual having a place of business in the United Kingdom and carrying on business under a business name which does not consist of his true surname without any addition other than his true Christian names or the initials thereof;

(*c*) Every individual or firm having a place of business in the United Kingdom, who, or a member of which, has either before or after the passing of this Act changed his name, except in the case of a woman in consequence of marriage;

shall be registered in the manner directed by this Act:

Provided that—

(i.) where the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary; and

(ii.) where two or more individual partners have the same surname, the addition of an *s* at the end of that surname shall not of itself render registration necessary; and

(iii.) where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration shall not be necessary; and

(iv.) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common is not of itself to be deemed carrying on a business whether or not the owners share any profits arising from the sale thereof.

Penalty for default in registration.

7. If any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall without reasonable excuse make default in so doing in the manner and within the time specified by this Act, every partner in the firm or the person so in default shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the default continues, and the court shall order a statement of the required particulars or change in the particulars to be furnished to the registrar within such time as may be specified in the order.

Disability of persons in default.

8.—(1) Where any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which particulars were required to be furnished at any time while he is in default shall not be enforceable by action or other legal proceeding either in the business name or otherwise.

Provided always as follows:—

(*a*) The defaulter may apply to the court for relief against the disability imposed by this section, and the court, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular contracts, on condition of the costs of the application being paid by the defaulter, unless the court otherwise orders, and on such other conditions (if any) as the court may impose, but such relief shall not be granted except

on such service and such publication of notice of the application as the court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the court that, if this Act had been complied with, he would not have entered into the contract;

(*b*) Nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid;

(*c*) If any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding, by way of counterclaim set off or otherwise, such rights as he may have against that party in respect of such contract.

(2) In this section the expression "court" means the "High Court" or a judge thereof:

Provided that, without prejudice to the power of the High Court or a judge thereof to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in a county court, the county court may, as respects that contract, grant such relief as aforesaid.

COMPANIES (FOREIGN INTERESTS) ACT, 1917.

[7 & 8 GEO. 5, c. 18.]

This Act gives the court which has jurisdiction to wind up a limited company, including the county court, in a case within its jurisdiction, power to refuse to make a winding up order, where such company has any provision in its articles of association which offend against sect. 1 of the Act.

The general intention of the Act seems to be to prohibit the alteration, except with the consent of the Board of Trade, of articles of association or regulations which restrict foreign interests in companies and to prevent companies controlled by aliens or which have articles of association which contain such provisions as mentioned in sect. 1 of the Act, being wound up with a view to continuing the undertaking free from any such restrictions or limitations.

Prohibition of alteration of articles restricting foreign interests in companies except with consent of Board of Trade.

1.—(1) Where any provision in the articles of association of a registered company is designed to restrict or limit, or has the effect of restricting or limiting, the proportion or amount of the capital of the company or of the voting power in the company, or of the control upon the Board of the company which may be held or exercised by or on behalf of aliens, or is otherwise designed to restrict or limit, or has the effect of restricting or limiting, the

nterests or authority of aliens in the company or the control of the company by aliens, an alteration of that provision shall not be of any effect, notwithstanding anything in any other Act, until it has received the written consent of the Board of Trade.

(2) The decision of the Board of Trade as to whether an alteration of a provision requires the consent of the Board under this Act or not shall be final and conclusive.

(3) This Act shall apply to any regulations or provisions in the nature of regulations affecting an incorporated company, not being a registered company, which can be altered by the company, in the same manner as it applies to the articles of association of a registered company.

(4) In this Act the expression "registered company" means a company as defined by section two hundred and eighty-five of the Companies (Consolidation) Act, 1908, and the expression "alien" includes any body corporate not incorporated in some part of His Majesty's dominions and any class of aliens. 6 Edw. 7, c. 69.

Provisions applicable to certain companies.

2. The following provisions shall apply to every company in whose articles of association is contained any provision such as mentioned in section one (1) of this Act :—

(1) A resolution for the voluntary winding-up of the company shall be of no effect unless the Board of Trade in its discretion authorises or ratifies it by a written consent.

(2) The court which has jurisdiction to wind up the company may in its discretion refuse to make a winding-up order.

(3) In the exercise of its discretion the Board of Trade or the court, as the case may be, shall be guided by the consideration whether the winding-up is *bonâ fide* with a view to the discontinuance of the undertaking, or is with a view to continuing the undertaking free from any restrictions or limitations such as are mentioned in section one (1) of this Act which are contained in the company's articles of association or any of such restrictions or limitations.

(4) The Board of Trade in giving consent or the court in making a winding-up order, as the case may be, may impose such terms or conditions for giving effect to this Act as it thinks fit.

Short title.

3. This Act may be cited as the Companies (Foreign Interests) Act, 1917.

BILLETING OF CIVILIANS ACT, 1917.

[7 & 8 Geo. 5, c. 20.]

By this Act any Government department is given power to make provisions for the billeting of civilians engaged in war work, in any locality.

The jurisdiction of the county court is to fix (if it cannot be settled by the conciliation of the local committee) the amount of compensation payable to the person on whom a worker is billeted in respect of damage done to his premises or the contents thereof by the person billeted (sect. 3, sub-s. 4.)

Rules have been made by the Lord Chancellor for this purpose (see p. 1031; also sect. 5, sub-s. 6 of the Act).

Duty to provide billets.

4.—(1) It shall be the duty of the occupier of any premises within a locality where this Act is in operation—

(*a*) to give to the local committee or their executive officer such information with respect to his premises and the persons for the time being residing therein as may be reasonably required for ascertaining the accommodation in the premises available for billets;

(*b*) to provide such billets as he may be required to provide under this Act, and to furnish such attendance and meals or food for the persons billeted on him as may reasonably be prescribed by regulations of the local committee, and generally to conform with any rules as to the treatment of persons billeted on him which may be made by the Board under this Act;

and if any such person refuses or wilfully neglects to comply with any of the foregoing provisions of this section he shall be liable on conviction before a court of summary jurisdiction to a fine not exceeding five pounds.

(2) Any occupier of any such premises who feels himself aggrieved by a proposal to billet persons on him, or by the number of persons to be billeted on him, or by the conduct or habits of persons billeted on him, may complain to the local committee, and the local committee shall take such complaint into consideration, and if satisfied of the justice of the complaint shall remedy the grievance; and if the occupier is dissatisfied with the decision of the local committee he may appeal to the Board, and the Board shall take the matter into consideration and, after giving the local committee an opportunity of being heard, may make such order as in the circumstances may appear to the Board to be proper.

(3) Every person on whom any worker is billeted shall be entitled to receive weekly payment in respect thereof in accordance with such scale applicable to the case as may be prescribed by regulations of the local committee, and to receive reasonable compensation for damage done to his premises and the contents

thereof, fair wear and tear excepted, and any such sum shall, if the person billeted fails to pay it within one week after it has become due, be paid by the local committee.

(4) If any difference arises as to the amount of such compensation, the amount (if it cannot be settled by the conciliation of the local committee) shall be such as may be fixed by a certificate of the county court of the district in which the premises are situate, and the Lord Chancellor may make such rules as he thinks fit for the purposes of this subsection, and may by such rules provide for applications for certificates being made to and certificates given by the registrar, subject to appeal to the judge.

(5) If the occupier of any premises on whom a person is billeted under this Act suffers direct loss or damage, including loss of earnings, which he proves to the satisfaction of the Board to have been caused by the person so billeted being infected with or spreading any infectious disease to which the provisions of section six of the Infectious Disease (Notification) Act, 1889, section fifty-five, subsection (8) of the Public Health (London) Act, 1891, or regulations under section one hundred and thirty of the Public Health Act, 1875, extend, the Board may, if they think fit, pay reasonable compensation, and any sums paid by the Board as such compensation shall be treated as expenses of the Board.

52 & 53 Vict. c. 72.
54 & 55 Vict. c. 76.
38 & 39 Vict. c. 55.

Duties and rights of persons billeted.

5.—(1) It shall be the duty of any person billeted in any premises under this Act to observe such rules as to conduct as may be laid down by rules of the Board, and generally to conduct himself in such manner as to cause as little inconvenience as possible to the person on whom he is billeted.

(2) It shall not be lawful for any person so billeted—

(*a*) except in such cases as may be prescribed by rules made by the Board, or except where leave of the executive officer has been obtained, to leave the billet without giving one week's notice to the occupier of the premises, or making payment in lieu of notice ; or

(*b*) to leave the billet without paying to the occupier of the premises any sums which may be due from such person under this Act otherwise than as compensation for damage ;

and if he leaves the billet in contravention of this provision he shall, if an information is laid by or on behalf of the local committee, be liable on conviction before a court of summary jurisdiction to a fine not exceeding five pounds.

(3) A local committee may at any time order any person

billeted under this Act to leave a billet, and if such person fails to comply with any such order of the local committee he shall be liable on conviction before a court of summary jurisdiction to a fine not exceeding five pounds, and to a further fine not exceeding one pound for each day during which the offence continues.

(4) If a person so billeted is guilty of violence drunkenness or indecency, of such a character as to require his immediate removal from the premises where he is billeted, he shall be guilty of an offence against this Act, and liable on conviction before a court of summary jurisdiction to a fine not exceeding twenty pounds, and a person charged with any such offence may be arrested without warrant by any constable, and the occupier of the premises shall have the same right of removing from the premises a person committing such an offence as if he were a trespasser.

(5) If a person billeted under this Act feels aggrieved as to his treatment in the billet, he may complain to the local committee, who shall take the complaint into consideration and, if satisfied of the justice of the complaint, shall take such steps as may be practicable to remedy the grievance.

(6) A person billeted under this Act shall be liable to pay every week to the occupier of the premises in which he is billeted such sums as may be prescribed by the scale applicable to the case as laid down by the local committee, and shall also be liable to pay reasonable compensation (to be ascertained in case of dispute in manner aforesaid) for any damage caused by him to the premises or the contents thereof (except fair wear and tear), and if on his making default in such payments the local committee is called upon to discharge his obligation, the amount shall be recoverable from him by the local committee summarily as a civil debt, and the court before which the proceedings are taken may, without prejudice to any other available means of recovery, make an order requiring such deductions to be made on account of the sum due from the wages of that person as the court may think fit, and requiring the person by whom the wages are for the time being paid to account for any sums deducted in accordance with the order.

THE COUNTY COURT (BILLETING OF CIVILIANS) RULES, 1917, DATED JULY 31, 1917, MADE BY THE LORD CHANCELLOR UNDER THE BILLETING OF CIVILIANS ACT, 1917 (7 & 8 GEO. 5, c. 20).

Preliminary.

The following Rules under the Billeting of Civilians Act, 1917 (in these Rules referred to as the Act) shall apply to the county courts and the City of London Court, which shall for the purposes of these Rules be deemed to be a county court. 7 & 8 Geo. 5, c. 20.

These Rules may be cited as the County Court (Billeting of Civilians) Rules, 1917, and shall come into operation on the 9th day of August, 1917.

Application for Certificate under Section 4, Sub-section 4.

1. An application to the county court under sub-section 4 of section 4 of the Act for a certificate as to the amount of compensation payable to a person on whom any worker is billeted for damage done to his premises and the contents thereof shall be made by means of a summons according to the form in the Appendix, entitled "in the matter of the Billeting of Civilians Act, 1917." Particulars of the compensation claimed shall be appended or annexed to the summons, and the name and address of the local committee established for the locality under the Act shall be stated on the summons. Application by summons for certificate under s. 4, sub-s. 4. Form 1.

Preparation, Filing, &c. of Summons.

2. The summons shall be prepared by the applicant and filed with the registrar, with as many copies as there are parties to be served: Provided that any summons, with the necessary copies, may, if the registrar so thinks fit, be prepared in his office. Preparation &c., of summons and copies.

Fixing Time and Place for Hearing.

3. The registrar shall fix a time and place for the hearing of the application before himself at the court or at his office on the earliest available day which will allow the copies of the summons to be served in accordance with the next following rule: And he shall examine, complete, seal and sign the summons and copies, and deliver the copies to the high bailiff for service, and give or send by post to the applicant a notice of the time and place fixed for the hearing. Fixing time and place for hearing.

Service.

4.—(1) A copy of the summons shall be served on every person affected thereby two clear days at least before the day fixed for the hearing. Time for service.

(2) Service may be effected by delivering the copy of the summons to the person on whom it is to be served, or by delivering the same at the last-known place of abode of such person, or by sending the same by registered post addressed to such person at his last-known place of abode; and such copy if served by post shall, unless the contrary be proved, be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such copy it shall be sufficient to prove that the same was properly addressed and posted. Mode of service.

Hearing by Registrar. Appeal.

5. Any application under these Rules may be made to and a certificate given by the registrar, subject to the following provisions:— Application to registrar.

(*a*) The registrar may in any case refer the matter to the judge: Reference to judge.

(*b*) Any party may appeal to the judge against any certificate given or order made by the registrar, and the judge may on the hearing of the appeal vary or rescind the certificate or order, and give such certificate or make such order as may be just: Appeal.

(*c*) An appeal shall be brought on notice in writing, which shall be served on the opposite party two clear days at least before the hearing of the appeal, unless the judge or registrar gives leave for shorter notice. The notice shall be filed within four clear days from the date of the certificate or order of the registrar, and if it is not so filed no such appeal shall be brought without leave of the judge.

Evidence on Application.

Evidence on application.

6. No affidavit in support of the application shall be used, except by leave of the court, but the court shall hear oral evidence tendered by either party, and the practice and procedure of the court as to the summoning of witnesses shall apply; or any party may, in lieu of appearing, send to the court and to the opposite party, one clear day at least before the hearing, a statement in writing setting forth the arguments in support of his contention and such arguments shall be considered by the court.

Certificate.

Certificate on application.

Form 2.

7. On the hearing of the application, or at any adjournment thereof, the court shall fix the amount in accordance with the said sub-section, and shall specify the amount in a certificate according to the form in the Appendix, which shall be prepared and sealed and signed by the registrar: and duplicates thereof shall be delivered to the high bailiff, who shall within twenty-four hours send the same by post or otherwise to the parties, and to the local committee established for the locality under the Act.

Fees.

Fees.

8.—(1) A fee of 6*d*. in the £ or part of a £ on the amount of compensation claimed, but not in any case exceeding 10*s*., together with a fee of 6*d*. for each copy of the summons to be served, and a further fee of 6*d*. for each copy of the certificate to be served, shall be payable under Schedule B, Part I., of the Treasury Order regulating Fees in the County Courts on an application under the Act and these Rules, in lieu of all other fees on such proceeding.

The foregoing fee shall include drawing, sealing, and issuing the certificate and the fee prescribed by paragraph 12 of Part I. of Schedule B of the Fees Order shall not be taken.

(2) On summonses to witnesses, the fees prescribed by Schedule A of the Fees Order shall be taken.

(3) On an appeal against a certificate or order the like fee shall be taken under Schedule B as on an application for a certificate, but the fees for service shall not be taken.

(4) The court may remit or excuse in whole or in part any fee paid or payable under this Rule.

Costs.

Costs.

9.—(1) The costs of any application under the Act and these Rules shall be in the absolute discretion of the court.

(2) The court may either fix the amount of such costs or allow them on the scale applicable to an interlocutory application in an action for the amount of the subject matter of the application: Provided that column B shall apply in all cases above twenty pounds to the exclusion of column C.

(3) Where the amount of the subject matter does not exceed ten pounds, there may be allowed for all work done by a solicitor in relation to the application—

If the amount exceeds £2 but does not exceed £5 6*s*. 8*d*.

If the amount exceeds £5 but does not exceed £10 10*s*.

(4) The court may direct that any costs allowed shall be payable by the opposite party, and any order directing payment of costs shall be included in the certificate and shall be enforceable in the same manner as an order for payment of costs in an action.

Forms.

10.—(1) The forms in the Appendix hereto, with such modifications as may be necessary, shall be used for summonses and certificates under the Act and these Rules. Forms.

(2) The registrar of any court may apply to the Treasury for any of the said forms to be printed and supplied to him, and if the application is granted may obtain such forms and supply the same without charge for the use of parties requiring the same.

The 27th day of July, 1917.

FINLAY, C.

We, the undersigned, two of the Commissioners of His Majesty's Treasury do hereby, with the consent of the Lord Chancellor, order that the several fees specified in Rule 8 of the foregoing Rules shall be taken on the proceedings therein mentioned in lieu of all other fees for the proceedings therein set forth.

J. TOWYN JONES.
JAMES F. HOPE.

I concur in the above order as to fees.

FINLAY, C.

The 31st day of July, 1917.

APPENDIX.

1.

Application for Certificate.

In the County Court of , holden at .
In the Matter of the Billeting of Civilians Act, 1917.
Between
A.B.
(*address and description*)
Applicant,
and
C.D.
(*address and description*)
Respondent.

TAKE NOTICE, that you are hereby summoned to attend at this Court [*or if the application is to be made to the Registrar at his office*, at the office of the Registrar of this Court situate at] on day of at the hour of in the noon, on the hearing of an application on the part of of , on whom you were billeted, for a certificate of the amount which he is entitled to receive as compensation for damage done by you to his premises situate at (*describing them*), and the contents thereof while so billeted ; and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be had and certificate given and order made as the court may think just.

Particulars of the compensation claimed by the applicant are hereunto appended [or annexed].

The name and address of the local committee established for the locality under the Act are as follows :—

Dated this day of

By the Court,

Registrar.

To
(*The respondent, naming him*)

2.

Certificate.

In the County Court of holden at .
In the Matter of the Billeting of Civilians Act, 1917.
Between

A.B.
(*address and description*)

Applicant,

and

C.D.
(*address and description*)

Respondent.

On the application of and upon hearing .

This Court doth pursuant to the above mentioned Act certify that the applicant is entitled to receive from the respondent compensation to the amount of £ for damage done to the premises of the applicant situate at (*describing them*), and the contents thereof by the respondent while billeted on the applicant;

And this Court doth order that the respondents do pay to the applicant the sum of £ for his costs of this application within seven days from the date of this certificate.

[*Or* this Court doth pursuant to the above mentioned Act certify that the applicant is not entitled to receive from the respondent any compensation for damage alleged to have been done to the premises of the applicant situate at (*describing them*) and the contents thereof by the respondent while billeted on the applicant.

And this Court doth order that the applicant do pay to the respondent the sum of £ for his costs of this application within seven days from the date of this certificate.]

[*or as the case may be.*]

Dated this day of .

By the Court,

Registrar.

To
(*The applicant and respondent, naming them, and to the local committee.*)

COMPANIES (PARTICULARS AS TO DIRECTORS) ACT, 1917.

[7 & 8 GEO. 5, c. 28.]

Obligation of companies to disclose particulars respecting directors. 8 Edw. 7, c 69

1. In addition to the particulars with respect to the persons who are the directors, or occupy the position of directors, which by section twenty-six of the Companies (Consolidation) Act, 1908, are required to be included in the annual summary, or, in the case of a company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom, are, by section two hundred and seventy-four of that Act, required to be included amongst the particulars to be filed with the Registrar of Companies, there shall be included such particulars

with respect to those persons as would be required to be furnished with respect to them under the Registration of Business Names Act, 1916, if they were partners in a firm required to be registered under that Act, and the register required to be kept by a company under section seventy-five of the Companies (Consolidation) Act, 1908, shall include such particulars as aforesaid, and the obligation of the company under that section, or in the case of a company incorporated outside the United Kingdom under section two hundred and seventy-four of the said Act, from time to time to notify to the registrar any change among its directors shall include an obligation so to notify any change in any such particulars. 6 & 7 Geo. 5, c. 58.

Additional obligations of companies.

2.—(1) Every company which has been registered between the twenty-second day of November, nineteen hundred and sixteen, and the passing of this Act, and every company incorporated outside the United Kingdom which has before the passing of this Act established a place of business within the United Kingdom, shall, within one month after the passing of this Act, and every company registered after the passing of this Act shall, within one month of the registration of the company, send to the registrar of companies, in such form as may be prescribed by the Board of Trade, such particulars respecting the directors of the company and, except in the case of a company incorporated outside the United Kingdom, respecting the persons who since the registration of the company have been directors of the company, as would be required to be furnished with respect to them under the Registration of Business Names Act, 1916, if they were partners in a firm required to be registered under that Act, and if default is made in compliance with this section, the company shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the default continues, and every director, secretary, and officer of the company who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty.

(2) Sections eighteen and nineteen of the Registration of Business Names Act, 1916, with respect to the publication in trade catalogues, trade circulars, show cards, and business letters of certain particulars, shall after the expiration of three months from the passing of this Act apply to every company which since the said twenty-second day of November, nineteen hundred and sixteen, has been registered or, in the case of a company incorporated outside the United Kingdom which has since the said twenty-second day of November, nineteen hundred and sixteen established a place of business within the United Kingdom, or which may after the passing of this Act be registered or establish

a place of business within the United Kingdom, as if the directors of the company were partners in a firm required to be registered under the first-mentioned Act:

Provided that if special circumstances exist which render it, in the opinion of the Board, expedient that such an exemption should be granted, the Board of Trade may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

Meaning of director.

3. For the purposes of this Act and of sections twenty-six, seventy-five, and two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by this Act, the expression "director" shall include any person who occupies the position of a director and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

Short title and citation.

3 & 4 Geo 5, c. 25.

7 & 8 Geo. 5, c. 18.

4. This Act may be cited as the Companies (Particulars as Directors) Act, 1917; and the Companies Acts, 1908 and 1913, the Companies (Foreign Interests) Act, 1917, and this Act may be cited together as the Companies Acts, 1908 to 1917.

PART II.

COSTS AND COURT FEES.

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CHAPTER I.

SCALES OF COSTS AND ALLOWANCES TO WITNESSES.

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(1.)
LOWER SCALE.

COSTS TO BE PAID TO SOLICITORS IN ACTIONS AND MATTERS, AS WELL BETWEEN PARTY AND PARTY AS BETWEEN SOLICITOR AND CLIENT, WHERE THE AMOUNT RECOVERED EXCEEDS 2*l.*, AND DOES NOT EXCEED 10*l.*

NOTES.—(1) Costs not sanctioned by the scale are not to be allowed, except in cases provided for by the County Court Rules; see Order LIII. Rule 20.

(2) The references in the footnotes to the amending Rules have been retained, as it is sometimes useful to know the date of a recent amendment. The amending Rules have been annulled by the County Court Rules, 1914 (No 3), dated July 30. 1914, and the amendments incorporated in the Scales, Part IV. of the Appendix to these Rules.

1. Where the particulars and copies are signed pursuant to Order VI. Rule 9, and the amount claimed exceeds 2*l.*, and does not exceed 5*l.*, there may be entered upon an ordinary summons, and upon a default summons, **four shillings,** unless the latter is to be served by a solicitor, when **seven shillings** may be entered.

2. Where the particulars and copies are signed by a solicitor, and the amount claimed exceeds 5*l.* and does not exceed 10*l.*, there may be entered upon an ordinary summons, and upon a default summons, **eight shillings,** unless the latter is to be served by a solicitor, when **thirteen shillings** may be entered.

3. Where the amount recovered exceeds 2*l.* and does not exceed 5*l.*, a solicitor for a plaintiff may be allowed for preparing for and attending trial, or upon an application for a new trial, **seven shillings**, and, where the sum recovered exceeds 5*l.* and does not exceed 10*l.*, **ten shillings.**

3a. Where service of an ordinary summons or a successive ordinary summons is to be effected by a solicitor, the costs which may be entered upon a default summons for the like amount to be served by a solicitor may be entered on the summons.

Service of an ordinary summons can only be effected by a solicitor in two cases:

(1) Where the plaintiff cannot give the present place of residence or business of the defendant, Order V., Rule 13 (9), and

(2) In the case of a defendant out of England and Wales, Order VII., Rules 41 to 49.

Any successive summons can, by leave of the Court, be served by a solicitor, Order VII., Rule 29a.

4. Where the action is withdrawn, or the amount claimed is paid into court less than five clear days before the return day, there may, if the judge or registrar so orders, be allowed to the solicitor, upon his application, **five shillings,** or such portion of the fees for preparing for and attending trial as the judge or registrar may under the circumstances direct.

See note to item 76 of the Higher Scale.

5. Where the amount claimed exceeds 2*l.* and does not exceed 10*l.* there may be allowed to a solicitor for entering up judgment

on a default summons, or under sect. 98 of the Act and Order IX. Rule 2, or under Order IX. Rule 5, **three shillings and fourpence** (*a*).

Where the confession or admission is delivered or filed less than five clear days before the return day, the full fee under clause 3 is allowable.

6. Where the amount claimed exceeds 2*l.* and does not exceed 5*l.*, the solicitor may be allowed for instructions, preparing defence, and attending trial, **ten shillings,** and where the sum claimed exceeds 5*l.* and does not exceed 10*l.*, **fifteen shillings,** or upon an application for a new trial, **seven** or **ten shillings,** according to the amount claimed.

*7. Where the action is tried by the judge with or without a jury, the costs of preparing for and attending trial may be increased to a sum not exceeding **one pound,** on a special order of the judge in such action to be entered in the minute book.

*8. The judge may in like actions by special order to be entered in the minute book allow a fee of 1*l.* 3*s.* 6*d.* for the employment of counsel.

*9. Where a trial is adjourned by the court for want of time, one half of the fees mentioned in clauses three and six may be allowed in respect of that day's attendance if the judge or registrar shall so direct.

It is usual to allow this item where a trial has been commenced, but is not concluded on the first day, but not where the hearing is completed and judgment reserved, in which latter case a fee is allowable only for the first day.

10. In the case of a plaintiff where the amount recovered, or in the case of a defendant where the amount claimed, exceeds 2*l.* and does not exceed 5*l.*, the solicitor may be allowed for attending court when the action is referred, **three shillings,** for attending before the arbitrator, **ten shillings,** and for attending court entering judgment upon the award, **three shillings,** and where the amount claimed or recovered exceeds 5*l.* and does not exceed 10*l.*, the sums of **six shillings, fifteen shillings,** and **six shillings** respectively may be allowed.

11. For the purposes of this scale a counterclaim shall be deemed to be a claim, and the defendant and the plaintiff shall in relation thereto be deemed to be plaintiff and defendant respectively: and in an interpleader proceeding the claimant and the execution creditor shall be deemed to be plaintiff and defendant respectively (*b*).

N.B.—No other costs are to be allowed than the above where the amount claimed does not exceed 10*l.*, unless the judge certifies under sect. 119 of the County Courts Act, 1888, or otherwise orders pursuant to Order LIII.

* An order of the judge, or in clause 9 of the registrar, is required for the allowance of these items.

(*a*) Amended by Rule 39 (a) of the County Court Rules, 1912.

(*b*) Added by Rule 39 (b) of the County Court Rules, 1912.

LOWER SCALE.

(ARRANGED IN TABULAR FORM.)

No. of Item.	No. of clause in present Scale.	——	Exceeding £2 and not exceeding £5.	Exceeding £5 and not exceeding £10.
			£ s. d.	£ s. d.
1	1 & 2	Where the particulars and copies are signed pursuant to Order VI. Rule 9, there may be entered upon an ordinary or upon a default summons . . .	0 4 0	0 8 0
2	1 & 2	Or where a default summons is to be served by a solicitor . .	0 7 0	0 13 0
2A	3A	Or where service of an ordinary summons or a successive ordinary summons is to be effected by a solicitor	0 7 0	0 13 0
3	4	Where the action is withdrawn, or the amount claimed is paid into court less than five clear days before the return day, there may, if the judge or registrar so orders, be allowed to the solicitor upon his application . . . or such portion of the fees for preparing for and attending trial as the judge or registrar may under the circumstances direct.	0 5 0	0 5 0
4	5	There may be allowed to a solicitor for entering up judgment on a default summons, or under sect. 98 of the Act and Order IX. Rule 2, or under Order IX. Rule 5 (Admissions) . . .	0 3 4	0 3 4
5	3	Plaintiff's solicitor shall be allowed for preparing for and attending trial	0 7 0	0 10 0
6	6	Defendant's solicitor shall be allowed for instructions, preparing defence, and attending trial	0 10 0	0 15 0
7	9	Where a trial is adjourned by the court for want of time, one half of the fees mentioned in the two preceding clauses may be allowed in respect of that day's attendance, viz.:		
		To plaintiff's solicitor . .	0 3 6	0 5 0
		To defendant's solicitor .	0 5 0	0 7 6

LOWER SCALE IN TABULAR FORM—*continued.*

No. of Item.	No. of clause in present Scale.		Exceeding £2 and not exceeding £5.	Exceeding £5 and not exceeding £10.
			£ s. d.	£ s. d.
8	7	Where the action is tried by the judge with or without a jury, the costs of preparing for and attending trial may be increased to a sum not exceeding . . . on a special order of the judge in such action to be entered in the minute book.	1 0 0	1 0 0
9	8	The judge may in like actions by special order to be entered in the minute book allow a fee of . for the employment of counsel.	1 3 6	1 3 6
10	10	In the case of a plaintiff or defendant the solicitor may be allowed:		
		For attending court when action referred . . .	0 3 0	0 6 0
		For attending before arbitrator	0 10 0	0 15 0
		For attending court entering judgment upon the award.	0 3 0	0 6 0
11	3 & 6	Plaintiff's or defendant's solicitor shall be allowed upon an application for a new trial . . .	0 7 0	0 10 0
12		The judge may allow to the plaintiff's or defendant's solicitor for attending court on hearing of judgment summons, when the party for whom he appears resides out of the district, or the summons is on a judgment or order of a court other than a county court; see Order XXV. Rule 53	0 5 0	0 5 0
		Where a new order is made on a judgment summons issued on a judgment or order of a court other than a county court, and a subsequent judgment summons is issued for default in compliance with such new order, no fee can be allowed to a solicitor for attending at the hearing of such subsequent judgment summons.		

(2.)

HIGHER SCALE.

COSTS TO BE PAID TO SOLICITORS IN ACTIONS AND MATTERS, AS WELL BETWEEN PARTY AND PARTY AS BETWEEN SOLICITOR AND CLIENT, WHERE THE SUBJECT MATTER OR THE SUM RECOVERED EXCEEDS 10*l.*

NOTES.—(1) Costs not sanctioned by the scale are not to be allowed, except in cases provided for by the County Court Rules; see Order LIII. Rule 20.

(2) The references in the footnotes to the amending Rules have been retained, as it is sometimes useful to know the date of a recent amendment. The amending Rules have been annulled by the County Court Rules, 1914 (No. 3), dated July 30, 1914, and the amendments incorporated in the Scales of Costs and Allowances to Witnesses, which constitute Part IV. of the Appendix to these Rules.

(3) By the County Court Rules 1914, dated April 6, 1914, Rule 49 (d), numerous additions were made to items of costs in column A. of the higher scale of costs, it having been represented to the Rules Committee that column A. worked very hardly on solicitors, as no allowance could be made thereunder for a great deal of work which might be, and often was properly done in an action where the subject-matter does not exceed £20. It has not been thought necessary to specifically refer to each item in the footnotes.

	Where the Subject Matter or the Sum recovered exceeds		
	£ 10 and does not exceed 20	£ 20 and does not exceed 50	£ 50 and does not exceed
	A.	B.	C.
Plaint, Particulars, Summonses, and Notices.	£ *s. d.*	£ *s. d.*	£ *s. d.*
1. Preparing particulars of claim, or counterclaim, where the claim is a liquidated demand including necessary copies; provided that such particulars and copies are signed pursuant to Order VI. Rule 9 . . .	0 4 0	0 7 0	0 10 0
2. The like in all other claims, or for preparing statement of claim or defence or preliminary act in Admiralty action .	0 6 0	0 12 0	1 1 0
3. Drawing petition or reply in Admiralty action, per folio .	0 1 0	0 1 0	0 1 0
* Not exceeding, except by order of the judge . .	0 10 0	1 5 0	1 5 0

* A special order of the judge is required for the allowance of this item under Order LIII. Rule 7.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10	s.	d.	£ 20	s.	d.	£ 50	s.	d.
	and does not exceed 20	0	0	50	0	0			
	A.			B.			C.		
Plaint, Particulars, Summonses, and Notices—continued.	£	s.	d.	£	s.	d.	£	s.	d.
4. Preparing further particulars, when same required by defendant under Order VI. Rule 7, or by plaintiff under Order X. Rule 11, including copy to file.	0	2	0	0	3	0	0	5	0
Or, per folio . . .	0	0	8	0	0	8	0	1	0

Copy for Service.]—The copy required to be delivered to the opposite party is not included in this item and may therefore be charged for under item 44.

5. Summons or subpœna to witness, including attending, obtaining leave to serve, or leave to issue in blank and serve, issuing, and sealing . .	0	2	0	0	3	0	0	5	0
Or per folio beyond four .		—			—		0	0	8
6. Summons in chambers, including sealing, copy to file, and one copy for service . . .	0	2	0	0	3	0	0	3	0

The only summons in chambers in the county court is the summons to proceed with accounts and inquiries in an equitable action under Order XXIV. Rule 2. All other interlocutory applications, which are not *ex parte*, are made by notice under Order XII. Rule 11, and are allowable under item 11.

Notices.									
7. Preparing notice to produce or admit, or to admit facts, and one copy	0	3	0	0	4	0	0	5	0
8. If special or necessarily long, such allowance as the registrar shall think proper, not exceeding per folio . . .		—		0	0	8	0	0	8

"Special or Necessarily Long."]—If the notice to produce or admit is not more than five folios in length, or, if over five folios, is not "special or necessarily long," item 7 applies. If the notice is over five folios in length and is "special or necessarily long," item 8 applies.

Copy for Service.]—There is no allowance for a copy for service of notice to produce or admit under item 7, but only under item 8.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ s. d. 10 0 0 and does not exceed 20 0 0 — A.	£ s. d. 20 0 0 and does not exceed 50 0 0 — B.	£ s. d. 50 0 0 — C.
Notices—continued.	£ s. d.	£ s. d.	£ s. d.
9. For preparing notice of motion to the court, including copies to file and serve . . .	0 4 0	0 5 0	0 6 0
10. If necessarily exceeding five folios, at per folio, including copies to file and serve . .	—	0 1 0	0 1 0
11. For preparing notice of any application to judge or registrar when required, not being *ex parte*, including copies to file and serve	0 2 0	0 3 0	0 5 0

Notice of application for directions, discovery, inspection, etc., are chargeable under this item.

12. For preparing any other necessary or proper notice, or demand, not otherwise provided for, including copies to file and serve (*a*) . . .	0 1 6	0 2 0	0 2 6

"Not otherwise provided for."]—Among the notices which are not otherwise provided for and, therefore, come within this item are: notices of filing affidavits; of setting down the action on further consideration; of order made (where necessary); of intention to read evidence; of appointments before judge or registrar in chambers; of settling or passing an order before the registrar; to inspect or to produce for inspection, under Order XVI. Rule 13, documents referred to in particulars, notices, or affidavits; of judgment or order under Order III. Rule 27; and of demand for a jury.

13. Or if special, and necessarily exceeding three folios, there may be allowed in the registrar's discretion for each folio beyond three, including copy to file	0 0 8	0 1 0	0 1 0

Copy for Service.]—No separate fee is allowed for copy to serve unless the notice is special and necessarily exceeds three folios.

(*a*) Amended by Rule 49 (a) of the County Court Rules, 1914, dated April 6, 1914.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds		
	£ 10 and does not exceed 20	£ 20 and does not exceed 50	£ 50
	A.	B.	C.
Service.	£ s. d.	£ s. d.	£ s. d.
NOTE.—One fee only for service may be entered on the summons; but where two or more parties are separately served, the fees for service on each of such parties may be subsequently allowed; but where any two or more summonses, orders, interrogatories, notices or demands to be served on the same party, have been or could have been served together, one fee only for service is to be allowed; and where two or more parties have been or could have been served together, one fee only for service is to be allowed (*a*).			
14. Service of a summons (not being a judgment summons), order, notice, or document required by statute or rule or by order to be served personally, including copy	0 5 0	0 5 0	0 5 0
15. If served at a distance of more than two miles from the nearest place of business of the solicitor serving the same, for each mile beyond such two miles therefrom, but not to exceed ten miles	0 0 6	0 0 6	0 1 0

"Distance."]—In *Lake* v. *Butler*, (1855) 5 E. & B. 92; 24 L. J. Q. B. 273; 103 R. R. 383, it was held that the distance between two dwellings is to be measured in a straight line from one to the other along the horizontal plane. See also Interpretation Act, 1889, s. 34, which provides that distance is to be measured in the same way "for the purposes of any Act passed after the commencement of this Act."

Service effected through Agent.]—Where service is effected through an agent, the distance must be reckoned from the office of the solicitor serving, *i.e.*, the agent, and not from that of the plaintiff's solicitor.

Service on Limited Company.]—Where a solicitor serves a summons on a limited company, under sect. 116 of the Companies (Consolidation) Act, 1908, by posting it to the company at its registered office, it would appear that he is entitled to this fee, where such registered office is more than two miles from his place of business.

(*a*) Amended by Rule 39 (c) of the County Court Rules, 1912.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 s. d. 0 0 and does not exceed 20 0 0 — A.	£ 20 s. d. 0 0 and does not exceed 50 0 0 — B.	£ 50 s. d. 0 0 — C.
Service—continued.	£ s. d.	£ s. d.	£ s. d.
16. Where in consequence of the distance of the party to be served, it is proper to effect service through an agent, for correspondence in addition .	0 4 0	0 7 0	0 7 0

"Correspondence."]—This item covers agency correspondence for both solicitors, that is, 3*s.* 6*d.* for each.

"An Agent" means another solicitor; a process server is merely a person employed by the solicitor.

17. When substituted service ordered, or order made giving liberty to proceed as if personal service had been effected, in addition, to include all costs of attendances, making appointment to serve, drawing, engrossing, and attending to swear and file all affidavits, and to obtain order, and the fees paid for oaths, but not to include the registrar's fee for the order, not exceeding (*a*) .	0 10 0	1 0 0	1 5 0
18. Service of any summons, subpœna, interrogatories, order, notice, or demand not required to be served personally, including copy and mileage, if not authorised to be served by post (*b*)	0 1 6	0 2 6	0 2 6
19. If authorised to be served by post	0 1 0	0 1 6	0 1 6

Service by Post.]—It should be observed that the distinction between this item and item 18 is whether or not the particular document, which must not be required to be served personally, is authorised to be served by post, and not whether in fact it is so served. By Order LIV. Rule 2, any document to be served on any party as to which no mode of service is prescribed by the rules is authorised to be served by post.

The only documents not required to be served personally, as to which special modes of service are provided, appear to be summonses to witnesses to attend court or an examination in chambers, and notice of application for a new trial where the opposite party does not act by a solicitor.

(*a*) Amended by Rule 49 (b) of the County Court Rules, 1914, dated April 6, 1914.

(*b*) Amended by Rule 39 (d) of the County Court Rules, 1912.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 0 0 and does not exceed £ 20 0 0 — A.	£ 20 0 0 and does not exceed £ 50 0 0 — B.	£ 50 0 0 — C.
Service—continued.	£ s. d.	£ s. d.	£ s. d.
19A. For service of a summons or notice of a summons out of England and Wales, under Order VII. Rules 41 to 48, to include all costs of attendances, drawing, engrossing, attending to swear and to file all affidavits, and the fees paid for oaths and obtaining order, such sum as the registrar shall think reasonable in the circumstances of the case.			

Instructions.

Documents and Proceedings for which no Fees for Instructions are Allowed.]—There is no provision in the scale of costs for instructions in respect of the following proceedings or documents: accounts, advertisements, pedigree, certificate of result of sale, particulars of sale, conditions of sale, abstract of title, to initiate or defend any interlocutory proceedings, to counsel to settle documents drawn by the solicitor who is allowed the fee for drawing, brief on further consideration.

Settlement.]—No fee is allowable for instructions to settle, but charges are allowed for the necessary work in and about affecting a settlement, if successful (see note to item 63).

20. To sue or defend, or to prefer or oppose claim in interpleader proceedings, or for a petition, or for a garnishee summons, or for payment into court by garnishee	0 3 4	0 6 8	0 13 4
21. For counterclaim or to oppose counterclaim (*a*) . . .	0 3 4	0 6 8	0 13 4
22. For interrogatories or for statement of claim, defence, reply, or preliminary act in Admiralty action	0 3 4	0 6 8	0 6 8

(*a*) Amended by Rule 39 (e) of the County Court Rules, 1912.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ s. d. 10 0 0 and does not exceed 20 0 0 — A.	Where the Subject Matter or the Sum recovered exceeds £ s. d. 20 0 0 and does not exceed 50 0 0 — B.	Where the Subject Matter or the Sum recovered exceeds £ s. d. 50 0 0 — C.
Instructions—continued.	£ s. d.	£ s. d.	£ s. d.
23. For affidavits in answer to interrogatories or other special affidavits	0 3 4	0 6 8	0 6 8
NOTE.—The charge for special affidavits is not to be allowed, if in the opinion of the registrar the facts upon which the affidavits are founded had already become known to the solicitor or his clerk in course of the business.			

Affidavit sworn by Solicitor or Solicitor's Clerk.]—No fee is allowable for instructions for an affidavit made by the solicitor to the party whose costs are being taxed or by his clerk.

Attendance on Deponent to settle or read over.]—There is no separate allowance for this attendance.

"Special Affidavits."]—An affidavit which consists merely of a printed form with the blanks filled in is not a "special" affidavit, *e.g.*, an affidavit of debt or of service (affidavits for substituted service are allowable under item 17). An affidavit of documents is a special affidavit, and is so treated in the wording of item 37.

24. For confession of debt or claim by defendant, and attesting signature thereto	0 3 4	0 6 8	0 6 8
This item is unique, combining as it does not only the service usually covered by "Instructions," but also the attendance on the client on his executing the document and attesting his signature, which is the outcome of the instructions. It is, of course, one very rarely seen, and by its nature could only occur in a solicitor and client bill.			
25. For application to add parties .	0 2 0	0 3 4	0 6 8
26. For counsel to advise on evidence if given in writing (*a*) .	—	0 3 4	0 6 8
Indorsed Back Sheet.]—The instructions must be in writing. It is submitted that the usual indorsed back sheet would not comply with the requirements of the item. The advice of counsel must also be given in writing; see item 94.			
27. For brief on interlocutory motion or application, where counsel allowed (*b*)	0 3 4	0 6 8	0 6 8 to 0 10 0

(*a*) Amended by Rule 39 (f) of the County Court Rules, 1912.
(*b*) Amended by Rule 49 (a) of the County Court Rules, 1914, dated April 6, 1914.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 s. d. 0 0 and does not exceed 20 0 0 — A.	£ 20 s. d. 0 0 and does not exceed 50 0 0 — B.	£ 50 s. d. 0 0 — C.
Instructions—continued.	£ s. d.	£ s. d.	£ s. d.
28. For brief on trial of action or matter, where counsel employed, such fee as the registrar may think fit, having regard to all the circumstances of the case	0 6 8 to 0 10 0	0 10 6 to 1 11 6	1 1 0 to 3 3 0
NOTE.—Great care must be exercised in assessing this item; see Order LIII. Rule 23.			

Where costs are taxed under column C, item 28 may, in cases of a real contest or the judge certifies under sect. 119 of the Act, be increased at the discretion of the registrar, or by special order of the judge, to £5 5*s.*; see Order LIII., Rule 8 (2), as amended by Rule 50 (b) of the County Court Rules, 1914, dated April 6, 1914.

This item does not appear to necessitate the actual preparation of any brief, if the work prior to the actual drawing of the brief has been done.

Journeys and Payments necessarily taken and made by the solicitor in getting up the case should be set out in the item, showing shortly the nature of the work done and the payments made, so as to justify the allowance of a larger fee than might otherwise be allowed.

Brief not Delivered.]—Where an action is settled before the delivery of the brief, the costs of all work reasonably and properly, and not prematurely done, are allowable, and the registrar, having regard to the circumstances of each case, must decide whether the work was reasonable and proper and the time for doing it had arrived (*Harrison* v. *Leutner*, (1881) 16 Ch. D. 559).

29. Examining and taking minutes of evidence where no counsel employed, for each witness afterwards allowed on taxation or properly examined for preparation of preliminary act .	0 2 0	0 3 4	0 6 8

Allowance for taking Plaintiff's Evidence.]—This item is confined to each witness afterwards allowed on taxation. It is, therefore, chargeable in respect of the plaintiff's evidence only if he is such a witness, *i.e.*, if he can make out a claim, however small, for travelling expenses, or if he is a domestic or menial servant, etc., or if the judge has specially ordered an allowance for his attendance; see Order LIII. Rule 38. The distinction is rather absurd, and many Registrars allow the costs of taking the plaintiff's evidence.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 0 0 and does not exceed 20 0 0 — A.	£ 20 0 0 and does not exceed 50 0 0 — B.	£ 50 0 0 — C.
Instructions—continued.	£ s. d.	£ s. d.	£ s. d.
30. If exceeding six folios, for each additional folio	0 0 6	0 1 0	0 1 0
*31. In the cases mentioned in Order LIII. Rule 8, where no counsel employed, if the judge so orders, in addition to items 29 or 30, for preparation of minutes of fact or argument	0 15 0	1 1 0	2 2 0

This item is allowable by order of the judge in any action or matter; see Order LIII. Rule 8 (1), as amended by Rule 23 of the County Court Rules, April, 1913, and Rule 50 (a) of the County Court Rules, 1914, dated April 6, 1914.

Drawing.			
NOTE.—The matter of all documents should be necessary and relevant, and expressed without prolixity, and the costs of all unnecessary, irrelevant, and prolix matter must be disallowed.			
32. Notice and particulars of special defence or admission of facts, or any application under Order XL. Rules 2, 5, or 7, including necessary copies	0 3 0	0 5 0	0 6 8
Or per folio beyond three	—	0 1 0	0 1 0
33. Draft of order under Order XII. Rule 8, including copy to file	0 2 0	0 3 0	0 5 0
Or per folio	0 0 6	0 0 8	0 0 8

This is the only order prepared by the parties. All others are prepared by the registrar, and in the case of special ones item 53 is applicable.

34. Brief on trial of action or matter where counsel employed, including necessary and proper observations, per folio	0 1 0 not exceeding 0 10 0	0 1 0	0 1 0

Copies of Documents set out in Brief.]—The fee for drawing must not be allowed in respect of documents or extracts from documents, including letters, which are copied from existing documents and set out *verbatim* in brief.

* A special order of the judge is required for the allowance of this item under Order LIII. Rule 7.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 s. d. 0 0 0 and does not exceed 20 0 0 A.	£ 20 s. d. 0 0 0 and does not exceed 50 0 0 B.	£ 50 s. d. 0 0 0 C.
Drawing—continued.	£ s. d.	£ s. d.	£ s. d.
35. Brief on any motion, application, or upon further consideration, when counsel allowed by judge	0 5 0	0 6 8	0 6 8 to 0 13 4
36. Interrogatories or answers thereto, including copy to file	0 2 6	0 5 0	0 6 8
Or per folio	0 0 6	0 1 0	0 1 0

It is usual, though not obligatory, to file at the registrar's office and deliver to the opposite party a copy of the proposed interrogatories, with the notice of application for leave to deliver. The copy proposed interrogatories so delivered can be charged for under item 44, as can also the copy delivered to the opposite party after the order is made. The copy answers delivered to the opposite party under Order XVI. Rule 8, can also be charged under item 44.

37. Affidavit of documents, or any other special affidavit, including engrossing	0 2 6	0 5 0	0 5 0
Or per folio	0 0 6	0 1 0	0 1 0

The copy affidavit delivered to the opposite party under Order XVI. Rule 11, is allowable under item 44.

38. Affidavit of debt under sect. 86 of County Courts Act, 1888, or Order XXVI., including engrossing, attending deponent to be sworn, oath, and filing	0 4 0	0 6 8	0 6 8
39. Affidavit, when required, of personal service of a summons, notice, or document, including engrossing, attending to be sworn, oath, and filing	0 3 4	0 5 0	0 6 8

Affidavit of Service.]—This affidavit is always required in the case of a default or ordinary summons where service has been effected otherwise than by a bailiff. In other cases it is allowed only where the opposite party fails to comply with the requirements of the document served, or where such document forms the basis of proceedings for attachment under Order XXV., Rule 57.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10	s. d. 0 0	£ 20	s. d 0 0	£ 50	s. d. 0 0
	and does not exceed 20	0 0	50	0 0		
	A.		B.		C.	
Drawing—continued.	£	s. d.	£	s. d.	£	s. d
40. Affidavit, when required, of service of summons to witness, subpœna, or of any notice under Order XVIII. Rule 7, or of signature to admission under Order IX. Rule 9, including engrossing, attending to be sworn, oath, and filing . .	0	2 0	0	2 0	0	3 4
41. Accounts, statements, and other documents for use in chambers when required, or in court when required by judge, including fair copy to leave, per folio .	0	0 8	0	0 8	0	0 8

"**Accounts.**"]—Receiver's and executors' accounts, if for use in chambers, are allowable under this item.

42. Bill of costs for taxation, including copy for registrar, per folio	0	0 4	0	0 8	0	0 8

Where a copy of the bill is delivered to the opposite party, it is usual to allow for it under item 44, even although the registrar has not directed it to be delivered under Order LIII. Rule 2.

Copies.

NOTE.—No copies are to be allowed for unless the registrar is satisfied that they were necessary, and that copies previously prepared were not available.

Where a solicitor undertakes the service of any process, he shall make the necessary copies of each process, and the registrar shall seal the same and return them to the solicitor for service; see Order LIV. Rule 5.

43. Of necessary documents to accompany brief, or for the use of judge or arbitrator, or on an inquiry or Admiralty reference before the registrar, per folio	0	0 2	0	0 4	0	0 4

"**Copies for use of the Judge.**"]—In every case which turns on the construction of documents, the costs of copies supplied for the use of the judge

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds		
	£ 10 0 0 and does not exceed £ 20 0 0	£ 20 0 0 and does not exceed £ 50 0 0	£ 50 0 0
	A.	B.	C.
Copies—continued.	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*
ought to be allowed (*Re Houstoun's Settlement, Sparkes* v. *Hutchell*, (1903) 89 L. T. 469).			
Typewritten Copies.]—Copies of documents which have been made simultaneously by means of a carbon typewriter ought not to be charged for, and will not be allowed at the rate of 4*d.* per folio for each copy (*In re Morse, Ex parte Latimer, Clark & Co.*, (1891) 7 T. L. R. 591). The present practice is to allow 4*d.* per folio for the first copy, and 2*d.* per folio for carbon copies, if legible.			
Affidavit of Documents.]—Copies for counsel are not usually allowed, except where the notices to admit and produce refer to the affidavit without setting out the documents.			
44. Where no provision is made herein that the fee for preparing, drawing, or serving any document is to include copies thereof, for each copy the registrar may consider necessary, per folio	0 0 2	0 0 4	0 0 4

Under this item copies of the following documents delivered to the opposite party may be charged :—

Draft interrogatories on application for leave to deliver.
Interrogatories with order.
Answers to interrogatories.
Affidavit of documents.
Bill of costs of action, but not of interlocutory proceedings.

The cases where the fee includes the copies are as follows :—

Items 1 and 2 . Particulars of claim and counterclaim.
„ 6 . . Summonses in chambers.
„ 7 . . Notice to produce and admit.
„ 9 . . Notice of motion.
„ 11 . . Notice of application to judge or registrar.
„ 12 and 13 . Any other notice or document.
„ 14 . . Summonses or documents required to be served personally.
„ 18 and 19 . Documents not so required.
„ 32 . . Special defence or admission of facts.
„ 41 . . Accounts, etc.
„ 84 . . Taxation of costs of interlocutory proceedings.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ s. d. £ 10 0 0 and does not exceed 20 0 0	A.	£ 20 0 0 and does not exceed 50 0 0	B.	£ 50 0 0	C.
Perusals.	£ s. d.		£ s. d.		£ s. d.	
NOTE.—Charges for perusals are not to be allowed, except under item 53, where the same solicitor is acting for both parties, or where the solicitor has been previously allowed for such perusal.						
45. Of particulars of claim or counterclaim, further particulars delivered under Order VI. Rule 7, or special defence, by the solicitor of the party to whom the same are delivered.	0 2 0		0 3 4		0 6 8	
Or per folio	0 0 2		0 0 4		0 0 4	
46. Of any petition	0 2 0		0 3 4		0 6 8	
Or per folio	0 0 2		0 0 4		0 0 4	
47. Of interrogatories, by the solicitor of the party by whom the same are to be answered	0 4 0		0 6 8		0 6 8	
Or per folio	—		—		0 0 4	
48. Of notice to produce or admit or to admit facts, by the solicitor of the party served	0 2 0		0 5 0		0 6 8	
The terms of the item allow notices to produce or admit on interlocutory proceedings. In the High Court the corresponding fee, No. 134, includes notices to admit on interlocutory proceedings, but not notices to produce; also, in the High Court, perusal of notice to admit or produce is only allowed by the masters on trial or hearing of a witness action, but there seems to be no reason why the item should be so limited in the county court.						
49. Of notice of defendant's claim against any person not a party to the action, under Order XI.	0 2 0		0 3 4		0 6 8	
50. Of any claim, defence or counterclaim, when served on a person not originally a party to the action, by the solicitor of the party served therewith	0 2 0		0 3 4		0 6 8	
Or per folio	0 0 2		0 0 4		0 0 4	
51. Of affidavit in answer to interrogatories by the solicitor of the party interrogating, or of statement of claim, defence, reply, or preliminary act in Admiralty action, by the solicitor to the adverse party, per folio	0 0 4		0 0 4		0 0 4	

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £10 0 0 and does not exceed £20 0 0 — A.	Where the Subject Matter or the Sum recovered exceeds £20 0 0 and does not exceed £50 0 0 — B.	Where the Subject Matter or the Sum recovered exceeds £50 0 0 — C.
Perusals—continued.	£ s. d.	£ s. d.	£ s. d.
52. Of other special affidavits, by the solicitor of the party against whom the same can be read, per folio . . .	0 0 4	0 0 4	0 0 4

Affidavit of Documents.]—Under this item perusal of an affidavit of documents can be allowed, as it is clear from item 37 that it comes within the class of special affidavits, and it can be read against the party requiring same.

53. Draft of special order or judgment, when prepared by registrar	0 2 0	0 3 4	0 6 8
Or per folio	0 0 2	0 0 4	0 0 4
Attendances.			
NOTE.—More than one attendance at the office of the registrar in an action or matter shall not be allowed, unless the registrar on taxation is satisfied that each separate attendance was necessary.			
54. To enter plaint, or file petition, including filling up præcipe, obtaining any necessary leave from the registrar, or giving any proper undertaking prior to such entry or filing . .	0 3 4	0 6 8	0 6 8

This item covers the leave required under sect. 74 and sect. 86 and the undertaking for costs under Order V. Rule 10, where the plaintiff is not ordinarily resident in England or Wales.

55. To deliver or file any counterclaim, special defence, further particulars, answers to interrogatories, admission of facts, affidavit of documents, or particulars of claim in interpleader proceedings, or statement of claim, defence, or reply in Admiralty action, or to file or inspect preliminary act . .	0 2 0	0 3 4	0 3 4

To file Affidavits.]—It should be observed that the only affidavits for the filing of which an attendance fee is allowable under this item are the

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds		
	£ 10	£ 20	£ 50
	and does not exceed		
	20	50	
	A.	B.	C.
Attendances—continued.	£ s. d.	£ s. d.	£ s. d.
affidavit of documents and answers to interrogatories. Where separate attendances are necessary to file any other affidavits they are allowable under item 83.			
56. To lodge order, etc., when action or matter remitted or transferred to county court, including preparing all necessary documents	—	0 13 4	0 13 4
57. To inspect, or produce for inspection, documents pursuant to a notice to admit, or pursuant to any order or a notice under any rule . . .	0 3 4	0 6 8	0 6 8
Or per hour	—	0 6 8	0 6 8
NOTE.—This item is not to be allowed, unless it is shown to the satisfaction of the registrar that there were good and sufficient reasons for giving the notice and making the inspection.			
Inspection under Bankers' Books Evidence Act.]—By sect. 8 of the Bankers' Books Evidence Act, 1879, these costs are in the discretion of the court.			
58. Where solicitor inspecting does not reside or carry on business within two miles of place of inspection, in addition sum paid for locomotion not exceeding	0 10 0	1 0 0	1 0 0
59. To obtain or give any necessary or proper consent or admission	0 2 0	0 3 4	0 6 8
Trustee's consent to Act. Solicitor's Certificate.]—This item covers both the attendance of the solicitor obtaining the trustee's consent, and the solicitor's certificate attesting the signature of the trustee under Order XIX. Rule 13. Only one fee of 3*s.* 4*d.* or 6*s.* 8*d.*, as the case may be, is allowable for one attendance and certificate.			
59a. Attending witness, arranging attendance without subpœna (*a*)	0 2 6	0 3 4	0 5 0

(*a*) Added by Rule 49 (c) of the County Court Rules, 1914, dated April 6, 1914.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 0 0 and does not exceed 20 0 0 — A.	£ 20 0 0 and does not exceed 50 0 0 — B.	£ 50 0 0 — C.
Attendances—continued.	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*
60. On examination of witnesses under Order XVI. Rule 9, Order XVIII. Rules 18 and 20, or Order XXV. Rule 71, per hour	0 3 4	0 6 8	0 10 0

This item is allowable where any responsible representative of the solicitor sent from his office attends, the practice being to allow him to be heard, following the analogy of proceedings before a High Court judge in chambers (*Vimbos, Ltd.* v. *Meadowcroft*, (1901) 46 Sol. Jo. 2).

61. On deponents being sworn, or by a solicitor or his clerk to be sworn to an affidavit in answer to interrogatories or other special affidavit . . .	0 2 0	0 3 4	0 6 8

Where more than one deponent to the same affidavit is sworn at the same time, only one fee of 3*s.* 4*d.* or 6*s.* 8*d.*, as the case may be, is allowable.

62. To enter up judgment by default or under sect. 98 of the Act and Order IX. Rule 2, or under Order IX. Rule 5, or to pay money into court on behalf of garnishee (*a*). . . .	0 3 4	0 6 8	0 10 0

Where a defendant signs a confession or admission which is filed with the registrar five clear days before the return day, the plaintiff will be entitled to tax his costs for work done before the service of the notice of such admission; with reference to costs incurred after the service of such notice the plaintiff will not be allowed any costs unless the judge otherwise orders. Order IX., Rule 5.

63. Where in consequence of anything done by the opposite party during the progress of an action or matter, it becomes necessary to advise or receive instructions from a client, for each attendance the registrar may deem absolutely necessary	0 3 4	0 6 8	0 6 8

Settlement.]—Under this item attendances on a client in consequence of an offer of settlement, and, under item 83, the necessary consequent attendances on the other side, may be allowed. It is usual, however, to

(*a*) Amended by Rule 39 (g) of the County Court Rules, 1912.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ s. d. 10 0 0 and does not exceed 20 0 0 — A.	£ s. d. 20 0 0 and does not exceed 50 0 0 — B.	£ s. d. 50 0 0 — C.
Attendances—continued.	£ s. d.	£ s. d.	£ s. d.
follow the High Court practice, and allow no charges in connection with an attempt at settlement which proves abortive.			
64. To make or oppose any interlocutory application or motion before the judge in court, or in chambers, without counsel .	0 5 0 to 0 10 0	0 6 8 to 0 13 4	0 10 0 to 1 1 0
The attendance on an application for a new trial is allowable under this item.			
65. The like with counsel . .	0 3 4	0 6 8	0 6 8 to 0 10 0
66. On any interlocutory application to the registrar . .	0 2 0	0 3 4	0 6 8
67. On counsel with brief . .	0 3 4	0 3 4	0 6 8
No fee is allowable for attendance on counsel with papers to settle the various matters mentioned in item 93.			
68. To appoint conference and attending thereon . . .	—	0 6 8	0 13 4
This item is only allowable if the fee was marked on the brief when delivered, and in the opinion of the registrar was necessary (see item 87).			
69. At court, conducting cause without counsel	0 15 0	1 1 0	1 1 0 to 2 2 0
NOTE.—The minimum must not be exceeded if the action is undefended or there is no real contest.			
*70. Or, in the cases mentioned in Order LIII. Rule 8, by order of the judge, there may be allowed instead of last item . .	1 1 0	2 2 0	3 3 0

This item is allowable by order of the judge in any action or matter; see Order LIII. Rule 8 (1), as amended by Rule 23 of the County Court Rules, April, 1913, and Rule 50 (a) of the County Court Rules, 1914, dated April 6, 1914.

Where costs are taxed under column C, items 70 to 73 may, in cases of a real contest, or the judge certifies under sect. 119 of the Act, be increased at the discretion of the registrar, or by special order of the judge, as follows: item 70 to 5*l.* 5*s.*, items 71 to 73 to 3*l.* 3*s.*; see Order LIII. Rule 8 (2), as amended by Rule 50 (b) of the County Court Rules, 1914, dated April 6, 1914.

The registrar can only "increase" this fee. Its "allowance" by the judge is a condition precedent to the exercise of this power.

* A special order of the judge is required for the allowance of this item under Order LIII. Rule 7.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 0 0 and does not exceed 20 0 0 — A.	Where the Subject Matter or the Sum recovered exceeds £ 20 0 0 and does not exceed 50 0 0 — B.	Where the Subject Matter or the Sum recovered exceeds £ 50 0 0 — C.
Attendances—continued.	£ s. d.	£ s. d.	£ s. d.
71. At court on trial with counsel . NOTE.—The minimum must not be exceeded if the case is undefended, or there is no real contest, nor if the solicitor does not attend in person.	0 10 0	0 15 0 to 1 1 0	1 1 0 to 2 2 0
See note to item 70.			
72. Where trial is commenced but not concluded on the day on which it is first heard, for each day or part of a day on which it is afterwards heard, with or without counsel, unless otherwise ordered by the judge .	0 10 0	0 15 0 to 1 1 0	1 1 0 to 2 2 0
See note to item 70.			

Further Consideration.]—This item appears to be applicable to the solicitor's attendance on the further consideration of an equitable matter, inasmuch as such further consideration is the subsequent hearing of a cause, the trial of which has not been concluded on the day on which it is first heard.

73. Where the trial is adjourned for want of time, or upon payment of the costs of the day, in lieu of items 69 and 71 there may be allowed with or without counsel, unless otherwise ordered by the judge . . . NOTE.—The minimum must not be exceeded, under items 72 and 73, if the solicitor does not attend in person.	0 10 0	0 15 0 to 1 1 0	1 1 0 to 2 2 0
See note to item 70.			

This item is allowable, it is submitted, to the solicitor attending at court, with or without counsel, for each day, in the case of successive adjournments, on which he attends, and the case is not reached but adjourned for want of time.

74. When solicitor does not reside or carry on business within two miles of the town in which the trial takes place, in addition the sum paid for locomotion to attend the trial, not exceeding, unless otherwise ordered by the judge	0 10 6	1 1 0	1 1 0

No costs for locomotion or maintenance of the solicitor shall be allowed unless the court (presumably the taxing officer) is satisfied that there was reasonable cause for employing such solicitor; see Order LIII. Rule 22.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 s. d. 0 0 and does not exceed 20 0 0 — A.	Where the Subject Matter or the Sum recovered exceeds £ 20 s. d. 0 0 and does not exceed 50 0 0 — B.	Where the Subject Matter or the Sum recovered exceeds £ 50 s. d. 0 0 — C.
Attendances—continued.	£ s. d.	£ s. d.	£ s. d.
75. When, in the opinion of the registrar, the solicitor cannot travel to and from the court the same day, in addition . . [Items 73, 74, and 75 are not to be allowed in full if the solicitor is engaged in any other case or cases on the same day, but such portion only as the registrar shall think just and reasonable, having regard to all the circumstances.]	0 10 6	1 1 0	1 1 0

Solicitor's Clerk.]—Items 74 and 75 are allowable, it is submitted, not only in the case of the advocate who conducts the case, but also in that of the solicitor's managing clerk who instructs counsel.

76. At court where the amount claimed is paid into court or the action is withdrawn or discontinued less than five clear days before return-day . .	0 5 0	0 10 0	0 10 0

This item is intended to cover two different services: (a) that of preparing for trial when the amount is paid into court less than five clear days before the return day, and (b) that of attending the court to obtain the necessary order.

It is, therefore, allowable in the following cases:—

1. When payment into court has been made less than five clear days before the return day.

2. When the debt has been paid five clear days before the return day, but the costs have not been paid, or not been paid in full (*e.g.*, omitting a fee for substituted service).

In the first of such cases it is necessary to prepare for trial; in the second, though no such preparation is required, it is necessary to make the application to obtain the costs, or so much of them as have not been paid.

When, however, the debt is paid into court more than five clear days before the return day, and the costs have been paid in full less than five clear days, no order for extra costs can be made under this item, as there is no necessity either to prepare for trial or to attend to obtain an order.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 0 0 and does not exceed 20 0 0 — A.	£ 20 0 0 and does not exceed 50 0 0 — B.	£ 50 0 0 — C.
Attendances—continued.	£ s. d.	£ s. d.	£ s. d.
77. Where in ordinary course of post or delivery, notice of payment, withdrawal, or discontinuance does not reach the opposite party or his solicitor in time to prevent attendance of the latter at court, such sum as the registrar shall think reasonable, not exceeding the minimum fee in items 69 or 71, as the case may be.			
78. To hear a deferred judgment (*a*)	0 5 0	0 6 8	0 6 8 to 0 10 0
78a. Attending court when the action is referred (*b*)	0 10 0	0 15 0	1 1 0
78b. The like with counsel (*b*)	0 6 8	0 10 0 to 0 15 0	0 15 0 to 1 1 0
79. Before an arbitrator, or on an inquiry or Admiralty reference before the registrar, for each sitting	0 15 0	1 1 0	1 1 0 to 2 2 0
80. The like with counsel if judge certifies for counsel	0 10 0	0 15 0	1 1 0
81. Where sitting exceeds three hours, for every additional hour	0 5 0	0 6 8	0 10 0
81a. See Order LIII. Rule 10.			
This rule in effect provides that where under item 92 the judge certifies for counsel, items 27, 35, 43, 65 and 67 may be allowed to the solicitor in addition to items 80 and 81.			
81b. Attending court to enter judgment on the award (*b*)	0 10 0	0 15 0	1 1 0
81c. The like with counsel (*b*)	0 6 8	0 10 0 to 0 15 0	0 15 0 to 1 1 0
82. On taxation of the costs of the action or matter (*c*)	0 3 4	0 6 8	0 6 8 to 0 13 4

Where judgment is given for the defendant on the claim and the plaintiff in the action on the counterclaim, the plaintiff, on the taxation of the costs of the counterclaim, would be entitled to the ordinary costs of taxation and not be limited to item 84, as the claim and counterclaim must be treated as separate actions.

(*a*) Amended by Rule 49 (a) of the County Court Rules, 1914, dated April 6, 914.

(*b*) Added by Rule 39 (h) of the County Court Rules, 1912.

(*c*)) Amended by Rule 39 (i) of the County Court Rules, 1912.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 s. d. 0 0 0 and does not exceed 20 0 0 — A.	£ 20 s. d. 0 0 0 and does not exceed 50 0 0 — B.	£ 50 s. d. 0 0 — C.
Attendances—continued.	£ s. d.	£ s. d.	£ s. d.
83. Any other attendance upon the judge or registrar, or at the registrar's office, or upon the opposite party, or upon the high bailiff in interpleader proceedings not otherwise provided for, which the registrar may think to have been absolutely necessary, and not for a purpose which could have been effected at any previous or subsequent attendance allowed .	0 2 0	0 3 4 to 0 6 8	0 6 8

Attendance prior to Service.]—Inasmuch as there is no provision for the inclusion of this item in those allowed on judgment being entered on a default summons, no allowances can be made under it in respect of attendances on the registrar under Order VII. Rules 30, 30A, 33. It follows by analogy that similar attendances in respect of ordinary summonses under Order VII. Rules 5A, 6, 7, cannot be allowed. In practice no attendances prior to service are allowed under this item ; see also note to item 63.

84. On taxation of any costs other than the general costs of the action or matter allowed by order of judge, where such taxation necessarily takes place at some time other than at the time the order giving the costs sought to be taxed was made, to include drawing bill, copies, notice, and service (*a*) . .	0 2 0	0 4 0	0 6 0

This item is applicable (inter alia) to the taxation of costs under an order awarding to an unsuccessful party the costs of a separate issue, and under an order for further costs under Order IX., Rule 13 (3).

Fees to Counsel.

NOTE.—Fees to counsel are not to be allowed unless the payment of them is vouched by the signature of counsel.

85. With brief, sum paid, not to exceed	2 4 6	3 5 6	5 10 0

(*a*) Amended by Rule 39 (k) of the County Court Rules, 1912.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 0 0 and does not exceed £ 20 0 0 — A.	Where the Subject Matter or the Sum recovered exceeds £ 20 0 0 and does not exceed £ 50 0 0 — B.	Where the Subject Matter or the Sum recovered exceeds £ 50 0 0 — C.
Fees to Counsel—continued.	£ s. d.	£ s. d.	£ s. d.
NOTE.—The maximum is not to be allowed as of course, but in assessing the fee to be allowed, the length of the brief, the documents (if any) to be perused and considered, the number of the witnesses and the difficulties of fact or law involved must be considered.			

Where costs are taxed under column C, in cases of a real contest, or the judge certifies under sect. 119 of the Act, reasonable fees may be allowed to counsel in excess of those mentioned in items 85 to 94 in respect of the matters referred to in such items, or where the judge certifies for the allowance of fees to more counsel than one reasonable fees may be allowed to such additional counsel at the discretion of the registrar, or by special order of the judge; see Order LIII. Rule 8 (3) (a) and (b), as amended by Rule 23 of the County Court Rules, April, 1913.

In the case of items 86, 91, 92, 93, 94 and 95, their original allowance by the judge is a condition precedent to the exercise by the registrar of this power, as an allowance in excess of the scale can only be made in a case where the scale fee has already become properly chargeable.

Where a claim is paid into court within five clear days of the return day, and the only order asked for on the hearing is an order for costs, the registrar has power to allow counsel's brief fee, if he considers the costs of instructing counsel were reasonably incurred before the date of payment into court, notwithstanding that counsel does not attend to make the application for costs.

*86. In the cases mentioned in Order LIII. Rule 8, where there is no local bar in the court town or within twenty miles thereof, a further fee may be allowed, once only, by order of the judge, if in his opinion the maximum fee allowable on the brief is insufficient, not exceeding	1 3 6	2 4 6	2 4 6
NOTE.—This item is not to be allowed in any court within twenty-five miles of Charing Cross.			

See note to item 85.

This item is allowable by order of the judge in any action or matter; see Order LIII. Rule 8 (1), as amended by Rule 23 of the County Court Rules, April, 1913, and Rule 50 (a) of the County Court Rules, 1914, dated April 6, 1914.

* A special order of the judge is required for the allowance of this item under Order LIII. Rule 7.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 s. d. 0 0 and does not exceed 20 0 0 — A.	£ 20 s. d. 0 0 and does not exceed 50 0 0 — B.	£ 50 s. d. 0 0 — C.
Fees to Counsel—continued.	£ s. d.	£ s. d.	£ s. d.
87. On conference, if the fee was marked on the brief when delivered, and in the opinion of the registrar was necessary.	—	1 6 0	1 6 0
See note to item 85.			
88. Where the trial is commenced but not concluded on the day on which it is first heard, or is adjourned for want of time, for each day or part of a day on which it is afterwards heard, a refresher may be allowed, unless the judge otherwise orders (*a*)	1 3 6	1 3 6 to 2 4 6	2 4 6 to 3 5 6
See note to item 85.			
89. Where the trial is adjourned upon payment of the costs of the day, there may be allowed as part of such costs	1 3 6	1 3 6 to 2 4 6	2 4 6 to 3 5 6
See note to item 85.			
90. With brief on further consideration or argument, or to enter up judgment on an award, or to hear a deferred judgment (*b*).	1 3 6	1 3 6 to 2 4 6	2 4 6 to 3 5 6
See note to item 85.			
*91. With brief on any interlocutory motion or application if the judge certifies for counsel	1 3 6	1 3 6	2 4 6
See note to item 85.			

* A special order of the judge is required for the allowance of this item under Order LIII. Rule 7.

(*a*) The fee may be allowed where the judge has a list, and the action reappears from day to day until it is reached (*Heap* v. *Peart*, (1891) 1 Q. B. 110; 39 W. R. 95).

(*b*) Amended by Rule 39 (l) of the County Court Rules, 1912.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds £ 10 s. d. 0 0 and does not exceed 20 0 0 — A.	£ 20 s. d. 0 0 and does not exceed 50 0 0 — B.	£ 50 s. d. 0 0 — C.
Fees to Counsel—continued.	£ s. d.	£ s. d.	£ s. d.
*92. With brief before an arbitrator, or on an inquiry or Admiralty reference before the registrar, or on an examination of witnesses under Order XVI. Rule 9, Order XVIII. Rules 18 and 20, or Order XXV. Rule 71, if the judge certifies for counsel, not exceeding (*a*) . . .	1 3 6	2 4 6	3 5 6
NOTE.—This fee is not to be allowed if the reference or inquiry was directed at the trial, and counsel was then instructed. A refresher may be allowed instead, pursuant to item 88.			
See note to item 85.			
*93. In the cases mentioned in Order LIII. Rule 8, for settling petition, particulars, statement of claim, defence or reply, interrogatories, preliminary act, or other matters required in the course of the action or matter, if allowed by order of the judge.	—	1 3 6	1 3 6 to 2 4 6
See notes to items 85 and 86.			
*94. Advising on evidence, if advice given in writing and allowed by order of the judge (*b*) . .	—	1 3 6	1 3 6 to 2 4 6
See note to item 85.			

* A special order of the judge is required for the allowance of this item under Order LIII. Rule 7.

(*a*) See Order LIII. Rule 10, and item 81A and note thereto, as to costs allowed solicitors when judge so certifies.

(*b*) Amended by Rule 39 (m) of the County Court Rules, 1912.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds		
	£ s. d.	£ s. d.	£ s. d.
	10 0 0	20 0 0	50 0 0
	and does not exceed		
	20 0 0	50 0 0	
	A.	B.	C.
Plans, Models, etc.	£ s. d.	£ s. d.	£ s. d.
*95. Plans, charts, or models for use of the judge at the trial, if allowed by order of the judge, not exceeding in the whole .	1 1 0	2 2 0	3 3 0

Where costs are taxed under column C, in cases of a real contest, or the judge certifies under sect. 119 of the Act, reasonable fees may also be allowed for plans, charts, or models, in excess of those mentioned in this item by special order of the judge, or at the discretion of the registrar subject to review by the judge ; see Order LIII. Rule 8 (3) (c) of the County Court Rules, 1914 (No. 3) dated July 30, 1914.

See note to item 85.

Letters, etc.			
96. Letter before action . . .	0 3 6	0 3 6	0 3 6
97. Letters in lieu of attendances which could be properly allowed under item 63 or item 83 .	0 2 0	0 3 6	0 3 6
98. Circular letters . . .	—	0 1 0	0 1 0
99. Costs for searches for certificates of births, marriages, and deaths, and payments therefor, and other disbursements in relation to procuring office copies or other documentary evidence, not otherwise provided for, which the registrar may upon taxation think necessary and proper, such sum as the registrar shall think reasonable.			
100. Oaths, sums paid, unless otherwise provided for.			

"Otherwise provided for."]—The cases where oaths are otherwise provided for are :—

Item 17 . . Affidavit for substituted service.
„ 38 . . Affidavit of debt.
„ 39 and 40 . Affidavit of service.

All other oaths are chargeable.

The commissioner's charge for marking the exhibit can be allowed under this item, unless the oath is otherwise provided for.

101. In addition to the above, an allowance may be made for the necessary expenses of postages, carriage and transmission of documents not exceeding . .	0 2 6	0 5 0	0 10 0

* A special order of the judge is required for the allowance of this item under Order LIII. Rule 7.

(3.)

SCALES OF ALLOWANCES TO WITNESSES.

Ordinary Witnesses.

	£ s. d.	£ s. d.
Gentlemen, merchants, bankers and professional men, *per diem* . .	from 0 15 0	to 1 1 0
Tradesmen, auctioneers, accountants, clerks and yeomen, *per diem* .	from 0 7 6	to 0 15 0
Artisans and journeymen, *per diem* .	from 0 4 0	to 0 7 6
Labourers and the like, *per diem* .	from 0 3 0	to 0 4 0
Females according to station in life .	from 0 2 6	to 0 10 6

By Order 53, rule 37 (a), allowances may be made to accountants being members of any recognised society of accountants on the scale applicable to merchants and professional men, instead of on that applicable to tradesmen (*a*).

Expert and Scientific Witnesses.

	If Costs taxed on Column B of Scale.	If Costs taxed on Column C of Scale.
	£ s. d.	£ s. d.
For qualifying to give evidence . .	1 1 0 to 3 3 0	1 1 0 to 5 5 0
Attending court on trial, *per diem* .	1 1 0 to 2 2 0	1 1 0 to 3 3 0

Where costs are taxed under column C in cases of a real contest, or the judge certifies under sect. 119 of the Act, reasonable additional allowances may be made at the discretion of the registrar, subject to review by the judge, or by special order of the judge for qualifying to give evidence and attending the court on the trial (Order LIII. r. 8 (3) (c) of the County Court Rules, 1914 (No. 3), dated July 30, 1914).

Where costs are taxed under column A, the registrar may on taxation, subject to review by the judge, allow for attendance in court and the judge may by special order made in accordance with Rule 7 of Order LIII. allow for qualifying to give evidence, the whole or part of such sums as may be allowed for attendance in court and qualifying to give evidence respectively under Order LIII. r. 43 (1) where costs are taxed under column B (Order LIII. r. 43 (2)).

Scale of Allowances for Travelling Expenses.]—See Order LIII. Rule 39, which provides that there may be also allowed to all witnesses, and to plaintiffs and defendants, if personally attending the court, for travelling expenses, the sum actually and reasonably paid by them.

(*a*) Added by Rule 20 of the County Court Rules, 1917

(4.)

TOTAL OF ITEMS OF COSTS TO BE ENTERED ON SUMMONSES FOR AMOUNTS EXCEEDING 10*l.*, WHERE THE PARTICULARS AND COPIES ARE SIGNED BY THE SOLICITOR.

The total amount to be entered on an ORDINARY SUMMONS shall be the following and no more, viz. :—

		s.	*d.*	Totals £	*s.*	*d.*
Where the amount sought to be recovered exceeds 10*l.* and does not exceed 20*l.*, and the claim is a debt or liquidated demand	Item 1 ..	4	0			
	,, 20 ..	3	4	0	14	2
	,, 54 ..	3	4			
	,, 96 ..	3	6			
In other claims	Item 2 ..	6	0			
	,, 20 ..	3	4	0	16	2
	,, 54 ..	3	4			
	,, 96 ..	3	6			
Where the amount sought to be recovered exceeds 20*l.* and does not exceed 50*l.*, and the claim is a debt or liquidated demand	Item 1 ..	7	0			
	,, 20 ..	6	8			
	,, 54 ..	6	8	1	3	10
	,, 96 ..	3	6			
In other claims	Item 2 ..	12	0			
	,, 20 ..	6	8	1	8	10
	,, 54 ..	6	8			
	,, 96 ..	3	6			
Where the amount sought to be recovered exceeds 50*l.*, and the claim is a debt or liquidated demand	Item 1 ..	10	0			
	,, 20 ..	13	4	1	13	6
	,, 54 ..	6	8			
	,, 96 ..	3	6			
In other claims	Item 2 ..	21	0			
	,, 20 ..	13	4	2	4	6
	,, 54 ..	6	8			
	,, 96 ..	3	6			

Where service of an ordinary summons or a successive ordinary summons is to be effected by a solicitor, items 14 and 39 may be entered on the summons in addition to the items mentioned above ; and items 15 and 17 may be added where the services for which those items are given are performed.

The total amount to be entered on a DEFAULT SUMMONS shall be the following and no more, viz. :—

		s.	*d.*	Totals £	*s.*	*d.*
Where the amount sought to be recovered exceeds 10*l.* and does not exceed 20*l.* and service is to be made by a bailiff	Item 1 ..	4	0			
	,, 20 ..	3	4			
	,, 38 ..	4	0	0	18	2
	,, 54 ..	3	4			
	,, 96 ..	3	6			
Where service is to be made by a solicitor	Item 1 ..	4	0			
	,, 14 ..	5	0			
	,, 20 ..	3	4			
	,, 38 ..	4	0	1	6	6
	,, 39 ..	3	4			
	,, 54 ..	3	4			
	,, 96 ..	3	6			

Default Summons—continued.			s.	d.	Totals. £	s.	d.
Where the amount sought to be recovered exceeds 20*l.* and does not exceed 50*l.* and service is to be made by a bailiff	Item	1 ..	7	0			
	,,	20 ..	6	8			
	,,	38 ..	6	8	1	10	6
	,,	54 ..	6	8			
	,,	96 ..	3	6			
Where service is to be made by a solicitor	Item	1 ..	7	0			
	,,	14 ..	5	0			
	,,	20 ..	6	8			
	,,	38 ..	6	8	2	0	6
	,,	39 ..	5	0			
	,,	54 ..	6	8			
	,,	96 ..	3	6			
Where the amount sought to be recovered exceeds 50*l.* and service is to be made by a bailiff .	Item	1 ..	10	0			
	,,	20 ..	13	4			
	,,	38 ..	6	8	2	0	2
	,,	54 ..	6	8			
	,,	96 ..	3	6			
Where service is to be effected by a solicitor	Item	1 ..	10	0			
	,,	14 ..	5	0			
	,,	20 ..	13	4			
	,,	38 ..	6	8	2	11	10
	,,	39 ..	6	8			
	,,	54 ..	6	8			
	,,	96 ..	3	6			

And items 15 and 17 may be allowed where the services for which those items are given are performed.

NOTE.—Upon judgment being entered without trial upon a default summons for a sum exceeding 10*l.*, only item 62 is to be allowed in addition to the above.

The above note only applies to cases where no notice of intention to defend has been given. Where notice of intention to defend has been given, but defendant does not appear on the day of hearing, the amounts usually allowed to the plaintiff's solicitor for his attendance in Court are as follows:

Where claim paid prior to the return day but within five clear days:—Item 76.

Where formal confession filed five clear days at least before the return day:—Item 62.

In all other cases:—Item 69.

Where a default summons has been exchanged for an ordinary summons under Order VII., Rule 38, the amounts for costs and fees entered on the exchanged summons will be those applicable to an ordinary summons

Where a bailiff experiences difficulty in effecting service of default summons and plaintiff's solicitor afterwards obtains leave to serve, the practice which prevails in many Courts of adding the solicitor's fee for service in addition to the bailiff's which has been already charged, is not, it is submitted, correct. The fee which should be added is the difference between the amount of the appropriate solicitor's fee and the 1*s.* already charged for service by the bailiff, otherwise the defendant would be asked to pay more than the maximum that could have been originally entered on the summons.

CHAPTER II.

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COSTS GENERALLY.—Costs abide the Event.]—In default of any special direction, costs abide the event of the action or matter (sect. 113 of the Act).

Generally speaking, when judgment is given for plaintiff or defendant with costs, the ascertaining of the amounts and items to be allowed falls within the province of the registrar. His duty is to tax them according to the scales of costs (Order LIII. rr. 1, 20).

Costs of Parties in Person.]—No person, other than a solicitor, is entitled to recover any fee for acting on behalf of any party in any proceeding (sect. 72 of the Act). Consequently, when parties appear in person, or by agent (other than a solicitor or barrister), if allowed to appear for them, the costs recoverable by the successful party include only court fees, and costs of witnesses and their travelling expenses. The plaintiff is not entitled to any allowance for himself in addition to his travelling expenses unless he is a domestic servant, or a labourer, etc., or a person engaged in manual labour, or unless the judge in any particular case otherwise orders (Order LIII., r. 38).

Solicitor's Costs.]—The scales of costs allowable to solicitors are framed under the County Courts Act, 1888, sect. 164. They comprise Part IV. of the Appendix of the County Court Rules, 1914 (No. 3), and consist of a lower scale where the amount recovered exceeds 2*l.*, and does not exceed 10*l.*, and a higher scale, which is sub-divided into three columns according to the value of the subject-matter or the sum recovered:—Column A where this sum exceeds 10*l.*, but does not exceed 20*l.*, column B where it exceeds 20*l.*, but does not exceed 50*l.*, and column C when it exceeds 50*l.* It will have been seen that the lower scale of costs contains no provision for any allowance to solicitor in cases where the amount recovered does not exceed 2*l.*; and except in the special cases to which sect. 119 of the Act and Order LIII. r. 17 apply, no such allowance can be made in such actions.

Where costs are awarded to municipal bodies, railway companies and insurance and other companies, who employ permanent salaried solicitors to do their legal work, and any costs recovered would have to be paid over to the client, there is no reason why the costs should not be taxed and recoverable in the ordinary way, and no objection can be taken to their allowance. Further, it makes no difference that the solicitor in question is only a part-time officer.

Comparison of sect. 113 of the Act with Rules of the Supreme Court.]—Sect. 113 of the Act provides that all the costs of any action or matter in the court, not therein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the court shall think just, and in default of any special direction shall abide the event of the action or matter. This section may be compared with Order LXV. r. 1 of the Rules of the Supreme Court, which provides that, subject to the provisions of the Acts and Rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court or judge. Provided that, where any action, cause, matter or issue is tried with a jury, the costs shall follow the event, unless the judge by whom such action, cause, matter or issue is tried, or the court, shall, for good cause, otherwise order.

Judicial Discretion.]—Although the wording of sect. 113 would appear to confer on the court absolute power over the costs of any action or matter, this power is no wider than the power given to judges of the High Court by the Judicature Acts and Rules (*Andrew* v. *Grove*, (1902) 1 K. B. 625; 71 L. J. K. B. 439). There is no substantial difference between the words in the High Court Rules and sect. 113 of the Act (*Elms* v. *Hedges*, (1906) 95 L. T. R. 145). This power or discretion, as it is called, is a judicial discretion, and must be exercised judicially in accordance with legal principles and on sufficient grounds. The rule laid down by the Court of Appeal that a judge's discretion can be interfered with if he has exercised it in a fashion not in accordance with settled principle, is one of practice only and not of principle restricting legal power, and has no application to the exercise of discretion by an arbitrator, to whom the Act of Parliament (The Agricultural Holdings Act, 1908) has given full discretion as to costs (*Gray* v. *Lord Ashburton*, (1917) A. C. 26).

Limitation to which Discretion Subject.]—In the exercise of this discretion, certain general limitations have been laid down by the courts, to which it will be useful to call attention.

(1) Where a plaintiff comes to enforce a legal right, and there has been no misconduct on his part—no omission or neglect which would induce the court to deprive him of his costs—the court has no discretion and cannot take away the plaintiff's right to costs (*Cooper* v. *Whittingham*, (1880) 15 Ch. D. 501; 49 L. J. Ch. 752). But neither this case nor *Foster* v. *Great Western Railway Co.*, (1882) 8 Q. B. D. 515, is an authority for the proposition that a plaintiff though successful in a part of his claim may not be made to pay the costs of the defendant (*Gray* v. *Lord Ashburton*, (1917) A. C. at pp. 33, 35).

(2) In the absence of misconduct directly connected with the subject matter of the action, a successful plaintiff will not be deprived of even a part of his costs because some of his witnesses have been guilty of exaggeration in their evidence (*Lipman* v. *George Pulman & Sons, Ltd.*, (1904) 91 L. T. R. 132), even if the witness is the managing director of the plaintiff company (*Hudsons, Ltd.* v. *De Halpert*, (1913) 108 L. T. R. 416.

(3) The fact that the plaintiff brought his action without a previous application or notice to the defendant does not prevent the plaintiff from getting his costs if he succeeds (*Goodhart* v. *Hyett*, (1883) 25 Ch. D. 182; *Wittman* v. *Oppenheim*, (1884) 27 Ch. D. 260; 54 L. J. Ch. 56; and *Ruskin* v. *Robinson*, (1885) 2 T. L. R. 18).

(4) Where a defendant successfully resists a suit he is *primâ facie* entitled as his right to the costs of the litigation (*Civil Service Co-operative Society* v.

General Steam Navigation Co. (C. A.), (1903) 2 K. B. 756; 72 L. J. K. B. 933).

(5) A successful defendant cannot be deprived of costs merely on the ground that he has succeeded on the defence of the Statute of Limitations (*Elms* v. *Hedges, supra*), or on the defence of the Gaming Acts (*Granville & Co.* v. *Firth* (C. A.), (1903) 72 L. J. K. B. 152).

(6) The court has no power to order a successful defendant to pay the costs of the plaintiff (*Andrew* v. *Grove*, (1902) 1 K. B. 625; 71 L. J. K. B. 439); this is an entirely different thing from ordering a plaintiff though successful in a small degree to pay the costs of the defendant, because if the defendant be successful he succeeds along the whole line (*Gray* v. *Lord Ashburton*, (1917) A. C. at p. 35), and, similarly, where a county court judge has made an award under the Workmen's Compensation Act, 1906, in favour of a workman's claim, he cannot order the workman to pay the employer's costs (*Evans* v. *Gwauncaegurwen Colliery Co., Ltd.* (C. A.), (1912) 106 L. T. R. 613). So where under an application for arbitration under the Workmen's Compensation Act, 1906, alleging incapacity which was denied, an award was made by the County Court judge merely for a declaration of liability, but the employers were ordered to pay the costs, it was held that, as the employers had been successful throughout, there were no materials on which the judge could exercise his discretion in making such an order, and the order was discharged (*Higgins* v. *L. Higgins & Co.*, (1916) 1 K. B. 640). But a judge has power to order a plaintiff who recovers a nominal sum to pay the defendant's costs, even when the action is tried before a jury (*Harris* v. *Petherick* (C. A.), (1879) 4 Q. B. D. 611; 48 L. J. Q. B. 521).

(7) If the wrong party has been sued, it is apparently not a ground for depriving the successful defendant of his costs that, having the necessary information to enable the plaintiff to ascertain who was the proper party to be sued, he neglected to give it to the plaintiff (*Westgate* v. *Crowe*, (1908) 1 K. B. 24; 77 L. J. K. B. 10).

(8) When an action has been brought against two defendants, and has failed against one and succeeded against the other, the judge has power to allow the plaintiff to include in his costs against the unsuccessful defendant any sum he has had to pay to the successful defendant for his costs. In *Sanderson* v. *Blyth Theatre Co.*, (1903) 2 K. B. 533; 72 L. J. K. B. 761, the Court of Appeal held that this power existed where two defendants, principal and agent, were sued in the alternative in an action on contract. And this has since been followed in an action of tort in *Bullock* v. *London General Omnibus Co.*, (1907) 1 K. B. 264; 76 L. J. K. B. 127, where plaintiff was injured by a collision between two vehicles. In the latter case, the exercise of the judge's discretion was upheld on the ground that there was evidence that the attitude taken up by the unsuccessful defendant made it reasonable for the plaintiff to join the successful one. In the case of *Mulhern* v. *The National Motor Cab Co., Ltd.*, (1913) 29 T. L. R. 677, where negligent driving was alleged against two vehicles, Mr. Justice Bankes held that a defendant, to escape the obligation to pay the plaintiff's costs against a co-defendant, must do something more than merely deny negligence on his own part, he must go so far as to say that he does not intend to throw any responsibility on the other defendant. But in the recent case of *Besterman* v. *British Motor Cab Co., Ltd.* (C. A.), (1914) 3 K. B. 181; 83 L. J. K. B. 1014, it was held by the Court of Appeal that even this will not avail, the question in all cases is whether the Court considers it was a reasonable and proper course for the plaintiff to join both the defendants in the action. This practice is followed

in Admiralty cases where a claim is brought against the owners of the different ships (*The "Esrom" and the Hopper "Wills No. 66,"* (1914) W. N. 81).

Should, however, the verdict go against both defendants and one appeal successfully, the other who did not join in the appeal cannot be ordered to indemnify the plaintiff against the costs of the appeal (*Riches* v. *L. G. O. Co. and Others*, (1916) 140 L. T. J. 372; 60 Sol. Jo. 337).

When, however, a plaintiff joins a second defendant from uncertainty as to, or misapprehension of his legal rights and not as to the facts, there is no ground for ordering the unsuccessful defendant to relieve the plaintiff of his liability for costs to a successful one (*Poulton* v. *Moore*, (1914) 83 L. J. K. B. at p. 880, and (1913) W. N. 349.

(9) A judge ought not to delegate his decision on the question of costs to the master (*Lambton & Co.* v. *Parkinson*, (1887) 35 W. R. 545). It is not a delegation to give defendant such costs as in the opinion of the master were occasioned by unnecessary proceedings taken by the plaintiff (*Musman* v. *Boret*, (1892) 40 W. R. 352).

(10) Although sect. 113 of the Act provides that the costs of any action shall be apportioned between the parties as the court shall think just, the court has no power to award a party a fixed sum for costs which have not been taxed under sect. 118 of the Act (*Golding* v. *Smith*, (1910) 1 K. B. 462; 79 L. J. K. B. 375). Darling, J. expressed the opinion in that case that an order that, if the plaintiff's costs when taxed amounted to more than 10*l.*, the defendant should pay to the plaintiff only 10*l.*, would have been perfectly right. Further, under sub-clause 7 of Schedule II. of the Workmen's Compensation Act, 1906, a county court judge is not entitled to award a lump sum for costs before taxation (*Beadle* v. *S. Nicholas*, (1909) W. N. 227).

(11) An appeal lies from an order awarding costs on a wrong principle, but no appeal lies from the erroneous exercise of his discretion on materials before him, so long as the judge has not proceeded on any wrong principle. The Court of Appeal will assume that the judge exercised his discretion, unless satisfied that he did not do so, but has applied some rule which in fact excluded his discretion (*Bew* v. *Bew* (C. A.), (1899) 2 Ch. 467; 68 L. J. Ch. 657, and *Rotch* v. *Crosbie*, (1909) 54 Sol. Jo. 30). If it appears that a judge has not exercised his discretion or has decided upon grounds which were not open to him (*e.g.*, because the litigant was a whig or a tory) the Court of Appeal can deal with his decision (*Civil Service Co-operative Society* v. *General Steam Navigation Co.* (C. A.), (1903) 2 K. B. 756; 72 L. J. K. B. 933, and *Westgate* v. *Crowe*, (1907) 24 T. L. R. 14. Where a judge has exercised his discretion upon certain materials which are before him, it is not within the power of the Court of Appeal to overrule that exercise of discretion, but where there are no materials upon which the judge could exercise a discretion at all, the Court of Appeal has power to entertain the appeal, and to reverse the decision of the judge (*Civil Service Co-operative Society* v. *General Steam Navigation Co.*, *supra*, at p. 765).

(12) Where a defendant succeeds upon one particular defence, the judge has a discretion to decline to allow him any costs of additional defences raised, but not tried (*Browne and Whitehead* v. *Lewis*, (1916) 115 L. T. R. 911).

The burden is on the appellant to show that there had been no real exercise of judicial discretion, and that either there were no materials on which the learned judge could come to his conclusion, or that some materials had been introduced which were so irrelevant and extraneous that the

order was not really made in the exercise of a judicial discretion (*Société des Hôtels Réunis* (*Société Anonyme*) v. *Hawker*, (1914) 58 Sol. Jo. 515).

Proceedings by Poor Persons.]—There are no rules in the county court dealing with this matter, but apparently sect. 164 of the County Courts Act, 1888, adopting and applying the general principles of practice in the High Court to cases not expressly provided for, is applicable. In fact, under the corresponding section of the older Act, sect. 78 of the County Courts Act, 1846, it was held in *Chinn* v. *Bullen*, (1849) 8 C. B. R. 447; 19 L. J. C. P. 42; 79 R. R. 566, that a county court judge had discretion to allow parties to sue before him *in formâ pauperis*. The point was incidentally considered in *Perry* v. *London General Omnibus Co.*, (1916) 2 K. B. 335, which decided that an action could be remitted to the county court under sect. 66 where the plaintiff was suing as a poor person, but the order could not make it a condition that the plaintiff was to be at liberty to sue as a "poor person" in the county court. Phillimore, L.J., at p. 346, said: "This argument loses nearly all its force if the plaintiff be admitted to sue as a poor person in the county court as she may be," and Bankes, L.J., at p. 348, said: "A county court judge may have an inherent jurisdiction to permit a person to sue in his court *in formâ pauperis*." The High Court practice in such cases is now regulated by the Rules of the Supreme Court (Poor Persons), 1914, but these provide the necessary machinery only where the action contemplated is in the High Court or the Court of Appeal. The position, therefore, seems to be that, so far as the county court is concerned, each judge is at liberty to settle his own method of procedure so long as he conforms to the principles of the High Court practice, *i.e.*, obtains a report from some independent legal practitioner that there is a reasonable cause of action, and satisfies himself that the pecuniary position of the applicant justifies an order. The High Court standard that the applicant is not worth 50*l.* (excluding his wearing apparel, tools of trade, and the subject matter of the proceedings) is not applicable, and no standard of poverty is laid down in respect of an application in the county court. Such applications are very few in number, and as a rule are discouraged by the county court judges. Where such leave is given, and a poor person acting by solicitor obtains a verdict, there seems no reason why the judge should not direct that the poor person's solicitor be entitled to recover from the other party to the action out-of-pocket expenses on the amount recovered, in which case, following the analogy of the practice now adopted in the High Court under similar circumstances, the plaintiff would be entitled as such out-of-pocket expenses not only to his necessary disbursements, but also to three-eighths of the profit costs on the scale applicable to the proceedings.

SECURITY FOR COSTS.—General Principle.]—The general principle of English law is that no person should be precluded from commencing an action on the ground of poverty, and therefore there is no possibility of checking speculative actions by people who are destitute of means, and even by undischarged bankrupts (where the cause of action has not vested in the trustee) through the medium of an application for security for costs.

Exception.]—The sole exception to this rule is sect. 66 of the Act, which enables a defendant against whom an action of tort has been commenced in the High Court by a plaintiff, who has no visible means of paying the defendant's costs should a verdict be not found for the plaintiff, to require such plaintiff to give security for costs if he desires to prosecute the action in the High Court, or, in the alternative, to have it remitted to the county court.

Cases in which Security can be Obtained.]—The cases which usually occur in practice in which security for costs can be obtained are as follows:—

(1) Where a plaintiff does not ordinarily reside in England or Wales though he may be temporarily resident there (Order V. r. 11), security is required automatically on the entry of the plaint, and is given either by a deposit of an amount fixed by the registrar, according to the nature of the action and the amount involved, or by an undertaking on the part of the plaintiff's solicitor to be personally responsible for any costs his client may ultimately be ordered to pay to the defendant (Order V. rr. 10, 11). Where an action is commenced by an attorney resident in England for a plaintiff resident abroad, security or an undertaking should be required.

By Rule 13 of the Consolidated Workmen's Compensation Rules, July, 1913, Order V. rr. 10, 11, and Order XII. r. 9, as to security for costs, shall not apply to proceedings under the Workmen's Compensation Act and Rules.

An arbitrator has no power to order the parties to give security for costs unless there is an agreement in the submission to arbitration to that effect, as it is not given him by the Arbitration Act, 1889, sec. 2, First Schedule, from which he derives all the powers he possesses (*Lanza* v. *Wiener* (1917) 61 Sol. Jo. 526).

(2) A defendant who resides or carries on business more than twenty miles distant from the court in which the plaint is entered, can also obtain security from a plaintiff, for the additional expense to which he will be put in attending the trial, by deposit of such a sum as the registrar may direct, on filing an affidavit, disclosing a good defence upon the merits, not later than seven clear days at least before the return day (Order XII. r. 9). This is a very useful provision to a defendant who is sued for a small sum, and who does not desire to waste a day at a distant county court, and in many cases the result of filing such an affidavit is that no deposit is made, and the action is thus automatically brought to an end. Some registrars keep a printed form of affidavit which on application they send to a defendant, who is thus able to avail himself of the advantages of this rule, without the necessity of instructing a solicitor to prepare the affidavit. As there is no official form, the following form may be found useful:—

AFFIDAVIT IN SUPPORT OF DEFENDANT'S APPLICATION FOR DEPOSIT BY PLAINTIFF.

No. of Plaint, .

Order XII. Rule 9.

NOTE.—*This affidavit to be forwarded to the registrar by registered post not later than seven clear days before the return day of the summons.*

In the County Court of , holden at .

Between

plaintiff,

and

defendant.

I, of in the county of the above-named defendant (or clerk to the above-named defendant) make oath and say as follows:—

(1) The return day of the summons issued against me/the defendant in this action is the day of 191 .

(2) My / The defendant's residence or place of business is situated at in the county of more than twenty miles distant from this court.

(3) I have / The said defendant has a good defence to this action upon the merits, and the facts I rely / the said defendant relies upon as disclosing such defence are: [*State shortly the facts and grounds of defence.*]

(4) In order to prove the said facts it will be necessary for me / the said defendant and witnesses to attend the court on the hearing of this action (and to travel overnight so as to reach the court by twelve o'clock on the day of hearing). [*Strike out words in brackets if not the fact.*]

(5) The third-class return railway fare from to is £ : s. d.

(6) I am a person in the employ of the said defendant. The facts herein deposed to are within my own knowledge, and I am duly authorised by the said defendant to make this affidavit. [*To be added when the defendant does not make the affidavit.*]

Sworn at in the county of this day of 191 .
Before me,
A Commissioner for Oaths:
or Clerk to the registrar of the county court, duly nominated.

This affidavit is filed on behalf of the defendant.

(3) Where a limited company is plaintiff, a judge may require security for costs to be given if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful (Companies (Consolidation) Act, 1908, sect. 278).

(4) Where the plaintiff becomes bankrupt, his trustee can only continue the action for the benefit of his estate on the terms of giving security for costs (County Courts Act, 1888, sect. 94).

(5) Where a party applies for discovery by interrogatories or otherwise, he may be ordered to make a deposit as security for the costs of the party making such discovery (Order XVI. r. 23).

(6) In Admiralty cases where a party applies for an order of transfer of proceedings for sale of a vessel which has been arrested to the High Court he must give security to the amount of 10*l.* (Order XXXIX. r. 71).

(7) Where a defendant in an action of contract, where a sum exceeding 20*l.* is claimed, or in an action of tort, where a sum exceeding 10*l.* is claimed, desires to have the action tried in the High Court, he is required to give security for the amount claimed, and costs of trial in the High Court, not exceeding 150*l.*, before applying for the judge's certificate, which is a condition of its removal (County Courts Act, 1888, sect. 62, and Order X. r. 6).

(8) The Bills of Exchange Act, 1855, sect. 4, contains a provision enabling a judge to order the document on which the action is brought to be deposited with an officer of the court, and to stay proceedings until the plaintiff has given security for costs. This is apparently intended to put a stop to actions brought by speculators, without means, on documents which are forgeries, without putting defendant to the expense of a trial. There are, of course, very few cases at the present time in which advantage is taken of this provision.

(9) On appeal from a county court judgment, the High Court has power to order security for costs (R. S. C., Order LIX. r. 17, and *Swain* v. *Follows*, (1887) 18 Q. B. D. 585). As to the circumstances under which an order will be made, see notes to the above rule in the Annual Practice. If the

county court has not granted a stay of execution, the only way in which a defendant can obtain one is to deposit or give security to the satisfaction of the county court for "the amount affected by the judgment" (R. S. C., Order LIX. r. 14), which includes the costs in addition to the amount for which judgment has been given (*Grimshaw, Baxter and Elliott, Ltd.* v. *Parker*, (1910) 2 K. B. 161; 79 L. J. K. B. 780).

Where security for the costs of an appeal has been ordered, it ceases to operate if within the time limited for giving security the appellant obtains leave as a poor person (*Wille* v. *St. John*, (1910) 1 Ch. 701; 79 L. J. Ch. 409).

Form of Security and Practice as to giving same.]—As to the form of security, see sect. 108 of the Act, and as to the practice to be followed in giving security, see Order XXIX. rr. 1 to 6.

Security for Costs of Appeal.]—Security will be ordered in the case of an appeal by an individual litigant or next friend to the Divisional Court (*Wilcox* v. *Wallis Crown Cork and Syphon Co., Ltd.*, (1914) W. N. 107), following the analogy of *Hall* v. *Snowdon, Hubbard & Co.* (C. A.), (1899) 1 Q. B. 593; 68 L. J. Q. B. 363, where security was required for an appeal by a litigant under similar circumstances to the Court of Appeal under the Workmen's Compensation Act, 1906.

SPECIAL ORDERS AS TO COSTS.—Effect of General Order.]—The judge's general order for costs, although enough to entitle a party to the allowance by the registrar of most of the items in the scales applicable to the particular case, is insufficient for all.

Particular Items.]—There are many items in the scales, as well as allowances governed by rules, which cannot be allowed or given by the registrar without the special order of the judge. After judgment has been given in an action, the solicitor, if he is conducting the case without counsel, or counsel, if briefed, often overlook the necessity of applying to the judge for a special order for the allowance of these items in the scales of costs, for which an order of the judge is required before they can be allowed. In the scales of costs, footnotes have been added, showing which these items are, but it will be convenient to set them out specifically.

When Application should be Made.]—This application must be made at, or immediately after, the trial or hearing, and if not so made, Order LIII. r. 7 provides it shall not afterwards be entertained, unless the judge for good cause otherwise orders, or unless the judge is satisfied that the omission to make the application in due time was due to mistake or inadvertence. Judges frequently decline to grant applications not made at the time, although the failure to make the application may be due to mistake or inadvertence, on the ground that they have forgotten all about the action, and it is therefore of the utmost importance that the application to the judge for a special order for the allowance of costs should be made at or immediately after the trial or hearing.

Items for which Special Order required.—Lower Scale.]—Items for the allowance of which a special order of the judge is required:—

Clause 7.—Where the action is tried by the judge with or without a jury, the costs of preparing for and attending trial may be increased to a sum not exceeding 1*l.*

Clause 8.—In like actions, the judge may allow a fee of 1*l.* 3*s.* 6*d.* for the employment of counsel.

Clause 9.—Where the trial is adjourned by the court for want of time, one half of the fees mentioned in clauses 3 and 6 may be allowed in respect of that day's attendance, if the judge or registrar shall so direct.

Higher Scale.]—The items in the higher scale for the allowance of which a special order of the judge is required by Order LIII. rr. 7, 8, of the County Court Rules, 1914 (No. 3), dated July 30, 1914, are :—

Item 3.—Drawing petition or reply in Admiralty action per folio, 1*s.*, where the fee at that rate would exceed under column A, 10*s.*, or under columns B or C, 1*l.* 5*s.*

Item 31.—In any action or matter where no counsel employed, in addition to items 29 or 30 (examining and taking minutes of evidence), for preparation of minutes of fact or argument—under column A, 15*s.*, under column B, 1*l.* 1*s.*, and under column C, 2*l.* 2*s.*

Item 70.—In any action or matter, instead of item 69 (attendance at court conducting cause without counsel)—under column A, 1*l.* 1*s.*, under column B, 2*l.* 2*s.*, and under column C, 3*l.* 3*s.*

Item 86.—In any action or matter where there is no local bar in the court town, or within twenty miles thereof, a further brief fee may be allowed, once only, if, in the opinion of the judge, the maximum fee allowable on the brief is not sufficient—not exceeding under column A, 1*l.* 3*s.* 6*d.*, and under columns B or C, 2*l.* 4*s.* 6*d.* This item is not to be allowed in any court within twenty-five miles of Charing Cross.

Item 91.—Fee to counsel with brief on any interlocutory motion or application—under column A, or column B, 1*l.* 3*s.* 6*d.*, and under column C, 2*l.* 4*s.* 6*d.*

Item 92.—Fee to counsel with brief before an arbitrator, or on an inquiry or Admiralty reference before the registrar, or on an examination of witnesses under Order XVI. r. 9 (further answers to interrogatories by *viva voce* examinations), under Order XVIII. rr. 18 and 20 (examination of witnesses before trial), under Order XXV. r. 71 (examination of debtor as to means when judgment is for recovery or payment of money)—under column A, 1*l.* 3*s.* 6*d.*, under column B, 2*l.* 4*s.* 6*d.*, and under column C, 3*l.* 5*s.* 6*d.* This fee is not to be allowed if the reference or inquiry was directed at the trial, and counsel was then instructed. A refresher may be allowed instead pursuant to item 88.

Item 93.—In any action or matter for settling petition, particulars, statement of claim, defence, or reply, interrogatories, preliminary act, or other matters required in the course of the action or matter—under column B, 1*l.* 3*s.* 6*d.*, and under column C, 1*l.* 3*s.* 6*d.* to 2*l.* 4*s.* 6*d.*

Item 94.—Advising on evidence, if advice given in writing—under column A, no fee, under column B, 1*l.* 3*s.* 6*d.*, and under column C, 1*l.* 3*s.* 6*d.* to 2*l.* 4*s.* 6*d.* is allowable.

Item 95.—Plans, charts or models for use of the judge at the trial, the sum reasonably paid for the preparation of the same not exceeding—under column A, 1*l.* 1*s.*, under column B, 2*l.* 2*s.*, and under column C, 3*l.* 3*s.* (Order LIII. r. 44). Where costs are taxed under column C, in cases of a real contest or the judge certifies under sect. 119 of the Act, reasonable fees in excess of those mentioned in item 95 may also be allowed by special order of the judge, or at the discretion of the registrar, subject to review by the judge (Order LIII. r. 8 (3) (c) of the County Court Rules, 1914 (No. 3), dated July 30, 1914). An order of the judge is also necessary for the allowance of the attendance of the persons who are called at the trial to prove the correctness of the plans and drawings and models, though they are not to be allowed as expert or scientific witnesses, but upon the scale applicable to ordinary witnesses (Order LIII. rr. 43, 44).

Costs of Discovery.]—This is not very clearly expressed in the rules, but the position appears to be as follows :—

(*a*) Where claim exceeds 10*l.* The party giving discovery, if successful,

s entitled to the costs of such discovery without an order. The party seeking discovery, if successful, is only so entitled where such discovery appears to the judge at the trial, or, if there is no trial, to the registrar on taxation, to have been reasonably asked for (Order XVI., r. 22).

(*b*) Where claim does not exceed 10*l.* (and there are, therefore, no items in the scale of costs applicable).

The party giving discovery, if successful, is entitled to have the whole or part of the deposit paid into court by the opposite party allowed in respect of this work only if the court (presumably the judge at the trial, or, if there is no trial, the registrar on taxation) so directs ; or, if he considers the case of sufficient importance, he can apply to the judge to certify under sect. 119 of the Act, or for a special order for the costs of discovery to be allowed on one or other of the higher scales of costs. The party seeking discovery, if successful, is only so entitled if he obtains such a certificate or an order as last mentioned. Order XVI., r. 24a. The party against whom discovery is applied for in the case of a claim not exceeding 10*l.* should, therefore, not assent to an order dispensing with the usual deposit of 1*l.*, as in that case it will be impossible for the judge to order the application of such a deposit towards his costs, and it may be difficult to induce the judge to certify under sect. 119 of the Act, or to make a special order for such costs on a higher scale.

Interlocutory Applications.]—The allowance of the costs of and incident to interlocutory applications shall be in the discretion of the judge or registrar, according as the application is expressly or by reasonable intendment directed to be made to the judge or registrar, and no such costs shall be allowed on taxation without special order (Order XII. r. 11 (4)).

Appointment of Receiver by way of Equitable Execution.]—Where a receiver is appointed by way of equitable execution, costs may be allowed as on an interlocutory application in an equitable action or matter (Order XIII. r. 14). And a special order is necessary before any costs can be allowed on taxation (Order XII. r. 11 (4)).

Expert or Scientific Witnesses.]—By Order LIII. r. 43 of the County Court Rules, 1914 (No. 3), dated July 30, 1914, in any action or matter in which the costs are taxable as of right, or by order of the judge, under columns B or C the registrar may on taxation, subject to review by the judge, allow for the attendance in court of any expert or scientific witnesses or any member of the medical profession, and the judge may order that such witnesses may be allowed, for qualifying to give evidence, such sums as the registrar on taxation may think fit, not exceeding :—

	£	*s.*	*d.*		£	*s.*	*d.*
For qualifying to give evidence under column B .	1	1	0	to	3	3	0
,, ,, ,, ,, C .	1	1	0	,,	5	5	0
For attending court on trial, *per diem*, under column B	1	1	0	,,	2	2	0
For attending court on trial, *per diem*, under column C	1	1	0	,,	3	3	0

Where costs are taxed under column C, in cases of a real contest or the judge certifies under sect. 119 of the Act, reasonable additional allowances may be made at the discretion of the registrar, subject to review by the judge, or by special order of the judge to expert and scientific witnesses for qualifying to give evidence and attending the court on the trial (Order LIII. r. 8 (3) (c) of the County Court Rules, 1914 (No. 3), dated July 30, 1914).

Where costs are taxed under column A, the registrar may on taxation,

subject to review by the judge, allow for attendance in court, and the judge may by special order made in accordance with Rule 7 of Order LIII., allow for qualifying to give evidence the whole or part of such sums as may be allowed for attendance in court and qualifying to give evidence respectively under Order LIII. r. 43 (1), where costs are taxed under column B, (Order LIII. r. 43 (2), of the County Court Rules, 1914 (No. 3), dated July 30, 1914).

Proceedings for which no Provision made.—Costs taxed under Columns B or C.]—In any action or matter in which costs are taxed under column B or column C, where proceedings are taken for which no provision is made by the rules or scales of costs, reasonable costs may be allowed in respect of such proceedings by the registrar, subject to review by the judge, or by special order of the judge, not exceeding those which may under the scales or the rules be allowed in respect of proceedings of a like nature (Order LIII. r. 8 (4) of the County Court Rules, 1914 (No. 3), dated July 30, 1914).

Increased Allowances in certain Cases.]—In any action or matter in which costs are taxed under column C, in cases in which there is a real contest or the judge certifies under sect. 119 of the Act, fees allowable under the following items may be increased by the registrar, but the registrar has no power to increase a fee for the allowance of which an order of the judge is necessary, that is, items 70, 86, 91, 92, 93 and 94, unless such order has been obtained.

(*a*) The fees allowable under the following items 28 and 70 to 73 may be increased at the discretion of the registrar, subject to review by the judge, or by special order of the judge, as follows :—

Item 28.—For brief on trial of action or matter, where counsel employed from 3*l.* 3*s.* to 5*l.* 5*s.*

Item 70.—At court, conducting cause without counsel, from 3*l.* 3*s.* to 5*l.* 5*s.*

Item 71.—At court on trial with counsel, from 2*l.* 2*s.* to 3*l.* 3*s.*

Item 72.—When trial is commenced, but not concluded on the day on which it is first heard, for each day or part of a day on which it is afterwards heard, with or without counsel, from 2*l.* 2*s.* to 3*l.* 3*s.*

Item 73.—Where the trial is adjourned for want of time, or upon payment of the costs of the day, in lieu of item 69 (attendance at court, conducting cause without counsel), and item 71 (attendance at court on trial with counsel), with or without counsel, from 2*l.* 2*s.* to 3*l.* 3*s.* (Order LIII. r. 8 (2) of the County Court Rules, 1914 (No. 3), dated July 30, 1914).

(*b*) Reasonable fees may be allowed to counsel in excess of those mentioned in the following items 85 to 94, in respect of the matters referred to in such items, at the discretion of the registrar subject to review by the judge, or by special order of the judge (Order LIII. r. 8 (3) (a) of the County Court Rules, 1914 (No. 3), dated July 30, 1914).

	Column C. £	*s.*	*d.*
Item 85.—With brief.	5	10	0
Item 86.—Where there is no local bar in the court town, or within twenty miles thereof, a further brief fee may be allowed, once only, by order of the judge, if, in his opinion, the maximum fee allowable on the brief is insufficient. This item is not to be allowed in any court within twenty-five miles of Charing Cross	2	4	6
Item 87.—On conference, if the fee was marked on the brief when delivered, and in the opinion of the registrar was necessary	1	6	0

	Column C. £	s.	d.
Item 88.—Where the trial is commenced, but not concluded on the day on which it is first heard, or is adjourned for want of time, for each day or part of a day on which it is afterwards heard a refresher fee may be allowed	3	5	6
Item 89.—Where trial is adjourned upon payment of the costs of the day	3	5	6
Item 90.—With brief on further consideration or argument, or to enter judgment on an award, or to hear a deferred judgment	3	5	6
Item 91.—With brief on any interlocutory motion or application, if the judge certifies for counsel	2	4	6
Item 92.—With brief before an arbitrator, or on an inquiry or Admiralty reference before the registrar, or on an examination of witnesses under Order XVI. r. 9, Order XVIII. rr. 18 and 20, or Order XXV. r. 71, if the judge certifies for counsel This fee is not to be allowed, if the reference or inquiry was directed at the trial, and counsel was then instructed. A refresher may be allowed instead, pursuant to item 88.	3	5	6
Item 93.—For settling petition, particulars, statement of claim, defence, or reply, interrogatories, preliminary act, or other matters required in the course of the action or matter if allowed by order of the judge	2	4	6
Item 94.—Advising on evidence, if advice be given in writing and allowed by order of the judge	2	4	6

(*c*) When more counsel than one are retained, and the judge certifies for the allowance of fees to more counsel than one, reasonable fees may be allowed to such additional counsel, and for consultations, and to solicitors the additional briefs and attendances on counsel with the same, and for for appointing and attending consultations (Order LIII. r. 8 (3) (b) of the County Court Rules, 1914 (No. 3), dated July 30, 1914).

Items allowable unless Judge otherwise orders.]—There are also certain items in the scales of costs which are allowable on taxation unless otherwise ordered by the judge, so that if counsel or solicitor wish to object to the allowance of any such items he should do so at or immediately after the trial or hearing, otherwise the allowance of such items will be in the discretion of the registrar on taxation.

Item 72.—Attendance where trial is commenced, but not concluded on the day on which it is first heard.

Item 73.—Attendance where the trial is adjourned for want of time, or upon payment of the costs of the day.

Item 74.—Attendance when solicitor does not reside or carry on business within two miles of the town in which the trial takes place.

Item 88.—Fees to counsel where the trial is commenced, but not concluded on the day on which it is first heard, or is adjourned for want of time.

Judge's Discretion must be exercised in each Case.]—In all cases where the allowance of the costs, or of particular items of costs, is left in the discretion of the judge, each case should receive particular consideration (Order LIII. r. 7). No general rule laid down by the judge is of any validity, and for the judge merely to act in compliance with such a rule is not an exercise of his discretion (*R.* v. *Marylebone C. C.*, (1890) 34 S. J. 439; *The Cashmere*, (1890) 15 P. D. 121; 59 L. J. P. 57).

Special Order as to Scale under Sect. 119 of the Act.]—Apart from the

rules, the judge has, in all cases whatsoever, power to award costs to the plaintiff on any higher scale than would otherwise apply, on any amount recovered, however small, or to a defendant who successfully defends an action brought for any amount, however small, provided the judge certifies in writing that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons, or of general or public interest (sect. 119 of the Act). The application must be made at, or immediately after, the trial, unless otherwise ordered by the judge for good cause, or because he is satisfied that the omission to apply was due to mistake or inadvertence (Order LIII. rr. 7, 9). Where the plaintiff accepts money paid into court in satisfaction of his claim, or gives notice of discontinuance, or the action is struck out on default of appearance by the plaintiff, or the defendant admits the claim or consents to judgment, an application for a certificate under sect. 119 may be made on notice in writing in accordance with the rules as to interlocutory applications ; the notice must state the grounds of the application. Where a judge so certifies, the certificate must be entered at the end of the minutes of the court of the day on which it is given, and must be signed by the judge (Order LIII. r. 9). But the entry and signature may be made on a day subsequent to that on which the order for costs is made (*Badcock* v. *Hunt*, (1889) 38 W. R. 255).

The order for costs on a higher scale will be inoperative unless the judge certifies in the mode above specified. Mere entry of the order on the minutes will not suffice (*Howard* v. *Graves*, (1885) 52 L. T. R. 858).

If the facts of any particular case are such as to justify the judge in certifying :—

(1) That it involved some novel or difficult point of law, or

(2) That the question litigated was important to some body or class of persons, or

(3) Of general or public interest,

the court above will not interfere with his discretion in awarding costs on the higher scale, but the question whether the judge is right in certifying that the facts of any particular case come within any of the three heads abovementioned can be raised by prohibition. It has been decided that the question whether one of the parties to an action has committed perjury is not one of general or public interest (*R.* v. *City of London* (2), (1886) 18 Q. B. D. 105), and that wives do not constitute a class of persons within the meaning of sect. 119, and the question whether a wife was guilty of adultery was of no importance to other wives (*Day* v. *Day*, (1916) 32 T. L. R. 332 ; 60 Sol. Jo. 354). It has also been held that the fact that a case involved a charge of fraudulent misrepresentation does not constitute "special grounds" so as to entitle a High Court judge to allow higher scale costs under Order LXV. r. 9 (*Paine* v. *Chisholm* (C. A.), (1891), 1 Q. B. 531).

SCALE OF COSTS APPLICABLE.]—In the absence of a special order by the judge, when the costs of a plaintiff are being taxed, the scale to be allowed depends on the amount recovered by him ; and the costs of a defendant upon the amount claimed by the plaintiff (Order LIII. r. 18).

Scales.]—It will have been seen from the scales that they are divided into lower and higher scales, and that the higher scale is subdivided into columns A, B and C. The lower scale applies in the manner therein mentioned to cases where the amount recovered exceeds 2*l.*, but does not exceed 10*l.* The higher scale applies where the subject-matter or the sum recovered exceeds 10*l.* ; column A, where it does not exceed 20*l.* ; column

B, where it exceeds 20*l.*, but does not exceed 50*l.*; and column C, where it exceeds 50*l.*

Actions in which Scale does not Depend on the Amount Recovered or Claimed.]—There are some actions or matters in which the scale of costs does not depend on the amount recovered or claimed, but on other considerations. The more usual of these actions or matters are as follows:—

(1) In actions for recovery of possession (see Order V. r. 3) under sect. 138 of the Act, that is recovery of possession of small tenements by landlord where term has expired or been determined by notice, and under sect. 139 of the Act, that is recovery of possession of small tenements by landlords for non-payment of rent, the costs shall be taxed:

(*a*) In the case of a plaintiff, on the scale applicable to the rent or value of the premises upon which the court fees are assessed, plus the amount of any rent and mesne profits recovered.

(*b*) In the case of a defendant, on the scale applicable to the said rent or value, plus the amount of the rent or mesne profits claimed. (Order LIII. r. 13.)

(2) In interpleader proceedings, the "subject-matter" shall mean:—

(*a*) In the case of a claimant, the amount of the value of the goods, his claim to which is allowed, plus the amount of the damages (if any) adjudged;

(*b*) In the case of an execution creditor, the amount of the value of the goods seized, plus the amount of the damages (if any) claimed; and

(*c*) In the case of the high bailiff, the amount of the damages claimed (Order LIII. r. 15).

It is the true value of the goods which is the criterion, so that where the judge found the value, as in *Studham* v. *Stanbridge*, (1895) 1 Q. B. 870; 64 L. J. Q. B. 473, the true value is the value so found, and it is submitted that where the goods have been sold, and realised more than the appraised value, the true value is the amount realised at the sale.

See an unreported case commented on under "Interpleader Appeals" in the *County Court Chronicle*, August 2, 1915, Vol. 45, p. 143.

This rule applies even in the case of a remitted interpleader, where the sole function of the county court judge is to decide as to whether the execution creditor or the claimant is entitled to the amount paid into court to avoid a sale. This amount, of course, where the execution is for a small sum, is frequently considerably less than the value of the goods seized, but notwithstanding the fact that the controversy is limited to the amount so paid, the costs are taxable on the value of the goods seized (*Tarry* v. *Will* (*Horwood, Claimant*), (1915) 84 L. J. K. B. 959). Apparently, even when a claim is admitted before the hearing of the interpleader, the judge may still be asked to go behind the high bailiff's valuation and hear evidence as to the actual value of the goods seized, in order to enable the claimant to tax his costs on a higher scale than that to which he would otherwise have been entitled.

(3) In proceedings under the Companies (Consolidation) Act, 1908:

(*a*) In a winding-up by the court, all costs properly incurred are to be allowed on the lower scale in Appendix N to the Rules of the Supreme Court (Rule 184 of the Companies (Winding-up) Rules, 1909).

(*b*) The costs of proceedings, other than proceedings relating to the winding-up of companies by the court, are to be allowed according to the scale of costs applicable to similar proceedings in the High Court (Order XLIA. r. 1 (3)).

(4) In proceedings under the Married Women's Property Act, 1882

(*a*) Applications for the appointment of a trustee or new trustee under sect. 11 of the Act shall be made by petition and costs allowed as on any other petition, regard being had to the amount of the subject-matter of the petition (Order XLVI. r. 1).
(*b*) In applications under sect. 17 of the Act, with reference to any question between husband and wife as to the title to the possession of property, the judge shall direct upon what scale the costs of the proceedings shall be taxed (Order XLVI. r. 2).

COLUMN OF HIGHER SCALE OF COSTS ON WHICH IN CERTAIN ACTIONS OR MATTERS COSTS ARE TAXABLE.]—In certain actions or matters, the judge has power to order under which column of the higher scale the costs shall be taxed. It is important to bear in mind the particular actions and matters in respect of which this discretion is given, so that an application may be made to the judge, at or immediately after the trial or hearing, for a special order, should the successful party not be satisfied with the column of the scale under which the costs will be taxed in the absence of such special order.

The cases in which an order to this effect can be made which most frequently occur in practice are :—

When Demand unliquidated.]—Where the demand is unliquidated, and the plaintiff recovers less than the amount claimed, the judge may order that his costs be taxed on the scale applicable to the amount claimed, or any intermediate scale, and that the court fees recoverable by the plaintiff shall be calculated on the amount claimed or on any smaller amount (Order LIII. r. 17 of the County Court Rules 1914 (No. 3), dated July 30, 1914). This power extends to an action remitted from the High Court and the rule is not *ultra vires* (*Sargeant* v. *Watts*, (1917) 143 L. T. J. 161; 61 Sol. Jo. 612).

In Special Actions.]—In the following actions or matters, the costs will be taxed under column B in default of any order of the judge that they shall be taxed under columns A or C (Order LIII. r. 11).

(*a*) Actions in which a perpetual injunction is claimed, whether the same is granted or not. But where an injunction was claimed, and the plaintiff had an alternative but inconsistent claim, and succeeded on the latter to the extent of 4*l.* 4*s.* damages, but failed as to the injunction, it was held that the judge could not order the costs to be taxed on scale B, but that they must be taxed on the lower scale (*Clinton* v. *Bennett*, (1908) 1 K. B. 109; 77 L. J. K. B. 52).
(*b*) Under sect. 59 of the Act, that is, actions of ejectment, where neither the value of the lands, nor the rent payable in respect thereof, shall exceed the sum of 100*l.* by the year.
(*c*) Under sect. 60 of the Act, that is, any action in which the title to any corporeal or incorporeal hereditaments shall come in question, where neither the value of the lands in dispute, nor the rent payable in respect thereof, shall exceed the sum of 100*l.* by the year.
(*d*) Under sect. 61 of the Act, that is, any action in which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise shall incidentally come in question, if both parties at the hearing shall consent in writing to give the judge jurisdiction to decide the claim.
(*e*) Under sect. 133 of the Act, that is actions of replevin.

Actions under Statutes other than the County Courts Act.]—In actions or matters under certain statutes giving county courts jurisdiction, other than the County Courts Act, 1888, the costs will also be taxed under column B in default of any order that they shall be taxed under columns A or C. Of these statutes the following are amongst those which most frequently occur in practice :—

(*a*) The Agricultural Holdings Act, 1908.
  (1) Costs of proceedings in the county court under the Act, and
  (2) Costs of, and incidental to, an arbitration or award in default of any direction of the arbitrator.

Order of Lord Chancellor, dated November 27th, 1900, still in force under sect. 49 of the Act.

(*b*) The Charitable Trusts Acts, 1853 to 1891 (Order XLVIII. r. 24).
(*c*) The Inclosure, etc. Expenses Act, 1868. Any action under sect. 4 of the Act (Order L. r. 2).
(*d*) The Court of Probate Acts, 1857 and 1858 (Order XLIX. r. 11).
(*e*) The Telegraph Acts, 1863 and 1878 (Order L. r. 11 (16)).
(*f*) The National Insurance Acts, 1911 and 1913. Costs of appeals under sect. 66 of the Act of 1911 and sect. 27 (2) of the Act of 1913 (Order XLIIA. r. 20).

Jurisdiction by Agreement.]—Costs in actions under sect. 64 of the Act, that is, jurisdiction by agreement in writing with respect to actions assigned to the King's Bench Division of the High Court, will be taxed under column C, unless the judge otherwise orders (Order LIII. r. 14).

Where the Subject-matter does not exceed 20*l.*, the Judge may order the Costs to be Taxed under Column B in proceedings :—

(*a*) Under sect. 67 of the Act, that is, jurisdiction in equitable actions or matters.
(*b*) Under sect. 70 of the Act, that is, moneys, stocks, or securities vested in trustees upon trusts within the meaning of the Trustees Relief Acts, may be paid or transferred into the name of the registrar of the court, to attend the order of the court.
(*c*) Under the Settled Land Acts, 1882 to 1890.
(*d*) In any other proceedings under the equitable jurisdiction of the court.

(Order LIII. r. 12).

Admiralty Actions.]—In Admiralty actions, where the amount recovered, or in the case of a defendant the amount claimed, does not exceed 20*l.*, the costs shall be allowed under column B, unless the judge otherwise orders (Order XXXIX. r. 112).

Subject to Order LIII. rr. 109 to 112, the costs in Admiralty actions shall be allowed and taxed according to the rules and scales of costs for the time being in force in the county courts, and applicable to the subject matter of such actions (Order XXXIX. r. 113).

FULL INDEMNITY AS TO COSTS.—In the case of *House Property Company of London* v. *Whittman* (1913), 109 L. T. R. 43, the Divisional Court held that where an action is brought, to which the Stat. 5 & 6 Vict. c. 97, which abolished double or treble costs, applies and provides by sect. 2 for payment of "full and reasonable indemnity as to costs incurred in and about any action," sect. 118 of the County Courts Act applies as to costs "in the action," which are therefore limited to costs allowed by the county courts scale, but not as to costs incurred "about the action," so that the indemnity covered all the costs reasonably incurred by the plaintiffs as preliminary to

the action, including the costs of taking counsel's opinion upon the question whether the action lay.

REMITTED ACTIONS UNDER SECT. 65 OF THE ACT (where judge of High Court orders action of contract to be tried in a county court).

Plaintiff recovers 20*l.* or upwards in High Court and something in County Court.]—Where an action of contract is remitted from the High Court to the county court, and plaintiff recovers in the High Court 20*l.* or upwards within twenty-one days after the service of the writ, or within such further time as may be ordered by the court or a judge thereof, and in the county court any sum, however small, he is entitled in respect of the High Court proceedings to costs on the High Court scale (sect. 116, sub-s. 2 of the Act); and in respect of the county court proceedings to costs on the scale applicable to the aggregate of the amounts recovered in both courts (*White* v. *Headland's Patent Electric Storage Battery Co., Ltd.*, (1899) 1 Q. B. 507; 68 L. J. Q. B. 354), extended by *Pearce* v. *Bolton*, (1902) 2 K. B. 111, to the case where a portion of the claim is paid direct to the plaintiff after appearance, and by *Lamb Brothers* v. *Keeping*, (1914) 111 L. T. R. 527, to the case where a portion of the claim is paid before service and without knowledge of the issue of the writ.

The costs of the proceedings in the High Court as well as in the county court are taxable by the county court registrar as there is only one action (*White* v. *Headland's Patent Electric Storage Battery Co., Ltd., supra*).

Plaintiff recovers 20*l.* or upwards in High Court and fails in County Court.]—Where in such an action plaintiff recovers in the High Court 20*l.* or upwards within such time as above mentioned, and fails in the county court, he is entitled in respect of the High Court proceedings to costs on the High Court scale (sect. 116, sub-s. 2 of the Act), and in respect of the county court proceedings to no costs. The defendant is entitled to the costs of the county court proceedings on the scale applicable to the full sum claimed in the action, only if a special order is made to that effect under sect. 113 of the Act (*Aston Tube Works, Ltd.* v. *Dumbell*, (1904) 1 K. B. 535; 73 L. J. K. B. 208). The judge's discretion to make such an order extends to the costs of proceedings in the High Court (*Mentors, Ltd.* v. *Evans* (C. A.), (1912) 3 K. B. 174; 81 L. J. K. B. 1111).

Plaintiff recovers less than 20*l.* in the High Court, and sufficient in County Court to make aggregate amount recovered 20*l.*]—Where plaintiff recovers in the High Court less than 20*l.*, and in the county court a further sum sufficient to make the aggregate amount recovered 20*l.* or upwards, he is entitled to costs on the county court scale applicable to such aggregate amount as if the action had been brought in that court.

Plaintiff recovers less than 20*l.* in the High Court, and insufficient in County Court to make aggregate amount recovered 20*l.*]—Where plaintiff recovers in the High Court less than 20*l.*, and in the county court a further sum insufficient to make the aggregate amount recovered 20*l.*, neither he nor the defendant is entitled to any costs.

Plaintiff recovers less than 20*l.* in the High Court, and fails in County Court.]—Where plaintiff recovers in the High Court less than 20*l.*, and fails to recover any further sum in the county court, he is not entitled to any costs (sect. 116 of the Act). The defendant is entitled to the costs of the county court proceedings on the scale applicable to the amount claimed in the action, only if a special order is made to this effect as above mentioned.

Plaintiff recovers nothing in the High Court, and 20*l.* in County Court.]—Where plaintiff recovers nothing in the High Court, and in the county court

a sum of 20*l.* or upwards, he is entitled to costs on the county court scale applicable to the amount recovered.

As to the principle on which the costs should be taxed on the county court scale see previous sub-heading on page 1085.

Plaintiff recovers nothing in the High Court, and less than 20*l.* in the County Court.]—Where plaintiff recovers nothing in the High Court, and in the county court a sum less than 20*l.*, neither he nor the defendant is entitled to any costs.

Plaintiff recovers nothing in the High Court, and fails in the County Court.]—Where plaintiff recovers nothing in the High Court, and fails in the county court, the defendant is entitled in respect of the High Court proceedings to costs on the High Court scale, and in respect of the county court proceedings to costs on the scale applicable to the amount claimed (sect. 65 of the Act).

Generally.]—Where a plaintiff is entitled to county court costs in respect of proceedings in the High Court, it is the practice to allow him the costs and fees which would have been charged if a default summons had been issued instead of a writ, and had been served by his solicitor. Such items, therefore, as "attending court lodging order" or "paid fee on entry of remitted action in the county court" should not be allowed.

It should be borne in mind that the words used in sect. 116 of the Act, are "20*l.* or upwards," whilst column B of the scale of costs is applicable where the sum recovered "exceeds 20*l.*" The effect is that a plaintiff who recovers 20*l.* in the High Court is entitled to costs on the High Court scale, though if he had commenced proceedings in the county court, he would have been entitled only to costs on column A.

REMITTED ACTIONS UNDER SECT. 66 OF THE ACT (where judge of High Court orders action of tort to be tried in a county court).

Actions of Tort which could not have been commenced in the County Court.]—Where an action of tort is brought in the High Court which could not have been commenced in the county court (*e.g.*, cases coming under the exceptions in sect. 56 of the Act), and is remitted to the county court, and the plaintiff recovers any sum, however small, he is entitled in respect of the High Court proceedings to costs on the High Court scale, and in respect of the county court proceedings to costs on the scale applicable to the amount recovered (sect. 64 of the Act, as sect. 116 of the Act does not apply).

Actions of Tort, which could have been commenced in the County Court, commenced in the High Court and Plaintiff recovers 20*l.* or upwards.]—Where an action of tort which could have been commenced in the county court is commenced in the High Court, and is remitted to the county court, and the plaintiff recovers 20*l.* or upwards, he is entitled in respect of the High Court proceedings to costs on the High Court scale, and in respect of the county court proceedings to costs on the scale applicable to the amount recovered (sect. 116, sub-s. 2, of the Act).

In such an Action, Plaintiff recovers 10*l.* but less than 20*l.*]—Where in such an action the plaintiff recovers 10*l.* or upwards, but less than 20*l.*, he is entitled in respect of the proceedings, both in the High Court and the county court, to costs on the county court scale applicable to the amount recovered (sect. 116, sub-s. 2 of the Act).

In such an Action Plaintiff recovers less than 10*l.*]—Where in such an action the plaintiff recovers less than 10*l.*, he is not entitled to any costs (sect. 116, sub-s. 2 of the Act).

In such an Action Plaintiff fa.] — Where the plaintiff fails in such an action, the defendant is entitled in respect of the High Court proceedings to costs on the High Court scale, and in respect of the county court proceedings to costs on the scale applicable to the amount claimed (sect. 66 of the Act).

REMITTED ACTIONS GENERALLY.]—After a case has been transferred to the county court, a High Court judge has no power to make any certificate or order as to costs under sub-sect. 2 of sect. 116 (*Harris* v. *Judge*, (1892) 2 Q. B. 565), nor has a master on making an order remitting an action to the county court power to direct that the costs of a previous application under Order XIV. shall be costs in the cause (*Dunn* v. *Appleton*, (1898) 1 Q. B. 564). A judge's general discretionary power over costs under sect. 113 of the Act extends to remitted actions and is not taken away by sect. 65 of the Act (*Everall* v. *Brown* (C. A.), (1906) 2 K. B. 884), nor by sect. 66 of the Act, there being no substantial difference between sect. 65 and sect. 66 (*Sergeant* v. *Watts*, (1917) 143 L. T. J. 161; 61 Sol. Jo. 612). The county court judge has jurisdiction to make an order under Order LIII. r. 17, there being nothing inconsistent between that rule and sect. 116, which does not take away the discretionary power of the judge in awarding costs (*Sergeant* v. *Watts* (*supra*)).

COUNTERCLAIMS.]—Order LIII. r. 16 provides that, unless the judge otherwise orders, where the same party succeeds on claim and counterclaim, the scale upon which his costs are to be taxed is that applicable to claim or counterclaim, whichever be larger; but when the latter is the case, a successful plaintiff, of course, only gets the advantage of the larger scale subsequently to the delivery of the counterclaim. If, however, the subject-matter of the counterclaim is entirely unconnected with that of the claim, certain items of costs, fees to counsel, and allowances to witnesses, may be allowed in respect of the counterclaim or claim (as the case may be), in addition to those attributable to the claim or counterclaim, by the judge, or at the discretion of the registrar.

The steps to be taken by a defendant when his only answer to a claim consists of a set-off or counterclaim, require the most careful consideration, as otherwise he may be saddled with payment of the plaintiff's costs of proving a claim which there was never any intention to dispute.

If he relies on a set-off, he must consider whether it extends to the whole of the plaintiff's claim or only to a portion, and in the latter case should pay into court the balance with proportionate costs under Order IX. r. 17. If he does this and establishes his set-off he will, like any other successful defendant, be entitled under sect. 107 to the costs of the action from the date of such payment into court.

If, on the other hand, he relies on a counterclaim, he should at the time of filing his counterclaim file also a confession of the claim under sect. 98, or an admission under Order IX. r. 3. The result of the case will then be, in the event of the counterclaim succeeding, that the defendant will be entitled to the costs of the only matter which was really contested, whilst the plaintiff is entitled to judgment on his claim with only such costs as are necessary to enable him to have judgment entered up for an admitted demand.

It frequently happens that for lack of these precautions a defendant who has succeeded on the only matter about which there has ever been any real contest is saddled with a substantial sum for the plaintiff's costs of the claim.

If the counterclaim is less than the claim, the defendant can also pay the

balance into Court with proportionate costs under Order IX. r. 17, above mentioned. Occasionally the plaintiff takes the money out of court in settlement and admits the counterclaim. If, however, the action proceeds to trial an admission of the claim may perhaps be inferred from such payment, but otherwise the defendant gets no advantage in the matter of costs through having paid the balance of the claim into court under this rule.

General Principles of Taxation.]—The general principles of the taxation of costs on claim and counterclaim, are settled in *Atlas Metal Co.* v. *Miller*, (1898) 2 Q. B. 500; 67 L. J. Q. B. 815, as follows:—

(1) A plaintiff who is to pay or to be paid the costs of his action, is to pay or be paid the whole of such costs, which ought to be taxed as if there were no counterclaim. Whether both parties fail or whether both succeed, or whether one fails and the other succeeds, can on principle make no difference.

(2) The costs of a counterclaim are the costs actually incurred by reason of the counterclaim; and the costs saved by bringing a counterclaim in lieu of a cross action cannot be treated as costs so incurred.

(3) Plaintiffs' items of costs common to both claim and defence to counterclaim, and defendants' items of costs common to both defence and counterclaim, must be apportioned. These common items of costs are those incurred by the plaintiff partly in support of his claim and partly in opposition to the defendant's counterclaim, and by the defendant partly in opposition to the plaintiff's claim and partly in support of his own counterclaim.

Common Items to be Apportioned.]—The items in question are in practice limited to those relating to the preparation of the brief and the fee paid to counsel. Each common item is to be treated as consisting of two, that is to say, so much of it as relates to the claim or the defence, and their respective issues will belong to the claim or the defence, and so much of it as relates to the defence to counterclaim, or the counterclaim and their respective issues will belong to the defence to counterclaim or the counterclaim, and the taxing officer must apportion such costs as best he can. If there are issues of the claim or counterclaim on which the party, who succeeds generally on such claim or counterclaim, fails, his costs of the action or the counterclaim will be diminished by the costs of those issues on which he has failed.

Difficulties in carrying out Apportionment.]—The practical difficulty in carrying out this principle lies in the fact that the maximum allowance for instructions for brief is not more than adequate where no counterclaim is raised, while the maximum fee for counsel has become so usual that it is paid as a matter of course in every case where there is any real contest. Where, therefore, both claim and counterclaim are contested the whole of such allowance and fee respectively should logically be attributable to the claim, because they would have been incurred to just the same extent if there had never been any counterclaim. The only effect of the counterclaim is that the solicitor and counsel have to do additional work for the same remuneration, the scale precluding them from obtaining any increase. This view has, however, been dissented from in *Fox* v. *Central Silkstone Collieries, Ltd.*, (1912) 2 K. B. 597; 81 L. J. K. B. 989. In that case the defendants contested the claim and counterclaimed; judgment was given for the plaintiff on the claim, and for the defendants on the counterclaim. The court held that on taxation of the costs of the counterclaim the brief fee must be apportioned between the defence and the counterclaim, and only that part which was

referable to the counterclaim could be allowed. The question of the brief fee to be allowed to the plaintiff in respect of the claim was not before the court, but both judges, Ridley, J., and Bray, J., in the Divisional Court, treated the case of a plaintiff and defendant as alike, and expressed the opinion that where a plaintiff had succeeded on the claim, and failed on the counterclaim, only so much of the brief fee as is apportioned to the claim ought to be allowed on taxation of the costs of the claim. The practical result of this decision is that where claim and counterclaim are both contested, the instructions and fee above mentioned must be taken to have been incurred partly in respect of the original action and partly in respect of the counterclaim, and must be apportioned between those two matters by the taxing officer, notwithstanding the fact that the result is to leave a smaller amount in each case attributable to the original action than would have been payable if the counterclaim had never come into existence.

The taxing officer is not bound to make the same apportionment in each case. In taxing the costs of a successful plaintiff he may consider the common items of costs properly apportionable as to two-thirds to the claim and one-third to the defence to the counterclaim, but it by no means follows that, on taxation of defendant's costs of a successful counterclaim, similar common items of costs in his bill are apportionable in the same manner. There is no reason why the taxing officer in taxing the defendant's bill should not apportion the common items of costs as to one-third to the defence and two-thirds to the counterclaim, even though in the result the aggregate amount allowed to the plaintiff and the defendant in respect of such common items of costs exceeds the maximum allowance for such items under the scale of costs applicable (*Fox* v. *Central Silkstone Collieries, Ltd., supra*).

COSTS OF SEPARATE ISSUES.]—As above stated, sect. 113 of the Act provides that in default of any special direction by the judge, costs shall abide the event of the action or matter. The very similar words in Order LXV. r. 1 of the Rules of the Supreme Court, relating to actions tried by juries, "the costs shall follow the event," have been the subject of many judicial decisions.

Unsuccessful Party entitled to Costs of Issues on which he Succeeds.]—The case of *Myers* v. *Defries*, (1880) 5 Ex. Div. 180; 49 L. J. Ex. 266, decided that the word "event" is to be read distributively, and that under this rule the unsuccessful party to an action is entitled to the costs of any issue on which he succeeds. For many years it was the practice to apply to the judge to direct judgment to be entered specially dealing with these costs, but the case of *Hoyes* v. *Tate*, (1907) 1 K. B. 656; 76 L. J. K. B. 408, decided that "where there are separate issues, and the plaintiff obtains a verdict and judgment, but the defendant succeeds as to one of the issues, no direction of the judge is required, but the judgment can be drawn up so as to entitle the defendant to the costs of the particular issue on which he succeeds." In the absence of a satisfactory definition of an issue, it was by no means easy to give effect to this decision, and it transpired in the recent case of *Bush* v. *Rogers, infra*, that in practice wherever separate questions were left to the jury and answered by them, each question and answer was assumed to be an issue, and the judgment drawn up accordingly. The case of *Howell and Dering, infra*, however, negatived this assumption, and now the recent case of *Bush* v. *Rogers*, (1915) 1 K. B. 707; 84 L. J. K. B. 686, decides that the obligation is thrown upon the judge of directing whether there is any separate issue on which the unsuccessful party is entitled to costs.

What are Separate Issues?]—The following have been decided to be separate issues :—

In an action of tort, the questions of negligence, contributory negligence and the amount of the damages (*Wagstaffe* v. *Bentley*, (1902) 1 K. B. 124 ; 71 L. J. K. B. 55).

In an action for balance due under a contract, the question of the performance of the contract and the statute of limitations (*Slatford* v. *Erlebach*, (1912) 3 K. B. 155 ; 81 L. J. K. B. 372). Every separate cause of action is an issue (*Myers* v. *Defries* (No. 2), (1880) 5 Ex. D. 15 and 180 ; 49 L. J. Ex. 266 ; *Hoyes* v. *Tate*, (1907) 1 K. B. 656 ; 76 L. J. K. B. 408).

In the recent case of *Howell* v. *Dering and others*, (1915) 1 K. B. 54 ; 84 L. J. K. B. 198, the plaintiff alleged :—

1. Material representations in a prospectus.
2. That they were fraudulently made by the defendants.
3. That he was thereby induced to take shares.

The jury found in favour of the plaintiff on the 1st and 3rd allegations, and in favour of the defendants on the 2nd, and the judgment was drawn up treating each question and answer as an issue, and giving the plaintiff the cost of numbers 1 and 3. It was held on appeal that these questions and answers were not separate issues, but merely links in the chain of facts which, if they were proved, would entitled the plaintiff to relief. The question is exhaustively discussed in the judgments in this case, where some attempt is also made to give a definition of an issue. See also *Bird* v. *Standard Oil Co. of Canada and Others*, (1915) 114 L. T. R. 316 ; 60 Sol. Jo. 189.

Form of Judgment.]—Where, therefore, the party who is unsuccessful in an action claims to have succeeded on some substantial portion of the case worthy to be dignified by the title of an issue, he must take care to make application to the judge to so define it, or to make a special order under section 113, awarding him the particular costs to which he claims to be entitled. The former course may be adopted where the case has been tried by a jury, who have decided in favour of the losing party some definite question left to them by the judge. The latter in all other cases. It cannot be too clearly understood that unless the judgment, as recorded in the minute book, is drawn so as to deal specifically with the costs of these separate issues, the registrar has no power to deal with such costs on taxation. He cannot be asked to inspect the documents relating to the case and come to the conclusion that there are certain issues on which the generally unsuccessful party succeeded, and to tax the costs accordingly. This is established by the cases of *Bush* v. *Rogers*, *supra*, and *Ingram and Royle, Ltd.* v. *Services Maritimes du Tréport*, (1914) 3 K. B. 28 ; 83 L. J. K. B. 1128. In the latter case the plaintiffs succeeded on issues both of fact and law, and judgment was entered for them without mention of any issue. The defendants appealed on the question of law and succeeded in the Court of Appeal, where judgment was entered for the defendants with costs. The plaintiffs attempted to tax their costs of the issue of fact at the original trial. On appeal it was held that they were not entitled to do so since the judgment did not show them to have succeeded on any issue, and that the taxing master had no jurisdiction to go behind the order and divide the costs of separate issues, where no direction as to the costs of such issues had been given by order of the Court. The previous judgment of the same Court to the opposite effect in *Slatford* v. *Erlebach*, (1912) 3 K. B. 155 ; 81 L. J. K. B. 372, was distinguished on the ground that the decision in that case must be considered to have applied to a special set of circumstances,

and amounted to an amendment of the judgment of the Court below, in order to give effect to the referee's findings. If, therefore, on taxation it turns out that the record in the minute book is defective in this respect, the proper course is to apply for an adjournment of the taxation pending an application to the judge to amend the record.

Principles of Taxation of Costs of Issues.] — Where the successful party is ordered to pay the costs of certain issues on which the generally unsuccessful party succeeded, the successful party is entitled to the general costs of the action, and the other party is not entitled to any general costs, but only the costs strictly relevant to the issue which has been decided in his favour. From this it follows that the brief, counsel's fees and witnesses' fees may have to be apportioned between the two issues. One important item, sometimes overlooked, is the costs of taxation, under item 84 the unsuccessful party succeeding on a separate issue will only be entitled to 2*s.*, 4*s.*, or 6*s.* as the case may be, which includes not only the taxation of costs, but the drawing the bill, copies notice and service. See *Sparrow* v. *Hill and Another* (1881) 8 Q. B. D. 479.

COSTS AFTER PAYMENT INTO COURT.] By sect. 107 of the Act, if the plaintiff recovers no more than the amount paid in, the defendant is entitled to his costs after the date of payment in. It has been held that the defendant's costs prior to the date of payment in are costs not otherwise provided for under sect. 113, and an order made awarding the defendant such costs, even when incurred in the High Court, has been upheld (*Bennett* v. *Drake*, (1907) 97 L. T. R. 132).

COSTS SUBSEQUENT TO JUDGMENT.]—No costs are allowed for searches for payment into court, nor for attending to issue execution.

Costs of Execution recoverable only out of Proceeds.]—The general rule of law is that the costs and fees of issuing execution are a first charge on the amount recovered under such execution, and are recoverable only out of the proceeds of such execution. The judgment debtor incurs no personal liability for the payment of such costs. For this reason such costs are directed by Order XXV. r. 56, not to be included in the amount due for the purpose of a judgment summons or fresh order. The intention of Order XXV. r. 19, which provides for the "allowance" of such costs against the execution debtor, read in connection with the other rule above mentioned, is apparently to make such costs recoverable by means of a subsequent execution.

Costs of Judgment Summons.]—As regards the costs of judgment summonses, none are allowed for attending to issue such summonses, but under Order XXV. r. 53, a solicitor's fee for attendance on the hearing is allowable in two classes of case: (1) Where the party for whom he appears resides out of the district; and (2) Where the summons is on a judgment of a court other than a county court.

The scale of fees is as follows:—

Where amount for which judgment summons is issued does not exceed 2*l.*	Nothing.
Where amount for which judgment summons is issued exceeds 2*l.* and does not exceed 10*l.*	5*s.*
Where amount for which judgment summons is issued exceeds 10*l.* and does not exceed 20*l.*	5*s.* to 10*s.*
Where amount for which judgment summons is issued exceeds 20*l.* and does not exceed 50*l.*	6*s.* 8*d.* to 13*s.* 4*d.*
Where amount for which judgment summons is issued exceeds 50*l.*	10*s.* to 21*s.*

Application for such allowance must be made to the judge at the time.

In practice, where a fresh order is made on a judgment of a county court, the judgment creditor has to pay the fees, and the power to allow solicitor's costs is usually exercised, where a plaintiff resides out of the district, only where a commitment order is made. On the other hand, where a fresh order is made on a judgment of a court other than a county court, most judges allow a solicitor's fee. This is reasonable, as the issue of a judgment summons is the only process by which a fresh order can be obtained on a judgment of a court other than a county court, the ordinary provisions, (Order XXIII. r. 14) by which such an order is issued automatically at the request of the plaintiff, applying only to county court judgments.

It should be remembered that where on the hearing of a judgment summons issued on a judgment of a court other than a county court a fresh order has been made, any judgment summons issued for default in compliance with such fresh order is not issued "on an order of a court other than a county court."

The costs of witnesses and witness summonses are also allowable against a judgment debtor in all cases where a commitment order is made (Order XXV. rr. 35, 54). But where a fresh order is made on the hearing of a judgment summons on a judgment or order of a county court in lieu of a commitment order, such costs and fees are allowable only if the judge is satisfied that the debtor has had the means to pay since the date of the original judgment, and an entry to that effect is made in the minute book (Order XXV. r. 54).

Travelling Expenses.]—Where the registrar fixes the amount to cover the travelling expenses of the debtor to attend the court on the hearing of a judgment summons under Order XXV. r. 26, the judgment debtor is entitled under the rule to be tendered the railway fare both to and from the county court (*Ward* v. *Nield*, (1917) 46 County Court Chronicle, 114; (1917) W. N. 257).

Costs of appointment of Receiver by way of Equitable Execution.]—By Order XIII. r. 14, these costs are allowed as on an interlocutory application in an equitable action or matter, subject to the following limits:—

Where amount of debt and costs due to the applicant exceeds 50*l.* and does not exceed 100*l.*—	
Costs (including obtaining appointment of receiver, completing security, passing accounts, and obtaining discharge) and fees are each limited to	2½ per cent. of such amount.
Where amount of debt and costs exceeds 20*l.* and does not exceed 50*l.*—	
Costs and fees are each limited to	25*s.*
Where amount of debt and costs exceed 5*l.* and does not exceed 20*l.*—	
Costs and fees are each limited to 1*l.*, but shall not be less than 7*s.* 6*d.* as the judge may direct.	

In determining for the purpose of taxation "the amount of debt and costs" in the above rule, the costs incurred in obtaining an interim injunction are not to be included (*Carrington* v. *Deane*, (1917) 1 K. B. 717). The words are limited to the amount of debt and costs in respect of which the receiver was appointed, and do not include sums by way of costs incurred by subsequent interlocutory proceedings, although ordered to be added to the judgment debt.

Costs of Examination in Aid of Execution.]—The costs of any application to examine a debtor as to his means under Order XXV. r. 71, and of any proceedings arising from or incidental thereto, are in the discretion of the court (Order XXV. r. 72). The court would therefore have discretion to allow such costs although, before the examination took place, the debtor paid the amount of the judgment debt and costs into court, and no examination was therefore held. In most cases the registrar exercises his discretion by allowing the costs wherever he is of opinion that the judgment creditor had reasonable grounds for thinking that the examination would elicit some useful information.

Where allowed, these costs are taxed on the scale above set out for solicitor's attendance on a judgment summons.

Costs of Obtaining Garnishee Order.]—There is a similar provision with regard to the costs of obtaining a garnishee order (Order XXVI. r. 12). The costs are in the discretion of the court, and are a first charge on the money recovered under the garnishee proceedings.

Costs under Special War or Emergency Legislation, Costs of application or summons under Courts (Emergency Powers) Acts, 1914 to 1917, Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, Trading with the Enemy Amendment Act, 1914, Billeting of Civilians Act, 1917, and the County Court Rules made by the Lord Chancellor under each of the above Acts.]—In applications under the above-mentioned Acts the court has an absolute discretion over costs, which may be either fixed or allowed as interlocutory applications under Columns A or B of the Scale of Costs, the latter applying to all cases above 20*l.* to the exclusion of Column C. The scale is regulated as follows :—

Act.	*Amount regulating scale.*
Courts (Emergency Powers) Act, 1914. Courts (Emergency Powers) (Amendment) Act, 1916. Billeting of Civilians Act, 1917	The subject matter of the application.
Courts (Emergency Powers) (No. 2) Act, 1916.	
Lessor's costs	*Nil.*
Lessee's costs, if allowed	Column B.
Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915. Billeting of Civilians Act, 1917	
Question as to increase of rent	Four weeks' standard rent.
Application to apportion rent	Half of the annual rent apportioned.
Application to enforce mortgage.	Amount of principal sum secured.
Trading with the Enemy Amendment Act, 1914.	The section under which the application is made.

When the amount regulating the scale does not exceed 10*l.* :—

Increase of Rent, etc. Act	Exceeding 2*l.* but not exceeding 5*l.*, 6*s.* 8*d.* ; exceeding 5*l.*, 10*s.*
The other above-mentioned Acts	Exceeding 2*l.* but not exceeding 5*l.*, 3*s.* ; exceeding 5*l.*, 5*s.*

In all cases of costs under the above emergency legislation it will be found convenient to fix these costs at the time the application is heard, and thus avoid the necessity for a separate taxation.

Costs of Obtaining Certificate under Inferior Courts Judgments Extension Act.]—These are fixed by Order XLV. r. 6, at 5*s.*, with an additional 2*s.* where the registrar requires an affidavit that the judgment has not been satisfied and of the amount remaining unsatisfied.

ADJUSTMENT OF COSTS.—As between Two Unsuccessful Defendants.]—Where there is more than one defendant, and judgment is given against each separately with costs, Order LIII. r. 24 directs that the costs must be divided in proportion to the amount of each judgment unless the judge otherwise orders. Where the whole matter is disposed of at the same sitting of the court this course is practicable, one bill of costs is allowed, and the total amount apportioned between the various defendants in equal shares. The only person damnified in such a case is the plaintiff, as, in the event of one of such defendants proving unable to pay, he loses the proportion of his costs attributable to such defendant. Where, however, a default summons is issued against several defendants, *e.g.*, on a joint and several promissory note, and judgment is signed against one in default of giving notice to defend, and against another in default of appearing at the trial, whilst the action is contested by the third, and the plaintiff ultimately succeeds, this rule is quite impracticable. The total amount of costs and fees allowable as against each defendant is necessarily different, and various steps are taken against each with which the others are in no way concerned, and for which they should not be called upon to pay. Some registrars under such circumstances treat the rule as inapplicable, others make the best apportionment they can by adding together all the items of costs incurred against all or any of the defendants, and then dividing the amount between them.

As between Two Defendants raising Separate Defences.]—Although the provisions of Order III. r. 2, undoubtedly intend that the liability of a particular defendant (say in an action of tort) for damages and costs, should be only that with which the jury fix him individually, the old rule of law which prescribed that in respect of a joint tort there should be no separate apportionment, was re-affirmed in 1913 by the Court of Appeal in the case of *Greenlands, Ltd.* v. *Wilmshurst and the London Association for Protection of Trade*, (1913) 3 K. B. 507; 83 L. J. K. B. 1. Notwithstanding this, however, in the recent case of *Hobson* v. *Sir W. C. Leng & Co. (Ltd.) and Another*, (1914) 3 K. B. 1245; 83 L. J. K. B. 1624, it has been decided that in a libel action where one defendant pleads justification and the other does not, the party who has not raised this issue is entitled to have any costs incurred by the plaintiff relating to this issue, excluded from the costs which he is liable to pay. In this case the judgment was simply entered for the plaintiff against the defendants for 750*l.* and costs, and the Court of Appeal held that it was the duty of the taxing master to determine what costs, having regard to the issues in the action, were taxable in favour of the plaintiff against any particular defendant.

As between Two Defendants jointly represented, Judgment against one and in favour of the other.]—When two defendants are jointly represented by the same solicitor, and judgment with costs is given in favour of one defendant and against the other, the registrar has apparently to inquire what was the position of the successful defendant with regard to his liability for costs to the solicitor employed. A party can only recover costs from the other side to the same extent as he himself is liable to his own solicitor. If, therefore, the registrar finds that the unsuccessful defendant was the person liable to the solicitor for all the costs of the

defence, the successful defendant will be entitled to recover only the additional costs incurred through his having been joined. In the absence of any agreement between the two defendants as to how the costs of the defence are to be borne, each defendant is liable for one half, and that is all that the successful defendant can recover against the plaintiff (*Beaumont* v. *Senior and Bull*, (1903) 1 K. B. 282; 92 L. J. K. B. 141, following *In re Colquhoun*, (1854) 5 D. M. & G. 35; 23 L. J. Ch. 515; 104 R. R. 15; and *Gundry* v. *Sainsbury*, (1910) 1 K. B. 99 and 645). The above doctrine can be avoided and an agreement drawn under which, while the client will be relieved from liability for costs to his solicitor, the solicitor shall retain, in the event of success, the right to costs to be recovered from the other side (*McLean* v. *Carlish*, (1917) 61 Sol. Jo. 399).

As between Two Plaintiffs jointly represented, Judgment given in favour of one only, Order for Defendant to have any costs caused by the addition of the second Plaintiff.]—Where an action has been brought by two plaintiffs and judgment given in favour of one plaintiff only, the defendant having any costs caused by the addition of the extra plaintiff, it is submitted that the principle of the above cases, namely, that a party can only recover costs from the other side to the same extent as he himself is liable to his own solicitor applies, so that where both plaintiffs are interested in common in the result of the action and each of them is only liable to their solicitor by agreement (express or implied) for a moiety of the costs, that is all either of them can recover from the defendant.

But where the second plaintiff has not common interest in the result of the action, and is brought in to guard against the possibility of a technical defence, there can be no presumption of law or otherwise that the added plaintiff contracts with the solicitor of the original plaintiff to relieve him of one half of his liability for costs. There is only one cause of action and one person interested in it, namely the original plaintiff, who is therefore entitled to his full costs.

As between Plaintiff and Defendant, Set-off.]—The registrar has power under Order LIII. r. 34, on taxation to set off any costs payable by the successful party against any costs recoverable by him in connection with the same matter, and to issue his allocatur for the balance. In this manner, costs of counterclaim, costs of issues, and costs improperly incurred (*e.g.*, unnecessary discovery, etc.), are adjusted between the parties. This provision, which is similar to that in force in the High Court (Order LXV. r. 27 (21)), is confined to cases in which the judgments for costs sought to be set off against each other are in the same action or proceeding, and does not extend to cases in which the judgments for costs are in distinct and independent litigations (*David* v. *Rees and Others*, (1904) 2 K. B. 435; 73 L. J. K. B. 729). The decision in *Edwards* v. *Hope*, (1885) 14 Q. B. D. 922; 54 L. J. Q. B. 379, however, recognises the equitable jurisdiction of the court, and enables it to approach the question as one of discretion "for the purpose of preventing absurdity or injustice." In the recent case of *Reid* v. *Cupper*, (1915) 2 K. B. 147; 84 L. J. K. B. 573, where plaintiff brought an action against the defendant and his wife, and another action against the defendant alone, he failed in the first, but succeeded in the second action. The judge at the trial of the second action made an order setting off the plaintiff's costs in the second action against the defendants costs in the first action. It was held that the set-off was rightly ordered in the exercise of the judge's discretion.

SPECIAL PROVISIONS AS TO EQUITABLE PROCEEDINGS.]—If a party suing or sued in a fiduciary or representative character incurs costs not allowed under any scale, the registrar must apply to the judge, who may allow a sum out of any funds in court applicable to the purpose (Order LIII. r. 29).

Costs occasioned by an unsuccessful claim or unsuccessful resistance to a claim to any property are not to be paid out of the estate, unless the judge otherwise orders (Rule 30). Costs of inquiries to ascertain the persons entitled to any legacy, money, or share, or otherwise incurred in relation thereto, are to be paid out of the legacy, money, or share, unless otherwise directed by the judge (Rule 31). Distribution may be made to those persons whose title has been ascertained to a distributive share of a fund, without reserving any part of their shares to answer the subsequent costs of ascertaining the persons entitled to the other shares (Rule 32).

Where a bill of costs is payable out of a fund or estate (real or personal), or out of the assets of a company in liquidation, and on taxation the amount of professional charges and disbursements contained in the bill is reduced by a sixth, no costs of drawing or copying it, nor of attending the taxation will be allowed to the solicitor leaving it for taxation (Rule 35). Where a bill of costs is ordered to be taxed for the purpose of being paid or raised out of a fund or property, the court may require the solicitor to deliver free of charge to all or any of his clients a copy of the bill or any part of it previously to completion of the taxation, and the taxation may be suspended for a reasonable time (Rule 36).

COSTS OF SOLICITOR TO A TRUSTEE UNDER THE DEEDS OF ARRANGEMENT ACT, 1914.]—The Board of Trade has power under section 15 (1) of the Act at the request of the creditors to cause the accounts of a trustee under a deed of arrangement to be audited, and on the audit to require production of a certificate for the taxed costs of any solicitor whose costs have been paid or charged by the trustee, and to disallow the whole or any part of any costs in respect of which no certificate is produced. The Deeds of Arrangement Act, however, makes no provision for the taxation of the solicitor's costs of a trustee under a deed of arrangement.

It was not apparently intended to require trustees under deeds to have their solicitor's costs taxed in every case, nor to empower a special tribunal to conduct the taxation, but to provide, in effect, that if the costs in question are not taxed, and an audit of the trustee's accounts is instituted by the Board of Trade under the provisions of the Act, such costs as may appear to be unreasonable will be subject to disallowance. The Bankruptcy Registrars of the High Court have held that sect. 23 empowers them to make orders for the ascertaining by taxation in the bankruptcy office of the proper amount of costs payable out of the estate to any solicitor employed by the trustee. There seems, therefore, no reason why the registrar of a county court, which has jurisdiction in the matter, should not make a similar order and proceed to the taxation of the costs himself. Most registrars are prepared to do so, and the Board of Trade have intimated that in such a case they would not, on their own initiative, question the amount at which the costs had been allowed or call for a further taxation. Under Rule 16 of the Deeds of Arrangement Rules such applications are deemed to be proceedings in bankruptcy, so that the same fee is payable as on an allocatur in respect of costs in bankruptcy proceedings.

EXECUTORS AND ADMINISTRATORS.]—Where an executor or administrator is an unsuccessful plaintiff, he is personally liable for costs unless the court otherwise orders (Order XXX. r. 1).

Where an executor or administrator is an unsuccessful defendant, he is personally liable for costs in the following cases:—

Where he has wasted assets (Order XXX. r. 4).

Where he does not appear (Order XXX. r. 2).

Where he admits his representative character, and does not deny assets, whether he admits plaintiff's demand or not (Order XXX. rr. 4A, 5).

Where he alleges total administration of assets and fails to prove it (Order XXX. rr. 7, 9).

Where such a defendant denies the plaintiff's demand, and proves a total administration of assets, he is liable to pay the plaintiff's costs of proving his demand, but is entitled to be paid his costs of proving administration of assets unless the court otherwise orders (Order XXX. r. 6).

Where such a defendant admits his representative character and the debt, and proves administration of assets, he is not liable to any costs, but is entitled to his costs of proving administration of assets unless the judge otherwise orders (Order XXX. r. 8).

The liability of an executor *de son tort* is no greater than that of an executor.

A trustee paying money into court under the provisions of sects. 67 or 70 of the Act, or sect. 42 of the Trustee Act, 1893, is entitled to retain his costs incurred in the payment into court, and in any matter connected with the trust prior thereto, subject to taxation by the registrar (Order XXXVIII. r. 11). If, however, he has availed himself of these statutory provisions without sufficient reason, he may be ordered not only to bear his own costs, but to pay the costs incurred by any other person or any part thereof (*e.g.*, in obtaining payment out of the funds) (Order XXXVIII. r. 25). If such a trustee appears on the petition of a beneficiary for payment out, where the petitioner relies only on the facts stated in the affidavit of the trustee, he will only be entitled to his costs of doing so if the judge certifies that his appearance was right and necessary (Order XXXVIII. r. 28).

In an administration action the administrator is entitled to be allowed his general costs, even where the greater part of his claim for expenses of realisation has been disallowed, if the claim was not improper, dishonest or monstrous (*In re Jones, Christmas* v. *Jones*, (1897) 2 Ch. 190; 66 L. J. Ch. 439). Where, however, an estate is insolvent, the administrator's right to costs should be confined to such costs as are really necessary for the protection of the estate (*Pain and Another* v. *Bowden*, (1896) 2 Q. B. 301; 65 L. J. Q. B. 530, where a registrar's disallowance of certain items usually allowed was supported on the ground that he was entitled to have regard to the financial condition of the estate).

COSTS IN ADMIRALTY PROCEEDINGS.]—The authorised scales of costs apply to proceedings instituted as Admiralty proceedings in any county court having Admiralty jurisdiction.

Special Provisions.]—Attention, however, is called to Order XXXIX. rr. 109—112 (inclusive), which make special provisions for costs in Admiralty actions not provided for in the scales and for certain increases.

Order XXXIX. r. 113 annulled.]—It should be noted that Order XXXIX. r. 113 was annulled by Order LIII. r. 8, as amended by the County Court Rules, April, 1913. Under the repealed rule registrars had power to increase costs and fees, and this was especially important in regard to item 28, "Instructions for Brief." Under the rule of April, 1913, the maximum fee, 3*l.* 3*s.*, could not be exceeded, a sum which was frequently totally inadequate in Admiralty cases, but the County Court Rules, 1914, dated April 6, 1914, Amended Order LIII. r. 8, which now provides, paragraph 2, that where costs are taxed under column C, this item may,

in cases of a real contest, or the judge certifies under sect. 119 of the Act, be increased, at the discretion of the registrar, subject to review by the judge, or by special order of the judge, to 5*l.* 5*s.*

Application for Judge's Order where necessary.]—As in cases under the ordinary jurisdiction of the county court, where a judge's order is required the application should be made at, or immediately after, the trial or hearing (Order LIII. r. 7).

TAXATION OF COSTS BY REGISTRAR.]—Sect. 118 provides for the taxation of all costs by the registrar of the court in which they were incurred.

Registrar who is a Successful Defendant must Tax his own Bill.]—It follows that where the registrar is a successful defendant in an action in his own court he must of necessity tax his own costs (*H. Tolputt & Co., Ltd.* v. *Mole* (C. A.), (1911) 1 K. B. 836; 80 L. J. K. B. 686).

Practice as to Delivery of Bill and obtaining Appointment.]—Unless the taxation takes place on the day of trial, which rarely happens in spite of the direction to that effect in Order LIII. r. 2, the party delivers his bill to the registrar and obtains an appointment to tax, giving one day's notice of taxation to the opposite party or his solicitor. It is usual to serve a copy of the bill with such notice, but this is obligatory only if the registrar so directs. The bills, except those on the lower scale, must be made out in columns showing professional charges and disbursements separately as in the High Court.

Most registrars only require the delivery of a bill and allow the costs of taxation where the bill contains items other than those recorded in the court books, *i.e.*, solicitor's fees on entry of plaint, service of default summons, and for conducting a case in court. Wherever witnesses' expenses or any other items are claimed the bill should be brought in for taxation on the day of hearing or the following day.

Solicitor Plaintiff or Defendant appearing in Person.]—A solicitor appearing in person as plaintiff or defendant is entitled on taxation to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting directly renders unnecessary (*e.g.*, attendances to take instructions, etc.) (Order LIII. r. 25).

Solicitor's Costs, Counsel employed but not allowed.]—Where counsel is employed, but the costs of employing him are not allowed, the solicitor's costs may be allowed on the scale applicable to a solicitor appearing for his client without counsel (Order LIII. r. 26).

Discretion allowed to Registrar.]—The discretion allowed to a registrar on taxation is certainly not large compared to that of a master in the High Court, and very strict rules as to its exercise are laid down in Order LIII. rr. 21, 22, 23, which prescribe that such discretion must be exercised with care, and in accordance with the directions in the scales and rules, taking into consideration other fees and allowances to solicitors and counsel, if any, in respect of the work to which an allowance applies, the nature and importance of the action or matter, the amount involved, the interest of the parties, the fund or persons to bear the cost, the general conduct and costs of the proceedings, and all other circumstances, *e.g.*, the insolvency of an estate in an administration action (*Pain* v. *Bowden*, (1896) 2 Q. B. 301; 65 L. J. Q. B. 530).

No Unnecessary Costs to be allowed.]—No costs are to be allowed which do not appear to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to have been

incurred through over-caution, negligence, or mistake, or merely at the desire of the party. The test is, as laid down in *Bartlett* v. *Higgins*, (1901) 2 K. B. 230; 70 L. J. K. B. 621, whether such costs were necessary or proper for the attainment of justice at the time when they were incurred, irrespective of the eventual state of circumstances at the trial.

Solicitor's Costs of Locomotion.]—In particular, where a solicitor is employed who does not reside or carry on business in or near the district of the court, no costs for his locomotion or maintenance will be allowed, unless the court is satisfied that there was reasonable cause for employing him.

Costs of Discovery.]—Costs of discovery by interrogatories or otherwise are within the registrar's discretion only where there is no trial, and he is directed to allow them only if he thinks they have been reasonably asked for (Order XVI. r. 22); and if in the opinion of the Registrar such interrogatories have been exhibited unreasonably, vexatiously or at improper length, the costs of them and the answers must be paid in any event by the party in fault (Order XVI. r. 4).

Costs of any Affidavit, etc., containing Improper or Unnecessary Matter to be disallowed.]—The costs of any affidavit, evidence, notice, or other proceeding which is improper, vexatious or unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, may be disallowed by the judge, or by the registrar on the direction of the judge. If the question has not been raised before the judge, it is the registrar's duty to look into the same, and thereupon the same consequences are to ensue as if he had been specially directed to do so (Order LIII. r. 33).

Allowances to Witnesses.]—The registrar may allow the costs of witnesses though they have not been summoned, and whether they have been examined or not (Order LIII. r. 41); but the allowance for attendance must not exceed the highest rate of the allowance mentioned in the scales (Order LIII. rr. 37, 41). The scales of allowances to ordinary witnesses are as follows:—

	£	*s.*	*d.*		£	*s.*	*d.*
Gentlemen, merchants, bankers and professional men, *per diem* . . . . . from	0	15	0	to	1	1	0
Tradesmen, auctioneers, accountants, clerks and yeomen, *per diem* . . . . from	0	7	6	,,	0	15	0
Artisans and journeymen, *per diem* . . from	0	4	0	,,	0	7	6
Labourers, and the like, *per diem* . . from	0	3	0	,,	0	4	0
Females, according to station in life, *per diem* from	0	2	6	,,	0	10	6

By Order LIII. r. 37 (a), allowances may be made to accountants being members of any recognised society of accountants on the scale applicable to merchants and professional men, instead of on that applicable to tradesmen (*a*).

A plaintiff is not entitled as a rule to an allowance except for travelling expenses, unless he is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, but the judge may otherwise order in any case (Order LIII. r. 38), and this is so although he was also the successful defendant to a counterclaim, unless the loss of time and expenses he was put to as such witness were increased by reason of the counterclaim.

A witness called in lieu of a plaintiff to give formal proof of debt in an undefended action is not usually allowed.

(*a*) Added by Rule 20 of the County Court Rules, 1917.

A witness in the employ of and called on behalf of a railway company is entitled to third class railway fare in addition to the allowance, according to the scale. Railway companies are not required to carry their own witnesses for nothing, nor to make special arrangements with other companies to do so.

A witness who is out of work or on strike, and therefore does not lose wages in attending the court, is nevertheless entitled to an allowance according to the scale. This allowance is not intended to reimburse the witness for his loss of wages only.

Travelling Expenses.]—There may be also allowed to all witnesses, including plaintiffs and defendants, if personally attending the court, for travelling expenses the sum actually and reasonably paid by them (Order (LIII. r. 39).

Hotel Expenses.]—Two opposite views as to allowance of hotel expenses have been expressed by county court judges.

In *Briggs* v. *Gaylord*, (1894) 97 L. T. J. 389, His Honour Judge Wightman Wood said that the reason for the difference between the maximum and minimum allowance in the scale of witnesses' allowances was to enable witnesses from a distance to be compensated for the necessary expense of board and lodging, and that in no other way could hotel expenses be allowed. On the other hand, His Honour Judge Tindal Atkinson is reported in 127 L. T. J. at p. 467, September 18th, 1909, to have dissented from the above view, and considered that the expenses incident to a journey, reasonably incurred, must be included in the travelling expenses. It is believed that the latter is the practice now generally followed.

Witnesses attending in more than one Action.]—If witnesses attend in more than one action or matter their allowance must not exceed one allowance, and it must be apportioned between the actions or matters (Order LIII. r. 40).

Seamen.]—Seamen necessarily detained on shore for the purpose of an action or matter will be allowed such remuneration as the judge may order, or, in the absence of an order, as the registrar may think reasonable compensation for their loss of time (Order LIII. r. 42).

Expert or Scientific Witnesses.]—The registrar can allow a fee to an expert or scientific witness for attending court on trial, without an order of the judge, but an order of the judge is required before a qualifying fee can be allowed. By Order LIII., r. 43 of the County Court Rules, 1914 (No. 3), dated July 30, 1914, in any action or matter in which the costs are taxable, as of right or by order of the judge, under columns B or C, the registrar may on taxation, subject to review by the judge, allow for the attendance in court of any expert or scientific witnesses or any member of the medical profession, and the judge may order that such witnesses may be allowed for qualifying to give evidence, such sums as the registrar on taxation may think fit, not exceeding :—

	£	*s.*	*d.*		£	*s.*	*d.*
For qualifying to give evidence under column B	1	1	0	to	3	3	0
„ „ „ „ C	1	1	0	„	5	5	0
For attending court on trial, *per diem* under column B	1	1	0	„	2	2	0
For attending court on trial, *per diem*, under column C.	1	1	0	„	3	3	0

Where costs are taxed under column C, in cases in which there is a real contest, or the judge certifies under sect. 119 of the Act, reasonable

additional allowances may be made at the discretion of the registrar subject to review by the judge, or by special order of the judge to expert and scientific witnesses for qualifying to give evidence, and attending the court on the trial (Order LIII. r. 8 (3) (c) of the County Court Rules, 1914 (No. 3), dated July 30, 1914).

Where costs are taxed under column A., the registrar may on taxation subject to review by the judge, allow for attendance in court, and the judge may by special order made in accordance with r. 7 of Order LIII. allow for qualifying to give evidence, the whole or part of such sums as may be allowed for attendance in court and qualifying to give evidence respectively under Order LIII. r. 43 (1) where costs are taxed under column B (Order LIII. r. 43 (2), of the County Court Rules, 1914 (No. 3), dated July 30, 1914).

There is no ground whatever for saying that a qualifying fee cannot be allowed because the examination was made before the litigation began (*Jones* v. *D. Davies & Sons, Ltd.*, (1914) 3 K. B. 549; 83 L. J. K. B. 153).

There is no rule of practice in the High Court that only two expert witnesses are allowed on each side. An expert who is called and listened to by the court ought to have his costs allowed in the absence of any special reason to the contrary (*Maxim* v. *Godson*, (1915) 60 Sol Jo. 77).

The question not infrequently arises as to what is the proper fee to allow to an interpreter who by arrangement acts for both sides, and is engaged the whole day. It is submitted that the fee of 1*l.* 1*s.* would be an appropriate fee, under whichever scale the costs are being taxed, unless the interpreter's ordinary occupation is such that a smaller fee would be appropriate. In a proper case this fee might be increased under columns B and C, and an allowance made to the interpreter as an expert witness. Even under column A a discretion is given to the registrar under Order LIII. r. 43 (2). No fee would of course be allowed for qualifying to give evidence.

Preparation of Plans, Charts, etc.]—Plans, charts or models for use of the judge at the trial are allowed at the sum reasonably paid for the same not exceeding: under column A, 1*l.* 1*s.*, under column B, 2*l.* 2*s.*, and under column C, 3*l.* 3*s.* Where costs are taxed under column C, in cases in which there is a real contest, or the judge certifies under sect. 119 of the Act, reasonable fees in excess of those mentioned in item 95, may also be allowed by special order of the judge, or at the discretion of the registrar subject to review by the judge (Order LIII. r. 8 (3) (c), of the County Court Rules, 1914 (No. 3), dated July 30, 1914). An order of the judge is also necessary for the allowance of the attendance of the persons who are called at the trial to prove the correctness of the plans and drawings and models, though they are not to be allowed as expert or scientific witnesses, but upon the scale applicable to ordinary witnesses (Order LIII. rr. 43 (2), and 44).

A solicitor who orders photographs for the purpose of litigation, in which he was acting for a client to the knowledge of the photographer, is not personally liable for the price of the photographs (*Wakefield* v. *Duckworth*, (1915) 1 K. B. 218; 84 L. J. K. B. 335).

Allocatur to be Signed on Production of Witnesses' Receipts.]—It is, of course, an obvious advantage to solicitors to defer settling with witnesses until after the amount to be allowed for their attendance has been ascertained on taxation. In important cases, therefore, it is usual to follow the practice of the High Court, under which the amounts to be allowed to witnesses and experts are assessed from their accounts produced on taxation, and the allocatur signed on production of the receipts from the witnesses, or, in

special cases, on the solicitor's written undertaking to produce such receipts when required. The case of *Harbin* v. *Gordon and Another*, (1914) 2 K. B. 577; 83 L. J. K. B. 322, clearly defines the practice of the taxing masters with regard to payments to and receipts to be given by parties to an action in respect of allowances to them for expenses and loss of time in travelling to give evidence. The Court of Appeal laid it down that the "special concession," which the master had made of offering to accept the plaintiff's letter to the effect that he was aware of the allowance to him as a witness and its amount, should be made the general rule in all similar cases where the solicitor taxing the bill was not in a position to produce a voucher for the sum allowed.

Counsel's Fees.]—As regards counsel's fees, the scale item is expressed to be the maximum, and the registrar is directed, by the official note in the higher scale of costs, in assessing the amount of the fee, to consider the length of the brief, the documents to be perused and considered, the number of witnesses, and the difficulties of fact or law involved. In practice, however, the maximum is usually allowed.

Conference Fee.]—Similarly, a conference fee is allowable under columns B and C of the scale, if marked on the brief and the registrar considers it necessary.

Advice on Evidence.]—The fee for advising on evidence is only allowable if the advice is given in writing, and allowed by the judge, item 94 of the higher scale of costs having been amended in the former respect by the Rules of July 26th, 1912. The fact that the judge has certified for this fee does not preclude the registrars from inquiring, on taxation, whether the work covered by it was actually performed.

Payment to be Vouched by Counsel's Signature.]—No fees are to be allowed on taxation unless the payment be vouched by the signature of counsel (see official note in the Higher Scale of Costs, Fees to Counsel).

REVIEW OF TAXATION, PROCEDURE BEFORE THE REGISTRAR.]—Order LIII. r. 5 provides that any party dissatisfied with the allowance or disallowance by the registrar on taxation, in any bill of costs taxed by him, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the registrar on taxation, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items, or parts thereof, objected to, and the grounds and reasons for such objection, and may thereupon apply to the registrar to review the taxation in respect of the same.

In practice, the registrar signs the bill of costs after taxation, and it then serves as a certificate or allocatur. A party dissatisfied should, therefore, at once indicate the items objected to, and request the registrar not to sign the bill of costs until he has had time to consider the propriety of the allowances or disallowances; and it is believed that the registrar could not, by refusing, prevent the party from exercising his right to review.

After delivering objections, the applicant will be entitled to an appointment to review. The registrar will then reconsider and review his taxation upon such objections, and he may, if he think fit, receive further evidence in respect thereof, and, if so required by either party, he must state either in his certificate of taxation or allocatur, or by reference to such objections, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto (Order LIII. r. 6). In practice the registrar

states his reasons for his decision either on the objections or in a separate document, and this should be shown to the parties (*Dashwood* v. *Maguire*, (1892) W. N. 52). These rules are in effect similar to the corresponding rules in the High Court (Order LXV. r. 27 (39), (40)).

Whether above Procedure a necessary preliminary to an Appeal to the Judge.]—It frequently happens, however, that the representative of a solicitor who attends a taxation fails to give notice that he intends to deliver objections, and when such objections are delivered later he finds that the allocatur has been already signed. The position of the parties in such a case is not very clear. Obviously, the registrar has no power to re-open the matter and review his taxation except by consent, but the question whether the dissatisfied party has a right to review before the judge, or whether a review before the registrar is a necessary preliminary to such an appeal appears never to have been decided in the county court. In the High Court Order LIII. r. 27 (41) limits the right of appeal to the judge to any items in respect of which objections have been delivered before the taxing master, though this does not apply where objection is taken to the principle of the taxation (*In re Fletcher & Dyson*, (1903) 2 Ch. 688 ; 72 L. J. Ch. 791), or where the taxing officer has decided that there is nothing to tax (*In re Castle*, (1887) 36 Ch. D. 194 ; 56 L. J. Ch. 753).

In the county court the right of appeal to the judge conferred by sect. 118 of the Act is absolute, and there is no rule which limits its application in the manner prescribed in the High Court. Order LIII. r. 47, merely provides how the application to the judge to review shall be made, and that it shall be heard and determined upon the evidence before the registrar, and no further evidence shall be received unless the judge otherwise directs. On the other hand, Order LIII. rr. 5 and 6 do provide for reconsideration and review of taxation before the registrar, who must state in his certificate or allocatur "the grounds and reasons of his decision," and see the observations of Fletcher Moulton, L.J. in *Mentors, Ltd.* v. *Evans*, (1912) 3 K. B. at p. 178—"It is a fundamental principle in dealing with such applications that the appellant is strictly tied to the objections made by him to the taxing master and answered by the latter. Such a provision saves endless expense."

REVIEW BY THE JUDGE ON APPEAL FROM THE REGISTRAR.]—The right of appeal to the judge is expressly conferred by sect. 118 of the Act, and the procedure is settled by Order LIII. r. 47, which provides that notice in writing shall be given in accordance with the rules as to interlocutory applications, which prescribe that the notice shall be served on the opposite party two days at least before the hearing of the application, unless leave be given for shorter notice (Order XII. r. 11). It should be specially noted that it must be determined on the evidence before the registrar, unless the judge otherwise directs. No time is fixed within which the application must be made. The analogous rule in the High Court (Order LXV. r. 27 (41)) prescribes fourteen days from the date of the allocatur. Inasmuch, however, as the unsuccessful party remains liable to execution from the date of the allocatur, it is obviously to his interest to give the notice promptly. Such notice does not operate as a stay of execution, but, if such were threatened, it would be desirable to apply to the judge, at his next sitting at any court on the circuit, for a stay of execution, pending the hearing of the application. The County Courts Act and Rules, provide no general power of suspension of execution similar to that contained in Order XLII. r. 17 of the High Court, the power under sect. 153 of the Act being limited to the inability of the defendant to pay. The existence of such a power is, however,

assumed by Order XXXI. r. 1, where notice has been given of application for a new trial, and by Order LIX. r. 14 of the High Court, where notice of appeal has been given. It would probably be held that the case was covered under the concluding words of sect. 164 of the Act, providing for the general principles of practice in the High Court being adopted in cases not expressly provided for.

APPEAL FROM JUDGE TO THE HIGH COURT, WHEN ALLOWABLE.]—Where the judge makes a mistake of law in reviewing or refusing to review a taxation of costs, there is a right of appeal from the judge to the High Court in actions where the amount claimed is over 20*l.*, but there is no appeal if the matter complained of is the wrongful exercise of his discretion, nor can the High Court, by order in the nature of a mandamus, compel the judge to review, if he hears the application and refuses to review (*Clifton* v. *Furley*, (1861) 31 L. J. Ex. 170).

TAXATION OF COSTS AS BETWEEN SOLICITOR AND CLIENT.—Procedure.]—Under the provisions of sect. 118 of the Act, all costs and charges between solicitor and client may also, on the application either of the solicitor or client, but not otherwise, be taxed by the registrar of the court in which they were incurred, subject to the right of either party to review before the judge. They are taxable on the same scales as party and party costs. No charges not sanctioned by the scale may be allowed, unless the registrar is satisfied that the client has agreed in writing to pay them. The application is made in writing to the registrar, and must state on whose behalf it is made; the registrar sends to the parties by post three clear days' notice at least of the day fixed for the taxation. Rules 5 and 6 of Order LIII. as to objection to, and review of, taxation apply. The costs of the taxation are dealt with by the registrar in accordance with the Solicitors Act, 1843, and are added to or deducted from the amount certified to be due (Order LIII. r. 46).

A solicitor retained to bring or defend an action cannot recover any costs incurred after retainer which are not allowed by the scales (*In re Dod, Longstaffe & Co., Ex parte Lamond*, (1888) 21 Q. B. D. 242; 57 L. J. Q. B. 503); but this is not the case if the client is plaintiff and he represents to the solicitor that a debt of a certain amount is due to him and a less sum is recovered. The registrar may then, in his discretion, tax on the scale applicable to the claim (*In re Langlois and Biden, Solicitors*, (1891) 1 Q. B. 349; 60 L. J. Q. B. 123).

Courses open to Solicitor to obtain Payment.]—The concluding words of sect. 118—"and no solicitor shall have a right to recover from his client any such costs or charges unless they shall have been allowed on taxation" have been considerably modified by judicial decisions. The case of *Cubison* v. *Mayo*, (C. A.) (1896) 1 Q. B. 246; 65 L. J. Q. B. 267, decided that the words in question do not constitute such taxation a condition precedent to the solicitor's right to sue where twelve months from the delivery of the bill of costs (the period in which the client is entitled to require it to be taxed) had expired, and no taxation had been applied for, whilst it appears from the case of *Bell* v. *Girdlestone*, (1913) 2 K. B. 225; 82 L. J. K. B. 696, that even where the twelve months have not expired, the words of the section apply only in the event of a taxation having been applied for."

The position therefore, appears to be this:—

The solicitor may either apply for taxation under this section, or issue a summons for the amount of his untaxed bill. Inasmuch as the taxing officer's certificate involves no obligation on the client to pay, but merely confers on the solicitor a right to recover by action, which he apparently

possesses without it, he will naturally adopt the latter course. If he does, the usual practice, where the period within which the bill is taxable has not expired, is to follow the High Court procedure by referring the bill to the registrar for taxation, and direct judgment to be entered for the amount certified by him to be due.

The above, of course, relates merely to proceedings by solicitors to recover against their clients costs incurred in the county court, but it frequently happens that actions are brought in the county court to recover costs not incurred in connection with county court proceedings. In such cases there is no power to adopt the course pursued in *Smith* v. *Edwardes*, (1888) 22 Q. B. D. at p. 10, of referring the bill to the master for taxation under the Solicitors Act, 1843, and thus retaining the client's rights under sect. 37 of that Act, because taxation under that Act can only take place in the High Court. On the other hand it is, of course, open to the judge to follow the procedure adopted by the High Court in *Lumsden* v. *Shipcote Land Property Co.*, (1906) 2 K. B. 433, and refer the bill to the registrar to ascertain the proper amount to be paid, just as in the case of any other action for work and labour done.

CHAPTER III.

COURT FEES AND SCHEDULES OF FEES.

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Court Fees.]—By sect. 165 of the Act, the Treasury may from time to time, with the consent of the Lord Chancellor, make orders as to the fees payable on any proceedings which were then, or should thereafter, be authorised to be taken in the courts.

By sect. 166 of the Act, a table of all fees must be posted in some conspicuous place in every court house and registrar's office.

Schedules of Fees.]—The present schedules of fees are sanctioned by Treasury Order of December 30th, 1903, as amended by Treasury Orders of February 22nd, and August 2nd, 1906, May 30th and October 22nd, 1907, January 17th, 1908, July 7th, 1909, May 15th, 1912, November 18th, 1913, December 28th, 1914, The County Courts Trading with the Enemy (Application of Property) Rules, 1915, dated February 15th, 1915, Treasury Order of December 10th, 1915, The Consolidated County Courts (Emergency Powers) Rules, 1916, dated August 23rd, 1916, The Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916, dated January 29th, 1916, The Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916 (No. 2), dated June 26th, 1916, The County Court (Billeting of Civilians) Rules, 1917, dated July 31st, 1917, and The County Courts (Emergency Powers) Rules, 1917, dated October 4th, 1917.

Consist of Two Parts, Schedules (A.) and (B.).]—The schedules consist of two parts, Schedule (A.), comprising those fees payable to the Treasury, and

Schedule (B.), those payable to registrars and high bailiffs. This complicated system is necessitated by the method of payment of those officials who are remunerated for their duties under the original jurisdiction of the court by salary, and in respect of the subsequent legislative developments of county court procedure (such as the default summons, equity proceedings, workmen's compensation, etc., etc., including the cases under the Act of 1903, extended jurisdiction), by fees. Until this point is grasped, the schedules are somewhat confusing to the practitioner, inasmuch as there may or may not be a fee payable on a particular proceeding according to circumstances (*e.g.*, a fee is payable for filing any affidavit under the equitable jurisdiction, but no fee is charged in respect of the same step in an ordinary action of debt).

Schedule (A.).]—The items under Schedule (A.) consist of fees payable on the initiation and service of process, the adjudication thereon, and the enforcement thereof.

Schedule (B.).]—Schedule (B.) consists of two classes of items: (1) additional fees payable for the services covered by Schedule (A.), where such process is issued under the added jurisdiction, and (2) fees in connection with various interlocutory proceedings both under the original and added jurisdiction. It is divided into four parts, the first dealing with ordinary and default summonses, extended jurisdiction, workmen's compensation, Agricultural Holdings and other Acts; the second with equitable jurisdiction; the third with Admiralty; and the fourth with sundry small matters.

Fees Payable in respect of Equitable Proceedings.]—The attention of practitioners is particularly directed to the various fees payable in respect of equitable proceedings, which amount in the aggregate to such a large sum as to be out of all proportion to the value of a small estate. It is disastrous to initiate any proceedings in equity dealing with a sum of not exceeding 20*l.*, and for this reason, it has not been thought worth while to insert any precedents of the costs of such proceedings on the scale applicable to that amount.

Practitioners are reminded that actions for an account, except under sect. 67 of the Act, ejectment, or possession, are not actions commenced under the equitable jurisdiction.

Table of Fees.]—A table of fees showing fees payable on entry and hearing of ordinary, default and judgment summonses, on judgment by default, and on issue of warrant of execution or commitment, for amounts from 1*l.* up to 20*l.*, over 20*l.* and not exceeding 50*l.*, and over 50*l.*, has been added at the end of the schedules (pages 1140 and 1141), the fees payable are shown at a glance under the various headings without the necessity of making any calculation.

Summary of Fees.]—A classified summary of the various fees is added at the end of the schedules (pages 1142 to 1164), so as to enable practitioners to see, as far as possible, in respect of what proceedings fees can be charged against them. At the same time, they are warned that there is some diversity of opinion among registrars and high bailiffs, as to the exact circumstances under which some of the fees are payable, and it is advisable therefore in every case to inquire as to the practice in this respect of the particular court concerned.

Fee Demanded, but in Opinion of Practitioner not Payable.]—Where any fee is demanded by a registrar or high bailiff, which, in the opinion of the practitioner concerned, is not payable under the circumstances, the

proper course is to pay it and state the facts to the superintendent of the County Courts Department of the Treasury.

In the case of a Schedule (A.) fee (which the registrar receives on behalf of the Treasury), the superintendent, if he is satisfied that the fee is not chargeable, will direct the registrar to return it. In the case of a Schedule (B.) fee, although the registrar receives these fees for the use of himself and the high bailiff (except in the case of registrars included in any order under sect. 45 of the Act), he is still under a legal obligation to render an account of them to the Treasury, the wording of sect. 169 being wide enough to cover both classes of fees. The superintendent can, therefore, call attention to any such fee appearing in a registrar's account, which he does not consider to be chargeable, and direct it to be carried to a suspense account or returned, or, if necessary, bring the matter to the notice of the Lord Chancellor.

Penalty for taking Fees besides those allowed.]—Sect. 51 of the Act provides a summary method of dealing with registrars and high bailiffs who "wilfully and corruptly" take any fees except those allowed.

TREASURY ORDER, Dated December 30th, 1903, regulating Court Fees in County Courts.

In pursuance of the powers given by the County Courts Act, 1888, and of all other powers enabling us in this behalf, We, the undersigned, two of the Commissioners of His Majesty's Treasury, whose names are hereunto subscribed, do hereby, with the consent of the Lord Chancellor, order that, on and after the first day of March, 1904, the several fees or sums in the name of fees specified in the Schedules hereunder written shall be taken on the proceedings therein mentioned, in lieu of all other fees for the proceedings set forth; and that the fees so authorised to be taken, with the exception of the fees mentioned in Schedule (B.), shall be received by the registrars of the different County Courts, and shall (except where otherwise directed) be accounted for and paid over by them to the Superintendent of County Courts, and that the fees set forth in Schedule (B.) shall be received by the registrars for the use of themselves and of the high bailiffs, according as the duties are to be performed by the registrars or high bailiffs, except in the case of registrars included in any Order under section 45 of the County Courts Act, 1888, in which case the fees received by them under Schedule (B.) shall be accounted for and paid over by them as may be directed by the Lord Chancellor and the Treasury.

H. W. Forster.
Balcarres.

I approve of the annexed Schedules of Fees.
Halsbury, C.

[*In the following Schedules "the Act" means the County Courts Act*, 1888. *An Order or Rule referred to in the following Schedules means the Order or Rule so numbered in the County Court Rules*, 1903.]

SCHEDULE (A.).

1. For every plaint or petition, one shilling in the pound.
2. Where the claim or demand exceeds forty shillings, and an ordinary summons is to be served by a bailiff, an additional fee of one shilling. This fee is not to be taken where a default summons is issued, or in any case in which a fee for service is prescribed by Schedule (B.).
3. Where in any case the number of defendants exceeds three, and an ordinary summons is to be served by a bailiff, an additional fee of one shilling for each defendant above three. This fee is not to be taken where a default summons is issued, or in any case in which a fee for service is prescribed by Schedule (B.).
4. Where a defendant claims a set-off, or sets up a counterclaim in an action or matter commenced in a county court, he shall, on giving notice of such set-off or counterclaim, or at any later stage at which he claims such set-off, or sets up such counterclaim, pay a plaint fee on the amount thereof, less the fee paid by the plaintiff on entering the plaint. This paragraph shall not apply to actions or matters commenced in the High Court and remitted or transferred to a county court.

SCHEDULE (A.)—*continued.*

5. For entering judgment by consent under section 98 or section 99 of the Act, or for entering judgment under a default summons where no notice of defence has been given, or under Order XXII. Rule 7, where the plaintiff appears and the defendant does not appear, one shilling in the pound on the amount claimed in the summons; or if the plaintiff abandon any part of his claim, one shilling in the pound on the reduced amount of the claim after such abandonment, including in such reduced amount the amount (if any) paid into court or to the plaintiff. Where a default summons is issued, and no notice of defence is given, but the claim is paid without costs, and the plaintiff enters up judgment for costs only under section 86 of the Act, no fee shall be payable.

6. For entering final or interlocutory judgment in an Admiralty action, on default of appearance, one shilling in the pound.

7. For every hearing, two shillings in the pound. To be charged once only in an action or matter, unless a new trial is ordered. Where separate trials are ordered under Order III. Rule 1, or Order IV. Rule 7, a separate hearing fee shall be paid on each trial.

8. No hearing fee shall be taken where the trial of any action or matter is postponed or adjourned once before the action or matter is called on for hearing, or after it has been called on, but before it is opened; but if a second postponement or adjournment is granted, or an adjournment is granted after an action or matter has been called on for hearing and opened, the hearing fee must be paid, and no part of such fee shall be returned without the sanction of the Treasury notwithstanding any provision contained in any other paragraph of this Schedule.

9. Where an order of reference is made under section 104 of the Act, or under Order XX., the same fee shall be paid as would have been payable on entering judgment under a default summons under paragraph 5, unless a reference is ordered to the registrar or some other officer of the court, in which case the same hearing fee shall be paid as if the action had been tried. In such last-mentioned case, or where a matter of account is referred to the registrar under section 92 of the Act, one-half of the hearing fee may, where the claim or demand exceeds forty shillings, and the reference is proceeded with, be retained by the registrar for the use of himself or of the officer to whom the reference is ordered unless the order of reference is made at a sitting of the court, and the reference is concluded on the day on which the order is made.

10. Where before an action or matter is called on for trial, or in opening his case when called on, the plaintiff abandons any part of his claim, the hearing fee shall be charged only on the reduced amount which the plaintiff seeks to recover after such abandonment, including in such reduced amount the amount (if any) paid into court, or to the plaintiff, or otherwise admitted by the defendant.

11. In all cases where the defendant either personally or by his solicitor or any other person allowed to appear for the defendant admits the claim (whatever its nature may be), or where the judge or registrar accepts a letter addressed to the court as an admission of the claim, one-half of the fee paid by the plaintiff for the hearing of the plaint under paragraph 7 or paragraph 10 (as the case may be) shall be returned

SCHEDULE (A.)—*continued.*

to the plaintiff by the registrar of the court, although the court may have been required to decide upon the terms and conditions upon which the claim is to be paid.

12. Where in an action for a debt or liquidated money demand the defendant does not appear, one-half of the fee paid by the plaintiff for the hearing of the plaint under paragraph 7 or paragraph 10 (as the case may be) shall be returned to the plaintiff by the registrar of the court, less, where the claim or demand does not exceed forty shillings the sum of one shilling, and where the claim or demand exceeds forty shillings, the sum of two shillings. For the purposes of this paragraph a claim for rent or mesne profits added to a claim for the recovery of a tenement under section 138 of the Act, shall be deemed to be a claim for a liquidated money demand. This paragraph shall not apply to cases coming within either paragraph 5 or paragraph 11 (*a*).

13. Where any action or matter in which a set-off is claimed or a counter-claim is set up is brought to a hearing, the plaintiff shall pay the same hearing fee on the claim as would have been payable if there had been no set-off or counter-claim, and the defendant shall pay the same hearing fee on the set-off or counter-claim as would have been payable if such set-off or counter-claim had been the subject of a separate action, less the fee paid by the plaintiff for the hearing of the plaint. The provisions of paragraphs 10 and 11 as to abandonment and admission shall apply to the fees payable by the plaintiff and defendant respectively ; and the fee to be paid by the defendant shall be calculated on the amount claimed by him at the hearing, after deducting the fee or half fee (as the case may be) payable by the plaintiff on the amount claimed by him at the hearing.

14. Where a plaintiff does not appear, or discontinues his action, or withdraws his claim, or a sum paid into court is accepted in full satisfaction of the claim, and a defendant claiming a set-off or setting up a counter-claim desires to proceed and obtain judgment on such set-off or counter-claim, he shall pay a hearing fee on the amount which he seeks to recover on such set-off or counter-claim, subject to the provisions of paragraph 10 as to abandonment, and of paragraph 11 as to the return of one-half of such fee if the plaintiff admits the set-off or counter-claim, and subject also to the provisions of paragraph 12 if the plaintiff does not appear.

15. No fee shall be payable on an application for a new trial or to set aside proceedings, or for the hearing of such application, or on an interpleader summons, or on an application under Order IX. Rule 13, paragraph 3, Rule 15 or Rule 20, paragraph 3, for fees and costs, or on an application for an order as to costs under Order XXXIX. Rules 77 to 79.

16. An additional hearing fee shall be taken for every new trial : provided, that where a fee of two shillings in the pound has been taken on the original hearing, the provisions of paragraphs 5, 10, 11, and 12 shall apply to the additional hearing fee to be taken on a new trial : provided also, that where the defendant does not appear at the original

(*a*) Amended by striking out the words " or a claim for the recovery of a tenement for non-payment of rent under sect. 139 " in the last paragraph but one, by Treasury Order dated December 10th, 1915.

SCHEDULE (A.)—*continued.*

hearing and a new trial is ordered on his application at the same court, the additional hearing fee shall be such sum as will, with the fee taken on the original hearing, make up a total of two shillings in the pound on the amount which the plaintiff seeks to recover on the new trial after any abandonment made pursuant to paragraph 10 before or at the new trial; and where the defendant does not appear at the original hearing, and a new trial is ordered on his application at a subsequent court, the additional hearing fee shall be such sum as will, with the fee taken on the original hearing, make up a total of three shillings in the pound on the amount which the plaintiff seeks to recover after any such abandonment as aforesaid, or, if the defendant on the new trial admits the claim or does not appear, a total of two shillings in the pound on such amount. The additional hearing fee on a new trial shall be payable in the first instance by the party by whom the same shall be directed to be paid by the order directing a new trial to be had, and in default of such direction shall be payable in the first instance by the party on whose application the new trial is ordered, subject to the power of the judge in any case to direct by whom such fee shall be ultimately borne.

17. The hearing fee on interpleader shall be prepaid by the claimant, and shall be calculated on the amount of the money in court or in the hands of the sheriff, or the amount of the money claimed, or the assessed value of the goods claimed, or, if such value has not been assessed, the value put upon them by the claimant, plus in either case the amount of the damages (if any) claimed, but subject to the provisions of this Order as to calculating poundage where the amount or value of the subject-matter exceeds twenty pounds; and the judge at the hearing shall direct by whom such fee shall be ultimately borne.

18. Where an interpleader summons is issued under Order XXVII. Rule 15, and is heard with the action, no hearing fee shall be paid on the interpleader; but if the plaintiff in the action appears upon the return day, and withdraws or abandons his claim without a hearing of the action, and the claimant requests the judge to make an order in his favour against the defendant, a hearing fee on the interpleader shall be paid by the claimant.

19. Where a notice of claim to contribution or indemnity is filed under Order XI., a fee shall be paid on entering judgment on such claim, or on the hearing of such claim, in like manner as on entering judgment on a default summons under paragraph 5, or the hearing of an action, as the case may be.

20. Fees shall be charged on a summons under section 49 or section 50 of the Act, and Order LII. Rule 4, as on an ordinary summons; but no fee shall be payable on a summons under section 48 of the Act.

21. For issuing every warrant upon a judgment or order of a county court [other than a warrant according to any of the forms numbered 146, 289, 357, 366, 367, and 372], eighteenpence in the pound on the amount for which such warrant issues, if such amount does not exceed ten pounds, and one shilling in the pound on any excess above ten pounds, but subject to the provisions of this Order as to calculating poundage where the amount or value of the subject-matter exceeds twenty pounds; less, in any case in which fees for the issue and execution of such warrant are prescribed by Schedule (B.), the amount of such fees.

SCHEDULE (A.)—*continued.*

22. For every judgment summons under the Debtors Act, 1869, upon a judgment or order of a county court, threepence in the pound on so much of the amount of the original demand and costs as, in obedience to the judgment or order of the court, should have been paid at the time of the issue of the summons, with an additional fee of sixpence, but so that the total fee shall not exceed five shillings; less, in any case in which fees for the issue and service of a summons for commitment are prescribed by Schedule (B.), the amount of such fees.

23. For the hearing of any such judgment summons, sixpence in the pound on the amount upon which the fee on the summons was calculated.

24. For the hearing of any judgment summons issued upon a judgment or order of a court other than a county court, sixpence in the pound on the amount upon which the fee on the summons would have been calculated had the summons been issued upon a judgment or order of a county court.

25. The provisions of paragraph 8 shall apply to the hearing of a judgment summons in like manner as to the trial of an action.

26. For issuing every order of commitment upon a judgment or order of a county court, eighteenpence in the pound on the amount for which the order of commitment issues, if such amount does not exceed ten pounds, and one shilling in the pound on any excess above ten pounds, but subject to the provisions of this Order as to calculating poundage where the amount or value of the subject-matter exceeds twenty pounds; less, in any case in which fees for the issue and execution of orders of commitment are prescribed by Schedule (B.), the amount of such fees.

26A. For the renewal of a warrant of execution, or the extension of an order of commitment, sixpence in the pound on the amount for which such warrant or order was issued, so that the total fee does not exceed five shillings (*a*).

27. All poundage, except where otherwise herein specified, shall be calculated upon the amount or value of the subject-matter of the proceeding upon which it is payable.

28. All fractions of a pound, for the purpose of calculating poundage, shall be treated as an entire pound.

29. Where the amount or value of the subject-matter of any proceeding, or the amount on which poundage is by any paragraph of this Order directed to be calculated, exceeds twenty pounds, poundage shall be calculated on twenty pounds only.

30. In plaints under section 59 or section 60 of the Act, poundage shall be calculated as upon a claim for a sum of twenty pounds.

31. In garnishee actions the poundage shall, subject to paragraph 29, be calculated on the amount of the debt sought to be attached, or of the judgment debt, whichever is the less.

32. In replevins all poundage shall, subject as aforesaid, be calculated on the amount of the alleged rent or damage, to be fixed by the registrar.

33. In plaints for the recovery of tenements where the term has expired or been determined by notice, all poundage shall, subject as aforesaid, be calculated on the amount of the weekly, monthly, quarterly, half-yearly, or yearly rent of the tenement, as such tenement shall have

(*a*) Added by Treasury Order, dated August 2nd, 1906.

SCHEDULE (A.)—*continued.*

been let by the week or by the month, or for any longer period ; and if no rent shall have been reserved, then on the amount of the half-yearly value of the tenement, to be fixed by the registrar.

34. Where a claim for rent or mesne profits, or both, is added to a plaint for the recovery of a tenement, an additional poundage shall be taken on the amount or amounts so claimed ; but where thereby the total amounts on which poundage would be taken shall exceed twenty pounds, the poundage shall be calculated on twenty pounds only.
35. In plaints for the recovery of tenements for non-payment of rent, all poundage shall, subject as aforesaid, be calculated on the amount of the half-yearly rent of the tenement.
36. In actions in which a perpetual injunction is claimed, the poundage shall be calculated as upon a claim for a sum of twenty pounds.
37. In proceedings under the Succession Duty Act, 1853, or the Finance Act, 1894, the poundage shall, subject as aforesaid, be calculated upon the amount in dispute.
38. In proceedings under the Charitable Trusts Acts, 1853 to 1887, fees shall be payable in accordance with Rules 13 to 16 and 19 of Order XLVIII.
39. In proceedings under the Charitable Trusts (Recovery) Act, 1891, the poundage shall be calculated on the annual income of the property in dispute, or if such income is not ascertained, then as upon a claim for a sum of twenty pounds.
40. In proceedings under the Court of Probate Act, 1857, or the Court of Probate Act, 1858, the poundage shall be calculated as upon a claim for a sum of twenty pounds.
41. For the hearing of a special case stated under the Agricultural Holdings (England) Act, 1908, and Order XL. Rule 3, twenty shillings ; to be paid by the party filing the case, or on whose application the case is stated(*a*).
42. In proceedings under the Agricultural Holdings (England) Act, 1908, and Order XL. Rule 4, for the removal of an arbitrator, or to set aside an award, the same fees shall be paid as would be payable in an action for a sum of twenty pounds (*b*).
43. In proceedings under the Merchant Shipping Act, 1894, the Literary and Scientific Institutions Act, 1854, or the London Buildings Act, 1894 (57 & 58 Vict. cap. ccxiii.), the poundage shall, subject as aforesaid, be calculated upon the amount in dispute, and if no amount is in dispute, or if the amount in dispute is not ascertained, then as upon a claim for a sum of twenty pounds. This paragraph shall not apply to proceedings before a court of survey under the Merchant Shipping Act, 1894, but the fees on such proceedings shall be regulated by General Rules made under the said Act.
44. In proceedings under the Friendly Societies Act, 1875, the Friendly Societies Act, 1896, the Building Societies Acts, or the Industrial and Provident Societies Act, 1893 (other than proceedings for winding up a building or industrial and provident society), the poundage shall, subject as aforesaid, be calculated upon the amount in dispute, and if no amount is in dispute, or if the amount in dispute is not ascertained, then as upon a claim for a sum of twenty pounds.
45. In proceedings under any Act not mentioned in this Schedule giving the court jurisdiction in any matter, such Act not being a County Courts

(*a*) Amended by Treasury Order, dated July 7th, 1909.

(*b*) By Treasury Order, dated January 17th, 1908, the fees prescribed by this paragraph shall be payable in respect of similar proceedings under the repealed Acts and Rules, where the accident happened before the commencement of the Act of 1906.

SCHEDULE (A.)—*continued.*

Act, the poundage shall, subject as aforesaid, be calculated upon the amount in dispute, and if no amount is in dispute, or if the amount in dispute is not ascertained, then as upon a claim for a sum of twenty pounds.

46.—(a) No court fee shall be payable under this Schedule by any party in respect of any proceedings by or against a workman under the Workmen's Compensation Act, 1906, or the Consolidated Workmen's Compensation Rules, July, 1913, in the county court prior to the award (*a*) (*b*).

(b) On an application for the settlement of any matter by arbitration under the said Act and Rules, when such application is not a proceeding by or against a workman, plaint and hearing fees shall be payable as in an ordinary action, and the poundage shall be calculated as upon a claim for a sum of twenty pounds.

(c) Where a notice of claim to contribution or indemnity is filed under the said Act and Rules, a fee shall be paid on an award on such claim, or on the hearing of such claim, in like manner as on entering judgment on a default summons under paragraph 5, or the hearing of an action, as the case may be.

(d) In proceedings under the said Act and Rules for the enforcement of an award, memorandum, or certificate, or an order for payment of costs, the same fees shall be taken as on the like proceedings for the enforcement of a judgment for the like amount given in an action, less, in any case in which fees for the issue, service or execution of any process are prescribed by Schedule (B.), the amount of such fees.

(e) On interpleader proceedings arising out of an execution issued for the enforcement of an award, memorandum, or certificate or an order for payment of costs under the said Act and Rules, fees shall be paid in like manner as on interpleader proceedings arising out of an execution issued in an action (*c*).

46A. In proceedings under the Money-lenders Act, 1900, section 2, subsection 1, the poundage shall, subject to paragraph 29, be calculated on the amount in dispute ; and if such amount cannot be ascertained, then as upon a claim for a sum of ten pounds.

47. In every case where the poundage cannot be calculated by any rule in this schedule, it shall be calculated on twenty pounds.

48. No increase of fees shall be made by reason of there being more than one plaintiff or defendant, except as before directed, where the number of defendants exceeds three.

	£	*s.*	*d.*
49. On every application under the Ballot Act, 1872, and Order L. Rule 5	1	0	0
50. For taking the acknowledgment of a married woman, where only one	1	0	0
And for every additional woman	0	10	0
51. For a warrant to replevy	0	2	6
52. For a replevin bond or deposit, where the alleged rent or damage does not exceed 20*l.*	0	10	6
53. For a replevin bond or deposit, where the alleged rent or damage exceeds 20*l.*	1	1	0

(*a*) See note (*b*), p. 1116.

(*b*) Amended by Treasury Order, dated November 18th, 1913.

(*c*) Paragraph 46 was substituted for previous paragraph by Treasury Order, dated May 30th, 1907.

SCHEDULE (A.)—*continued.*	£	*s.*	*d.*
54. For notice to distrainor	0	2	6
55. For every summons to a witness or subpœna to be served by a bailiff in a home district, if served within two miles of court house	0	1	0
For every mile beyond two	0	0	6
But the total fee to be taken is in no case to exceed 3*s.*			
56. For every summons to a witness or subpœna to be served by a bailiff in a foreign district	0	3	0
57. For every summons to a witness or subpœna to be served otherwise than by a bailiff	0	0	6
58. The fee for a summons or a subpœna to be served by a bailiff is not to be taken in cases in which a fee for the service of such summons or subpœna is prescribed by Schedule (B.), and the fee for a summons to be served otherwise than by a bailiff is not to be taken in cases in which a fee for the issue of such summons or subpœna is prescribed by Schedule (B.).			
59. For every sitting to take evidence under the Companies (Consolidation) Act, 1908, section 226 (*a*)	2	0	0
60. In proceedings under the Companies (Consolidation) Act, 1908, other than proceedings relating to the winding up of companies by the court and the fee for every sitting prescribed by paragraph 59, the fees shall be the same as those payable in respect of similar proceedings in actions or matters under the equitable jurisdiction of the county court (*a*) (*b*).			
61. On a notice of appeal under the National Insurance Act, 1911, section 66, or the National Insurance Act, 1913, section 27, sub-section 2, to include the hearing of the appeal (*c*)	1	0	0

For Fees under Emergency Legislation, see p. 1125.

SCHEDULE (B.).

PART I.

GENERAL.

Registrar's Fees.

	£	*s.*	*d.*
1. For examining, allowing, and filing every affidavit of debt or for leave to proceed as if personal service had been effected under section 86 of the Act, or under the Summary Procedure on Bills of Exchange Act, 1855, and Order VII. Rule 39, or an affidavit for leave to defend under the said section or the said Act, and for the order thereon, where the claim does not exceed 40*s.*	0	1	0
2. For the like, where the claim exceeds 40*s.*.	0	2	0
3. For entering writ under section 65 or section 66 of the Act, and sending notice to parties of day of trial, etc.	1	1	0
3A. On the entry of a plaint under the County Courts Act, 1903 (*d*)	0	10	0

(*a*) Substituted for previous paragraph by Treasury Order, dated July 7th, 1909.
(*b*) Amended by Treasury Order, dated May 15th, 1912, by insertion of the words, "by the court," in line 2.
(*c*) Added by Treasury Order, dated December 10th, 1915.
(*d*) Added by Treasury Order, dated February 22nd, 1906.

SCHEDULE (B.), PART I.—*continued.*	£	*s.*	*d.*
3B. On such an action being brought on for hearing, for signing judgment (*a*)	0	10	0
[NOTE.—Where an action commenced in one court is transferred for trial to another, the fees payable under the two preceding paragraphs (3A and 3B) are to be equally divided between the two registrars.]			
Where a plaint has been entered under the County Courts Act, 1903, for an amount exceeding 50*l.* and the plaintiff, before the action comes on for trial, abandons the amount in excess of 50*l.*, the fees payable under paragraphs 3B and 3C are still payable, as the action remains an action entered under the County Courts Act, 1903, although after the abandonment it is an action which could have been brought under the ordinary jurisdiction of the court.			
3C. On taxation of costs in such an action (*a*)	0	10	6
See note to paragraph 3B.			
4. Taxing costs in actions under section 65 or section 66 of the Act	0	5	0
5. On entry of plaint under section 59 or section 60 of the Act	1	1	0
Where the plaint has not been entered under section 60, and the judge certifies that the court has exercised jurisdiction under that section, the above fee of 1*l.* 1*s.* shall be paid.			
6. On every order for a new trial in an action tried under section 59 or section 60 of the Act	0	10	6
7. Taxing costs under either of the said last-mentioned sections 59 and 60	0	10	6
7A. For every certificate of judgment (*b*)	0	0	6
8. For sealing every warrant, order of commitment, precept, or writ issued from or on a judgment or order of a court other than a county court, or on an award, memorandum, or certificate under the Workmen's Compensation Act, 1906, and the Consolidated Workmen's Compensation Rules, July, 1913 (not being a sealing under section 158 of the Act), 6*d.* in the pound on the amount for which it issues, if such amount does not exceed ten pounds, and 4*d.* in the pound on any excess above ten pounds (*so that the total fee does not exceed* 8*s.* 4*d.*) (*c*).			
9. For issuing a judgment summons on a judgment or order of a court other than a county court, or on an award, memorandum, or certificate under the Workmen's Compensation Act, 1906, and the Consolidated Workmen's Compensation Rules, July, 1913 (*c*) (*d*).			
Where the amount for which such summons issues—			
does not exceed 40*s.*	0	1	0
exceeds 40*s.* but does not exceed 5*l.*	0	1	6
exceeds 5*l.* but does not exceed 10*l.*	0	2	0
exceeds 10*l.*	0	2	6

(*a*) Added by Treasury Order, dated February 22nd, 1906.
(*b*) Added by Treasury Order, dated August 2nd, 1906.
(*c*) Amended by Treasury Order, dated November 18th, 1913.
(*d*) By Treasury Order, dated January 17th, 1908, the fees prescribed by this paragraph shall be payable in respect of similar proceedings under the repealed Acts and Rules, where the accident happened before the commencement of the Act of 1906.

SCHEDULE (B.), PART I.—*continued.*	£	s.	d.
10. For drawing, sealing, and issuing every order under the following rules or any of them, including copy for service :—			
Order III. Rule 8			
Order V. Rule 11			
Order VII. Rules 50 (1) and 51 (2)			
Order IX. Rule 25.			
Order XII. Rules 1, 2, 3, and 5 to 8 . . .			
Order XII. Rule 10 (if application made before the trial)			
Order XIII. Rule 1			
Order XIV. Rule 11			
Order XV. Rules 1 and 3			
Order XVI. Rules 1 to 3, 10, 12, 16, 17, 19, 20, and 21 (*a*)	0	4	0
Order XVIII. Rules 18, 19, 20, and 26 . . .			
Order XXI. Rule 10 (other than an order made by the judge on the return day)			
Order XXII. Rule 16 (c)			
Order XXV. Rules 12, 13, 24, and 61 . . .			
Order XXVI. Rule 16			
Order XXVII. Rule 13			
Order XXXIII. Rules 12 and 13			
Order XLII. Rule 10			
Order LIV. Rules 11 and 12			
Provided that if the Schedule (A.) fee paid on the issuing of the plaint did not amount to 4*s.*, the fee for such order shall not exceed the amount of such plaint fee.			
10A. Where any money paid into court under Order IX. Rule 24, is ordered to be invested or to be paid out by instalments, there shall be allowed for such investment or payment out a fee (to be charged once only, and to be deducted from the sum ordered to be so invested or paid out) as follows :— For every 10*l.* or part of 10*l.* so invested or ordered to be paid out (but so that the total fee shall not exceed 50*s.*) (*b*)	0	5	0
11. For drawing, sealing, and issuing every notice or order under Order XVII. Rules 2, 3, and 4, or Order XXV. Rules 14 and 15, and altering the minute book	0	4	0
Provided that if the Schedule (A.) fee paid on the issuing of the plaint did not amount to 4*s.*, the fee for such notice or order shall not exceed the amount of such plaint fee.			
If such notice or order affects more actions or matters than one, or more persons than one, then for each person more than one on whom such notice or order is required to be served, an additional fee of . .	0	1	0
12. For drawing, sealing, and issuing every order on an interlocutory application made under Order XII. Rule 11, pursuant to any statute other than the Act or any Act mentioned in this Schedule, where no other fee is prescribed for such order, including copy for service . . .	0	4	0

(*a*) Amended by Treasury Order, dated May 15th, 1912.
(*b*) Added by Treasury Order, dated May 15th, 1912.

SCHEDULE (B.), PART I.—*continued.*	£	*s.*	*d.*
13. For drawing, sealing, and issuing every special judgment or order, where the court exercises jurisdiction under the Supreme Court of Judicature Act, 1873, or under the National Insurance Acts, 1911 and 1913, including copy for service (*a*)	0	15	0
14. For every sitting before the registrar under— Order XII. Rule 4 / Order XVIII. Rules 18, 19, and 25 / Order XXV. Rules 5 and 71	0	10	0
15. Where the sitting is longer than one hour, for every additional hour or part of an hour	0	7	0
16 Where the registrar is required to attend elsewhere than at the court or office (in addition to the above)	0	10	0
17. Mileage one way, each mile	0	0	6
18. For every notice, receipt, or summons under— Order X. Rule 4 / Order XVI. Rule 23 / Order XXI. (other than a notice under Rule 8) / Order XXII. Rule 18 (except where a fee is payable under Order XIV. Rule 11) / Order XXV. Rules 58 and 59 / Order XLII. (A) (*b*)	0	2	6
19. For issuing every warrant of attachment	0	2	0
20. For every application under Order XXV. Rule 62 or Rule 63	0	10	0
21. For every order for substituted service or service out of England and Wales under Order VII. Rule 40 or Rules 41 and 44—			
Where the claim does not exceed 40*s.*	0	1	0
Where the claim exceeds 40*s.*	0	2	0
For every notice under Order VII. Rule 46 or Rule 47	0	2	6
22. For auditing receiver's accounts in any action or matter—			
Where the sum in the account does not exceed 100*l.*	0	5	0
For every additional 50*l.* or fraction thereof	0	2	6
23. For drawing, sealing, and filing every order under the Ballot Act, 1872, and Order L. Rule 5, including copy for service	0	10	0
If more than one copy of such order to be served, for each additional copy, per folio	0	0	4
24. On proceedings under the Agricultural Holdings (England) Act, 1908, or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, and Order XL. (*c*)—			
On every application for the appointment or change of a guardian under Order XL. Rule 1, including drawing, sealing, and issuing the order on such application	0	5	0
For filing every application or special case under Order XL. Rule 2 (1), (2), Rule 3 (2), or Rule 7 (1)	0	2	6
For every order for short service under Order XL. Rule 2 (3) or Rule 7 (4), including copy for service	0	2	6

(*a*) Amended by Treasury Order, dated December 10th, 1915.
(*b*) Added by Treasury Order, dated December 10th, 1915.
(*c*) Amended by Treasury Order, dated July 7th, 1909.

SCHEDULE (B.), PART I.—*continued.*	£	*s.*	*d.*
If more than one copy of such order to be served, for each additional copy, per folio	0	0	4
For every notice under Order XL. Rule 3 (3), to be paid by the party filing the case, or on whose application the case is stated	0	2	6
For every notice under Order XL. Rule 4 (7), to be paid by the applicant	0	2	6
For filing every affidavit under Order XL. Rule 2 (4), Rule 4 (12), or Rule 7 (4)	0	1	0
Where hearing takes place at another court under Order XL. Rule 4 (16), to the registrar of such other court, for his duties under that rule	0	10	0
For settling, sealing, and filing every order under the following rules or any of them, including copy for service :— Order XL. Rule 2 (6). Order XL. Rule 3 (5), to be paid by the party filing the case, or on whose application the case is stated. Order XL. Rule 4 (15). Order XL. Rule 7 (5).	0	5	0
If more than one copy of such order to be served, for each additional copy, per folio	0	0	4
For every notice under Order XL. Rule 5 (2), to be paid by the applicant	0	2	6
For every taxation of costs of an arbitration and award, including certificates of result of taxation, where the amount of the account to be taxed does not exceed 50*l.*	0	10	0
And for every additional 50*l.* or fractional part of 50*l.*	0	10	0
For every taxation of costs on an application for the removal of an arbitrator, or to set aside an award	0	5	0
25. On proceedings under the Employers' Liability Act, 1880, and Order XLIV.—			
For forwarding copy of application for assessors, Order XLIV. Rule 7	0	2	6
For every summons to an assessor (other than an assessor appointed by the judge under Order XLIV. Rule 11), to be paid by the party nominating such assessor	0	2	6
For every taxation of costs—			
Where the sum recovered (or, in case of a defendant, the sum claimed) does not exceed 100*l.*	0	7	0
Where such sum exceeds 100*l.*	0	10	0
26. On proceedings under the Workmen's Compensation Act, 1906, and the Workmen's Compensation Rules, 1907 (when applicable), and the Consolidated Workmen's Compensation Rules, July, 1913 (*a*).			
(N.B.—*These fees, with the exception of Nos. 6 and 7, are not to be taken in respect of proceedings by or against a workman prior to the award.*)	£	*s.*	*d.*
1. On the filing of a special case under Rule 34	0	5	0
2. On an order for the detention of a ship, an order of release, a bail bond, or an affidavit of justification, under the Workmen's Compensation Act, 1906, or the Shipowners' Negligence (Remedies) Act, 1905	0	7	6

(*a*) This paragraph was substituted for previous paragraph by Treasury Order, dated November 18th, 1913.

SCHEDULE (B.), PART I.—*continued.*	£	*s.*	*d.*
3. On an order adding a respondent under Rule 41 (4) .	0	4	0
4. On an application to rectify the register or to remove a record from the register under Schedule 2, paragraph 9 (c) or (e), and Rule 50 or Rule 52	0	4	0
5. For preparing a certificate under section 1, sub-section 4, and Rule 54	0	5	0
6. On an application for a reference to a medical referee under Schedule 1, paragraph 15, the fee prescribed by Rule 57 (9).			
7. On a reference to a medical referee in accordance with regulations made by the Secretary of State pursuant to section 8 (1) (f)	0	10	0
8. On an application for the suspension of the right to compensation or to take proceedings, or of the right to weekly payments under, Schedule 1, paragraphs 4, 14 or 15, and Rule 58	0	4	0
8A. On a payment into court under Rule 53, Rule 60, Rule 61, Rule 62, or Rule 65, but the aggregate of such fees in any one case in which compensation is ordered to be paid into court by instalments shall not exceed the investment fee under item (12) which would have been chargeable had one investment been ordered of the total amount of compensation (*a*)	0	5	0
9. On an application for investment, etc., under Schedule 1, paragraph 5, and Rule 60, Rule 61, Rule 62 or Rule 65.	0	4	0
10. On an application for the payment of weekly payments into court under Schedule 1, paragraph 7, and Rule 63 (3) .	0	4	0
11. On an application for the variation of an order under Schedule 1, paragraph 9, and Rule 64 . . .	0	4	0
11A. The fee mentioned in the last preceding item is not to be taken on an application under the liberty to apply reserved by paragraph 13 of Rule 60, but on any such application there shall be allowed a fee (which shall be deducted from the fund to which the application relates) of	0	2	0
12. For every investment made by a registrar, including the payment out or application of a sum allotted to any person by weekly or other periodical payments (charged once only, and to be deducted from the sum ordered to be invested or allotted). For every 10*l.*, or part of 10*l.*, invested, but so that the total fee shall not exceed 50*s.*.	0	5	0
13. On an application for a reference to a medical referee under Schedule 1, paragraph 18, and Rule 66 . . .	0	4	0
14. For a certificate of identity under Rule 66 (10) (c) . .	0	5	0
15. For receiving and forwarding any sum due to a workman or the representatives of a deceased workmen residing out of the United Kingdom under Rule 66 (15) or Rule 67 (4) (to be deducted from the sum to be forwarded)	0	5	0
16. For every taxation of the costs of an award, or between third parties and other parties to an arbitration . .	0	10	0

(*a*) Amended by Treasury Order, dated December 10th, 1915.

SCHEDULE (B.), PART I.—*continued.*	£	*s.*	*d.*
17. For every other taxation of costs	0	5	0
18. On an application to the judge under Rule 80 (3 to 5) at a date subsequent to the hearing of the arbitration . .	0	4	0
19. On an application to the judge under Rule 81 (e) other than an application for an order for execution to issue .	0	4	0
20. For examining every affidavit or taking other evidence in support of an application for issue of execution or a judgment summons under Rules 82 (3) or 83 (2) . .	0	1	6
21. On an application to set aside or vary an award or order under Rule 85	0	4	0
22. For every office copy or certified copy of documents filed or records made in reference to any matter, per folio .	0	0	4
23. For every sitting under Rule 37	0	10	0
24. On any other proceeding, not herein specified, for which, if such proceedings were taken in an action, a fee would be payable, the fee which would be payable if such proceeding were taken in an action. The fees prescribed in Sections 5, 12, 16, 17, 18, 19, 20, 21, and 22 of this paragraph are payable in respect of similar proceedings under the Workmen's Compensation Acts, 1897 and 1900, and the Workmen's Compensation Rules, 1898 to 1900, when the accident happened before the commencement of the Workmen's Compensation Act, 1906.			
27. Where the court exercises its powers under the Money-lenders Act, 1900, section 1 :—			
For every sitting before the registrar to take accounts, for every hour or part of an hour	0	5	0
For settling, sealing, and issuing every order containing special directions by the judge, including copy for service	0	5	0
28. For copies of every proceeding or document under Order II. Rule 7 (not being a certified copy of a judgment or order according to Form 155), per folio	0	0	4
29. Taxing costs in any action or matter not hereinbefore mentioned—			
Where the amount recovered (or in the case of a defendant, the amount claimed) exceeds 50*l.* but does not exceed 100*l.*	0	7	0
Where such amount exceeds 100*l.*	0	10	0

Where the amount originally claimed in an action does not exceed 50*l.*, and the judge certifies under section 119 of the Act for costs on column C, the certificate of the judge does not imply that the action should be treated as if the amount claimed exceeded 50*l.*, and therefore no taxing fee is payable to the registrar under this item.

30. Taxing costs between solicitor and client, under section 118 of the Act, and Order LIII. Rule 46.			
Where the amount of the account to be taxed does not exceed 25*l.*	0	5	0
And for every additional 25*l.*, or fractional part of 25*l.*, an additional fee of	0	5	0

Where in an action on a solicitor's bill of costs, judgment is given for the plaintiff subject to taxation, no taxing fee is payable to the registrar for

SCHEDULE (B.), PART I.—*continued.* £ s. d.

taxing the bill. The ascertainment of the question of amount is not a taxation, but a reference to a skilled tribunal to ascertain the correct amount due to the plaintiff (*Lumsden* v. *Shipcote Land Property Co.*, (1906) 2 K. B. 433, referred to on page 1107). Although not entitled to a taxing fee, the registrar may be entitled to retain, for the use of himself, one-half of the hearing fee under Schedule (A), paragraph 9.

31. For every bond with sureties 0 5 0

32. For making a return to a writ of *certiorari*, for costs out of pocket 0 15 0

33. For issuing duplicate plaint note, warrant, order, or any document issued by the court, under Order VII. Rule 1, or Order LIV. Rule 26 . . . . . 0 0 6

Where any such plaint note refers to more than 10 actions, for every 10 actions or fractional number above 10 . 0 0 6

DEEDS OF ARRANGEMENT ACT, 1914 (*a*).

33A. On applying to give security under a deed of arrangement pursuant to sect. 11 (1) of the Act:—

For taking security and giving certificate, where the estimated assets available for distribution amongst the unsecured creditors, as shown by the affidavit filed on registration, are—

less than 100*l.* 0 10 0

in all other cases 1 0 0

33B. On any proceedings under sects. 3 (1), 3 (4), 11 (2), 16, 18 or 23, or under Rule 22 of the Deeds of Arrangement Rules, 1915, the like fee payable on a similar proceeding under the Bankruptcy Act and Rules, unless jurisdiction in equity is exercised and there is no fee for a similar proceeding in bankruptcy, in which case fees shall be chargeable under Part II. of this schedule.

FEES UNDER SPECIAL WAR OR EMERGENCY LEGISLATION.

COURTS (EMERGENCY POWERS) ACTS, 1914 TO 1917 AND THE CONSOLIDATED COURTS (EMERGENCY POWERS) RULES, 1916 (*b*).

Fees.

The following fees shall be payable under the Treasury Order regulating fees in the county courts, on proceedings under the Acts and these Rules, in lieu of all other fees heretofore prescribed on such proceedings, viz:—

(1) On any notice of application under—

Rule 1, paragraph 2,
Rule 2, paragraph (ii.),
Rule 4, paragraph (ii.),
Rule 5, paragraph 2,
Rule 7, paragraph 2,

a fee under Schedule (B.), Part I., of the Fees Order, of 6*d.* in the *l.* or part of a *l.* on the amount of the subject-matter of the application, not exceeding 2*s.* 6*d.*

(*a*) Added by Treasury Order, dated December 28th, 1914, and amended by Treasury Order, dated December 10th, 1915.

(*b*) Prescribed by Rule 25 of the Consolidated County Courts (Emergency Powers) Rules, 1916, dated August 23rd, 1916.

SCHEDULE (B.) PART I.—*continued.* £ s. d.

The fee on a notice of application shall include drawing, sealing, and issuing the order (if any), other than an order for the appointment of a receiver, and the fee prescribed by paragraph 12 of Schedule (B.), Part I., of the Fees Order shall not be taken,

(2) On any summons under Rule 11—

(a) a fee under Schedule (B.) of the Fees Order of 6*d.* in the *l.* or part of a *l.* on the amount of the subject-matter of the summons, not exceeding 2*s.* 6*d.* (*a*).

(b) for drawing, sealing, and issuing the order (if any), a fee under Schedule (B), Part I., of the Fees Order of 6*d.* in the *l.* or part of a *l.* on the amount of the subject-matter of the summons, not exceeding 2*s.* 6*d.*, and the fee prescribed by paragraph 12 of Schedule (B), Part I., of the Fees Order shall not be taken.

(3) On summonses to witnesses, the fees prescribed by Schedule (A.) of the Fees Order shall be taken.

(4) On applications for discovery or inspection of documents, and on applications for the revocation or variation of orders, fees in accordance with paragraph 2, sub-paragraph (b), of this Rule shall be taken.

(5) The court may remit or excuse in whole or in part any fees paid or payable under this rule, other than the fee prescribed by paragraph 2, sub-paragraph (b).

INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915, THE INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) RULES, 1916 (*b*).

(1) The following fees shall be payable under Schedule (B.), Part I., of the Treasury Order regulating Fees in the County Courts, on applications under the Act and these Rules, in lieu of all other fees on such proceedings, viz. :—

	£	s.	d.
On an application for the determination of a question as to the increase of rent of a dwelling-house, 6*d.* in the *l.* or part of a *l.*, calculated on four weeks' standard rent of the dwelling-house, but not exceeding	0	2	6
On an application for the apportionment of rent or rateable value	0	10	0
On an application for an order authorising a mortgagee to call in and enforce a mortgage	1	0	0

The foregoing fees shall include drawing, sealing, and issuing the certificate or order, and the fee prescribed by paragraph 12 of Part I., of Schedule (B.), of the Fees Order shall not be taken.

(2) On summonses to witnesses, the fees prescribed by Schedule (A.), of the Fees Order shall be taken.

(*a*) Schedule (B.) substituted for Schedule (A.) by Rule 5 of the County Courts (Emergency Powers) Rules, 1917, dated October 4th, 1917.

(*b*) Prescribed by Rule 16 of the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916, dated January 29th, 1916.

SCHEDULE (B.), PART I.—*continued.* £ s. d.

(3) On applications for discovery or inspection of documents and on applications for variation of certificates or orders, the fees prescribed by paragraphs 10 and 12 of Part I. of Schedule (B.) of the Fees Order shall be taken.

(4) The court may remit or excuse in whole or in part any fee paid or payable under this Rule.

INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) RULES, 1916 (No. 2) (*a*).

A fee of 10*s.* shall be payable under Schedule (B.), Part I., of the Treasury Order regulating fees in the county courts on an application under these Rules for an order authorising the grant of a lease; and the provisions of Rule 16 of the Principal Rules shall apply.

TRADING WITH THE ENEMY AMENDMENT ACT, 1914, AND THE COUNTY COURTS TRADING WITH THE ENEMY (APPLICATION OF PROPERTY) RULES, 1915 (*b*).

The following fee shall be payable under Schedule (B.), Part I., of the Treasury Order regulating fees in the county courts on proceedings under these Rules, viz.:

On any notice of application 0 2 6

The fee prescribed by this Rule shall include drawing, sealing and issuing the order, and the fee prescribed by paragraph 12 of Schedule (B.), Part I., of the Fees Order shall not be taken, but this Rule shall not affect the fees payable on orders for substituted service.

The judge may remit or excuse in whole or in part any fees paid or payable under this Rule.

BILLETING OF CIVILIANS ACT, 1917, AND THE COUNTY COURT (BILLETING OF CIVILIANS) RULES, 1917 (*c*).

The following fees shall be payable under Schedule (B), Part I., of the Treasury Order regulating fees in the county courts on proceedings under the Act and these Rules.

1. On an application to the county court for a certificate as to the amount of compensation payable . 6*d.* in the £ Maximum 10*s.*

For each copy of the summons to be served . . 0 0 6

For each copy of the certificate to be served . . 0 0 6

The foregoing fees shall include drawing, sealing, and issuing the certificate, and the fee prescribed by paragraph 12 of Part I. of Schedule (B) of the Fees Order shall not be taken.

2. On summonses to witnesses, the fees prescribed by Schedule (A) of the Fees Order shall be taken.

(*a*) Prescribed by Rule 10 of the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916 (No. 2), dated June 26th, 1916.

(*b*) Prescribed by Rule 10 of the County Courts Trading with the Enemy (Application of Property) Rules, 1915, dated February 15th, 1915.

(*c*) Prescribed by Rule 8 of the County Court (Billeting of Civilians) Rules, 1917, dated July 31st, 1917.

SCHEDULE (B.), PART I.—*continued.*	£	*s.*	*d.*
3. On an appeal against a certificate or order the like fee shall be taken under Schedule (B) as on an application for a certificate, but the fees for service shall not be taken.			
4. The Court may remit or excuse in whole or in part any fee paid or payable under this Rule.			
High Bailiff's Fees.			
34. For every default summons to be served by a bailiff . .	0	1	0
And where there are more defendants than one, for each defendant to be served by a bailiff	0	1	0
34A. For every ordinary or default summons to be served by a bailiff after amendment in accordance with Order VII. Rule 5A or Rule 30A	0	1	0
And where there are more defendants than one on whom such amended summons is to be served by a bailiff, for each defendant to be so served (*a*)	0	1	0
35. For keeping possession of goods till sale on any process of execution, or any warrant of delivery under Order XXV. Rule 69, per day (including expenses of removal, storage of goods, and all other expenses), not exceeding seven days, sixpence in the pound on the value of the goods seized, to be fixed by appraisement in case of dispute, *so that the total fee does not exceed* 10*s. per day ;* and, in addition, for feeding animals, the actual cost thereof.			
36. Where possession is kept after the seventh day, at the written request of both parties, the fees and cost allowed under the preceding paragraph may be allowed for a reasonable further time in respect of such possession against the debtor or his estate.			
37. For keeping possession of goods in an interpleader proceeding or where notice of a claim to or in respect of any goods or chattels taken in execution is sent to an execution creditor under Order XXVII. Rule 1, after the seventh day, and for taking charge of and feeding animals, in addition to the possession fees and cost as above on execution of warrant, costs out of pocket to be allowed by the judge (*b*).			
38. For keeping possession of goods in an interpleader proceeding transferred from the High Court under Order XXXIII. Rules 13 and 15, such reasonable charges, not exceeding those which might be made by the sheriff, as the judge may order ; and for appraisement (if required) and sale, the same charges as are allowed on a sale under an execution issued by a county court.			
39. For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the fees allowed to the broker by section 154 of the Act, the sum actually and necessarily paid.			
40. When no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, there may be allowed all			

(*a*) Added by Treasury Order, dated May 15th, 1912.
(*b*) Amended by Treasury Order, dated October 22nd, 1907.

SCHEDULE (B.), PART I.—*continued.*

£ s. d.

charges actually and necessarily incurred for inventory, appraisement, cataloguing, lotting and preparing for sale, not exceeding 1*s.* in the pound on the value of the goods seized, if such value does not exceed ten pounds, and 8*d.* in the pound on any excess above ten pounds, the value to be fixed by appraisement in case of dispute, and, in addition, any sum actually and necessarily paid for advertising under the last preceding paragraph.

41. For service of every judgment summons issued on a judgment or order of a court other than a county court, or on an award, memorandum, or certificate under the Workmen's Compensation Act, 1906, and the Consolidated Workmen's Compensation Rules, July, 1913, a fee equal to that charged under Schedule (A.) on the issue of a judgment summons for the like amount on a judgment or order of a county court, *so that the total fee does not exceed* 5*s.* (*a*).

42. For executing every warrant, order of commitment, precept, or writ issued from or on a judgment or order of a court other than a county court, or on an award, memorandum, or certificate under the Workmen's Compensation Act, 1906, and the Consolidated Workmen's Compensation Rules, July, 1913, 1*s.* in the pound on the amount for which it issues, if such amount does not exceed ten pounds, and 8*d.* in the pound on any excess above ten pounds, *so that the total fee does not exceed* 16*s.* 8*d.*; and for keeping possession, appraisement, advertising, and sale, or for inventory, appraisement, cataloguing, lotting and preparing for sale, and advertising, where no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, the same allowances as under a warrant of execution on a judgment or order of a county court (*a*).

42A. Where the high bailiff is directed to detain a ship under the Workmen's Compensation Act, 1906, or the Shipowners' Negligence (Remedies) Act, 1905, the same fees for execution of the order for detention and for keeping possession of the vessel as for executing a warrant of arrest and keeping possession of a vessel in an Admiralty action where the amount claimed exceeds 100*l.*, being part of the costs, charges and expenses attending the custody of the ship (Rule 39 (8)) (*a*) (*b*).

42B. On any proceeding under the Workmen's Compensation Act, 1906, and the Consolidated Workmen's Compensation Rules, July, 1913, not herein specified (not being a proceeding by or against a workman prior to the award) for which, if such proceeding were taken in an action a fee would be payable, the fee which would be payable if such proceeding were taken in an action (*a*) (*b*) (*c*).

(*a*) Amended by Treasury Order, November 18th, 1913.

(*b*) Added by Treasury Order, May 30th, 1907.

(*c*) By Treasury Order, January 17th, 1908, the fee prescribed by this paragraph shall be payable in respect of proceedings under the repealed Acts and Rules, where the accident happened before the commencement of the Act of 1906.

SCHEDULE (B.), PART I.—*continued.*	£	*s.*	*d.*
43. For executing any order for the detention, preservation, or interim custody, or for taking possession of any property or thing under Order II. Rules 38 to 40, or Order XII. Rules 1 to 3, or Order XXVII. Rule 13, the same fees as for keeping possession of goods on a process of execution, not exceeding seven days, and after the seventh day costs out of pocket to be allowed by the judge; and for appraisement (if required), advertising, and sale, the same allowances as on a warrant of execution on a judgment of the court.			
44. For delivering the goods on completion of a replevin bond together with 6*d.* a mile from the court house to the place where the goods are	1	1	0
45. For service (including proof of service) of any notice under Order XXV. Rule 58 or 59, or any order authorising the issue of a warrant of attachment	0	2	6
46. For executing any warrant of attachment . . .	0	10	0
47. For affidavit of service of an order for the recovery or for the delivery of the possession of land, and of disobedience thereto, Order XXV. Rule 68	0	2	6

SCHEDULE (B.)—*continued.* PART II.

Fees in Equitable Actions or Matters only, unless otherwise mentioned.	Where the Subject-matter of the Action or Matter					
	Does not exceed 100*l.*			Exceeds 100*l.*		
Registrar's Fees.	£	*s.*	*d.*	£	*s.*	*d.*
1. For duties to be performed under Order XXXVIII. Rules 9 to 22 inclusive, to be charged once only in the matter	0	10	0	0	15	0
2. On transfer of proceedings from the Chancery or Probate Division of the High Court of Justice, or of interpleader proceedings under the Supreme Court of Judicature Act, 1884: for perusing and filing papers, application to judge, drawing directions to proceed, and notice to parties	1	1	0	1	1	0
3. For attesting admission of defendant and filing, Order IX. Rule 5	0	3	6	0	5	0
4. For filing statement of defendant, or notice by plaintiff of discontinuance of action, Order IX. Rules 1 and 5	0	2	6	0	4	0
5. For settling draft order on an *ex parte* or interlocutory application, and the order as made, Order XII. Rules 5, 6, 7 and 8	0	10	0	0	15	0
6. For drawing and filing order of transfer, under Order XXXIII. Rule 5, and transmitting order and papers	0	10	0	0	15	0
7. For drawing, filing, and sealing every special order or judgment (other than orders obtained *ex parte* or on interlocutory applications under Order XII.), and every final order, including copy for service	0	15	0	1	5	0
8. If more than one copy of such order or judgment to be issued, for each additional copy, per folio	0	0	4	0	0	4
9. For every order for further directions under Order XXIV. Rule 37	0	7	0	0	12	0
10. For filing or recording every order by judge for adjournment	0	2	6	0	4	0
11. For drawing advertisements and inserting	0	5	0	0	7	0
12. For every sitting on which the registrar is employed in settling conditions and contracts or fixing reserved biddings, or in taking accounts, making inquiries or acting as a special examiner under Order XXIII. Rule 18, or Order XXIV. Rules 1 and 2, or Order XVIII. Rules 18, 19, and 25	0	10	0	0	10	0
13. Where the sitting is longer than one hour, then for every additional hour or part thereof	0	7	0	0	7	0
14. Where the registrar is required to attend elsewhere than at the court or office (in addition to the above)	0	10	0	1	0	0
15. Mileage one way, each mile	0	0	6	0	0	6
16. For certificate under Order XXIV. Rule 27	0	15	0	1	10	0

SCHEDULE (B.), PART II.—*continued.*

Fees in Equitable Actions or Matters only, unless otherwise mentioned.	Where the Subject-matter of the Action or Matter					
	Does not exceed 100*l.*			Exceeds 100*l.*		
Registrar's Fees—*continued.*	£	*s.*	*d.*	£	*s.*	*d.*
17. For making and transmitting note of order under Order XXXVI. Rule 2.	0	2	6	0	3	6
18. For every inspection of certificate, Order XXIV. Rule 31	0	1	0	0	2	0
19. For filing and sealing every affidavit or other document, not being a document annexed to an affidavit, or a document for which a fee is herein provided	0	1	0	0	1	0
20. For every application for a search and searching.	0	2	0	0	2	0
21. For issuing every warrant	0	2	0	0	3	0
22. For giving every notice required by any order, except as hereafter mentioned	0	2	0	0	2	6
23. Where the notices are given under Order III. Rules 27 and 28	0	3	0	0	5	0
24. For every office copy, per folio	0	0	4	0	0	4
25. For every taxation of costs other than a taxation under Order XXXVIII. Rule 11	0	7	0	0	10	0
26. For every bond with sureties	0	5	0	0	7	6
27. For every summons under Order XXIV. Rule 2	0	1	6	0	1	6
28. Where hearing takes place at another court under Order XXXIII. Rule 13, to the registrar of such other court for his duties under that rule.	0	10	0	0	15	0
High Bailiff's Fees.						
29. For service within home district of every summons, petition, subpœna, notice, judgment, or order, not being a summons for commitment or a summons to a juror—						
If within one mile of court house	0	2	6	0	4	0
If beyond one mile, then for every additional mile or part of a mile	0	0	6	0	0	6
Where more than one person has actually to be served, the High Bailiff is entitled to charge the fee in respect of each person to be served under this item in the same way as under item 30, but where service is accepted by a solicitor on behalf of all the defendants or respondents then only one fee can be taken.						
30. For service of every summons, petition, subpœna, notice, judgment, or order (except as aforesaid), in a foreign district, each person to be served	0	4	0	0	5	0
31. Where service is ordered to be personal, then an additional fee of	0	2	6	0	2	6
32. For the execution of each warrant within home district	0	7	6	0	10	0
With an allowance of mileage, double the amount of the allowance on summonses.						
33. For the execution of each warrant in a foreign district	0	10	0	0	15	0

SCHEDULE (B.), PART II.—*continued.*

Fees in Equitable Actions or Matters only, unless otherwise mentioned.	Where the Subject-matter of the Action or Matter	
	Does not exceed 100*l.*	Exceeds 100*l.*
High Bailiff's Fees—*continued.*	£ *s.* *d.*	£ *s.* *d.*
34. For keeping possession under a warrant of execution, advertising, appraisement, and sale, or for inventory, appraisement, cataloguing, lotting and preparing for sale, and advertising, where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, the same allowances as under a warrant issued by the court in the exercise of its ordinary jurisdiction.		
35. Superintending sale, whether by auction or private contract, under Order II. Rule 38, or Order XXIII. Rule 23, making out account, and paying money into court, 2*l.* per cent. on first 50*l.* so paid, and 1*l.* per cent. on all afterwards.		

N.B.—The fees in equitable actions or matters shall be payable in actions or matters under sections 67, 68, 69, 70, and 71 of the Act; the Succession Duty Act, 1853, section 50; the Court of Probate Acts, 1857 and 1858; the Partition Acts, 1868 and 1876; the Solicitors Act, 1870; the Local Loans Act, 1875, sections 12 and 25; the Commons Act, 1876, section 30; the Rivers Pollution Prevention Acts, 1876 and 1893; the Sale of Exhausted Parish Lands Act, 1876; the Married Women's Property Act, 1882, section 11; the Settled Land Acts, 1882 to 1890; the Judicature Act, 1884, section 17; the Guardianship of Infants Act, 1886; the Lunacy Act, 1890, sections 132 and 300; the Open Spaces Act, 1890; the Trustee Act, 1893; the Finance Act, 1894, section 10; the London Buildings Act, 1894, section 196; the Judicial Trustees Act, 1896 (but subject to the provisions of the Judicial Trustee Rules, 1897); and the Inebriates Act, 1898, section 12, and in proceedings under the Companies (Consolidation) Act, 1908, other than proceedings relating to the winding-up of companies by the court; but such fees shall not be payable in proceedings in which the court exercises its powers under the Money-lenders Act, 1900, section 1. (*a*)

Subject to the provisions of Order XIII. Rule 14, an application for the appointment of a receiver by way of equitable execution shall for the purposes of fees be treated as an interlocutory application in an equitable action or matter.

Where the amount or value of the subject-matter of the action or matter is not disclosed by the plaint or petition, it shall be taken not to exceed 100*l.*, and the fees charged accordingly. If, however, the judge shall subsequently certify that the amount or value of the subject-matter does exceed 100*l.*, the difference between the fees up to that time taken and those that would have been taken had it exceeded 100*l.* may then be taken.

The fees payable in equitable actions or matters shall be payable in actions or matters under the Licensing Act, 1904. (*b*)

(*a*) Amended by Treasury Orders, dated July 7th, 1909, and May 15th, 1912.
(*b*) Added by Treasury Order, dated February 22nd, 1906. The Act of 1904 was repealed by the Licensing (Consolidation) Act, 1910.

SCHEDULE (B.)—*continued.*

PART III.

Fees in Admiralty Actions.	Where the Amount claimed: Does not exceed 100*l.*			Where the Amount claimed: Exceeds 100*l.*		
Registrar's Fees.	£	*s.*	*d.*	£	*s.*	*d.*
1. On every warrant of arrest of a vessel or property	0	5	0	0	7	6
2. ,, order of release	0	5	0	0	7	6
3. ,, bail bond	0	5	0	0	7	6
4. ,, affidavit of justification . . .	0	2	6	0	2	6
5. ,, subpœna or summons to a witness .	0	2	0	0	3	0
6. ,, notice of hearing or rehearing . each	0	1	6	0	2	6
7. Summons for the attendance of an assessor at the hearing of any action or reference . . each	0	1	6	0	2	6
8. For every order of transfer of action or sale or order for consolidation of actions . . .	0	10	0	0	15	0
9. Where a special court is to be held for the trial of the action	1	5	0	1	15	0
10. Where the court is to sit for the hearing or part hearing of an action beyond three miles from registrar's office, then in addition . . .	0	15	0	0	15	0
11. Mileage one way from office to place of sitting, for each mile	0	0	6	0	0	6
12. When the registrar cannot return the same night	1	1	0	1	1	0
13. For drawing final judgment	0	10	0	0	15	0
14. For filing every affidavit or other document, not being a document annexed to an affidavit .	0	1	0	0	1	0
15. For every office copy of a document in the English language . . . . . per folio	0	0	4	0	0	4
16. For office copies of papers in a foreign language, or of shorthand writers' or reporters' notes, or of abstracts or translations made in the office, in addition to the above fees, the charges of the copyist, shorthand writer, reporter, or translator		—			—	
17. On a receipt for money or for papers (*only one fee to be taken, however many may be the papers delivered in at one time*)	0	1	0	0	1	0
18. For inspecting any preliminary act, or from a person who is not a party in the action, nor his solicitor, nor the clerk of the solicitor, on examining the court books in respect of any action	0	1	0	0	1	0
19. For every summons for commitment . .	0	3	0	0	5	0

SCHEDULE (B.), PART III.—*continued.*

Fees in Admiralty Actions.	Where the Amount claimed					
	Does not exceed 100*l.*			Exceeds 100*l.*		
Registrar's Fees—*continued.*	£	*s.*	*d.*	£	*s.*	*d.*
20. For every warrant of execution against goods, order of commitment, or order for appraisement or sale of vessel or property, or warrant of execution against vessel or property . . .	0	5	0	0	7	6
21. On examining the documents in any action in which no proceedings are pending, and which has been terminated within the last two years .	0	2	6	0	2	6
22. Ditto ditto, if beyond that period . .	0	3	6	0	3	6
23. For every sitting in which the registrar is employed as an examiner on the cross-examination of sureties, or on a reference, or for the assessment of damages, where the amount claimed exceeds 20*l.*	0	7	0	0	10	0
24. When the sitting is longer than one hour, then for every additional hour or part of an hour. .	0	5	0	0	7	0
25. Where the registrar shall be required to attend elsewhere than at the court or office (in addition to the above)	0	10	0	1	0	0
26. Mileage one way from the office to the place of sitting, for each mile	0	0	6	0	0	6
27. For report under Order XXXIX. Rule 101 .	0	10	0	0	15	0
28. For making and transmitting note of judgment or order under Order XXXVI. Rule 2. . .	0	2	6	0	3	6
29. For every notice under Order XXXIX. Rules 57 or 59	0	3	0	0	5	0
30. For every order for substituted service under Order XXXIX. Rules 15, 18, or 60. . .	0	2	0	0	3	0
31. For every order directing notice of judgment or order to be given under Order XXXIX. Rule 61	0	3	0	0	5	0
32. For drawing advertisements and inserting . .	0	5	0	0	7	0
33. For taxation of costs	0	5	0	0	7	0
High Bailiff's Fees.						
34. For service of every summons, subpœna, judgment, order, or notice	0	2	6	0	4	0
And reasonable expenses for travelling and maintenance		—			—	
35. Where service is ordered to be personal, then an additional fee of	0	2	6	0	2	6
36. Attendance at special court, if required by judge	0	7	6	0	15	0
37. For execution of warrant of arrest of vessel or property	0	15	0	1	0	0
And reasonable expenses for travelling and maintenance		—			—	

SCHEDULE (B.), PART III.—*continued.*

Fees in Admiralty Actions.	Where the Amount claimed					
	Does not exceed 100*l.*			Exceeds 100*l.*		
High Bailiff's Fees—*continued.*	£	*s.*	*d.*	£	*s.*	*d.*
38. For keeping possession of vessel or property under warrant of arrest, to include the cost of a vessel-keeper, if required, per day	0	5	0	0	5	0
39. For service of summons for commitment . .	0	4	0	0	8	0
40. For execution of order of commitment . .	1	0	0	1	10	0
41. For execution of warrant of execution against goods in action *in personam*, or against the goods of parties giving bail and their sureties in action *in rem* [Form 403]	1	0	0	1	10	0
42. And for keeping possession, appraisement, advertising, and sale, or for inventory, appraisement, cataloguing, lotting and preparing for sale, and advertising, where no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, the same allowances as under a warrant of execution on a judgment of the court given in the exercise of its ordinary jurisdiction.						
43. For execution of warrant of execution against vessel or property in action *in rem* [Form 412]. [Less, where vessel or property is already under arrest, the fee for execution of warrant of arrest;]	1	0	0	1	10	0
And reasonable expenses for travelling and maintenance		—			—	
44. For keeping possession of vessel or property under such warrant, to include the cost of a vessel-keeper, if required, per day	0	5	0	0	5	0
45. On sale of vessel or property [in addition to appraiser's and auctioneer's charges] for every 50*l.* or fraction thereof of the gross proceeds of sale	0	10	0	0	10	0
46. Appraiser's and auctioneer's fees in action *in rem*:						
(*a*) For inventory and appraisement only, without sale—						
If the appraised value does not exceed 500*l.*, for every 100*l.* or fraction of 100*l.*	1	0	0	1	0	0
If the appraised value exceeds 500*l.*, for the first 500*l.*, per cent.	1	0	0	1	0	0
For each subsequent 100*l.* or fraction of 100*l.*	0	10	0	0	10	0
(*b*) Where sale takes place—						
For inventory and appraisement, for every 100*l.* of the appraised value, or fraction of 100*l.*	0	10	0	0	10	0

SCHEDULE (B.), PART III.—*continued.*

Fees in Admiralty Actions.	Where the Amount claimed					
	Does not exceed 100*l.*			Exceeds 100*l.*		
High Bailiff's Fees—*continued.*	£	*s.*	*d.*	£	*s.*	*d.*
For sale, for every 100*l.* or fraction of 100*l.* of the gross proceeds of sale . . Together with the actual cost of printing, advertising, and hire of sale room. And, in either case, a reasonable sum for travelling expenses and maintenance.	1	0	0	1	0	0
(*c*) Where no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, there may be allowed the full fees under (*a*) for inventory and appraisement [if actually made] and all charges actually and necessarily incurred for printing, advertising, and preparing for sale, and for travelling expenses and maintenance as aforesaid.						

N.B.—The fees in Admiralty actions shall be payable in actions under the County Courts Admiralty Jurisdiction Acts, 1868 and 1869, and in proceedings which under the Merchant Shipping Act, 1894, or any other Act of Parliament may be taken as Admiralty proceedings in any court having Admiralty jurisdiction by virtue of the said County Courts Admiralty Jurisdiction Acts, 1868 and 1869.

Where the amount or value of the subject-matter of the action is not disclosed by the plaint, it shall be taken not to exceed 100*l.*, and the fees charged accordingly. If, however, the judge shall subsequently certify that the amount or value of the subject-matter does exceed 100*l.*, the difference between the fees up to that time taken and those that would have been taken had it exceeded 100*l.* may then be taken.

PART IV.

FEES IN OTHER PROCEEDINGS.

Registrar's Fees.	£	*s.*	*d.*
1. Protection of property of deserted married women, 20 & 21 Vict. c. 85, s. 21— For sealing every order brought to a registrar, entering same, and transmitting sealed copy of entry to registrar of county courts judgments	0	5	0
2. Grant of a certificate of judgment under the Inferior Courts Judgments Extension Act, 1882	0	2	6
3. Presentation of such last-mentioned certificate for registration	0	2	6
4. Sealing and issuing duplicate of such certificate . .	0	1	0

SCHEDULE (B.), PART IV.—*continued.*

Registrar's and High Bailiff's Fees.

	£	*s.*	*d.*
5. (*a*)			
For taxation of accounts and examination of claims under sections 4 and 5 of the Parliamentary Elections (Returning Officers) Act, 1875, or any Act applying the said Act, or any other Act providing for the taxation by the court of costs of elections :—			

Registrar's Fees.

6. For every notice under Order XLIII. Rules 2 and 4 . .	0	2	6
7. For taxation—			
Where the amount of the account to be taxed does not exceed 50*l.*	0	10	0
And for every additional 50*l.* or fractional part of 50*l.* an additional fee of	0	10	0
8. For examination of claim, 1*s.* in the £ on the amount of such claim, so that the total fee does not exceed . . .	0	10	0

High Bailiff's Fees.

9. For service of every notice under Order XLIII. Rules 2 and 4—			
Within one mile of registrar's office	0	2	6
Beyond one mile, for every additional mile or part of a mile	0	0	6

(*a*) The first part of paragraph 5 relating to proceedings under the Companies Acts annulled by Treasury Order, dated July 7th, 1909.

REGISTRY OF JUDGMENTS, &c., OF COUNTY COURTS.

51 & 52 Vict. c. 43, s. 183, 31 & 32 Vict. c. 71, s. 24, and ORDER XXXVI. Rule 1, "COUNTY COURT RULES, 1903," City of London Court, *Judgments;* 16 & 17 Vict. c. 137, s. 32, *Orders under Charitable Trusts Act;* 20 & 21 Vict. c. 85, s. 21, *Orders for Protection of Property of deserted Married Women;* 53 & 54 Vict. c. 71, s. 8 (2) (iv.), "Bankruptcy Rules, 1886," Rule 240 (2), 46 & 47 Vict. c. 52, s. 122, *Bankruptcy.*

TABLE OF FEES.

	s.	*d.*
For every name searched for at the registry for a judgment .	0	6
For forty names searched for within two months (*to be paid in advance*)	10	0
For every certificate of search, which may be obtained by letter addressed to "The Registrar of County Court Judgments" (*postage stamps may be enclosed*)	1	0
For having the record of any judgment removed from the register (*to be paid to* "The Registrar of the Court" *in which the judgment was obtained*)	0	6*

* This fee is to be transmitted with the certificate of satisfaction.

TABLE

PAYABLE ON ENTRY AND HEARING OF ORDINARY, DEFAULT, ON ISSUE OF WARRANT OF

Reference to Schedules of Fees.	ORDINARY SUMMONS.				DEFAULT		
	Entry of Plaint, not exceeding * 3 defendants, Service by bailiff.	Hearing.			Entry of Plaint, ‡ one defendant, § Service by bailiff.	Judgment by default, no notice of intention to defend.	
		Full.	Consent or admission by defendant.	Non-appearance of defendant.			
	Sched. (A.), pars. 1, 2, & 3. Sched. (B.), Part I., ‖ par. 3A.	Sch. (A.), pars. 7 & 8.	Sch. (A.), par. 11.	Sch. (A.), par. 12.	Sch. (A.), par. 1. Sch. (B.), Part I., pars. 1 or 2, 3A & 3A.	Sch. (A.), par. 5.	
Amount not exceeding £ 1	1/-	2/-	1/-	2/-	3/-	1/-	1
„ 2	2/-	4/-	2/-	3/-	4/-	2/-	2
„ 3	4/-	6/-	3/-	5/-	6/-	3/-	3
„ 4	5/-	8/-	4/-	6/-	7/-	4/-	4
„ 5	6/-	10/-	5/-	7/-	8/-	5/-	5
„ 6	7/-	12/-	6/-	8/-	9/-	6/-	6
„ 7	8/-	14/-	7/-	9/-	10/-	7/-	7
„ 8	9/-	16/-	8/-	10/-	11/-	8/-	8
„ 9	10/-	18/-	9/-	11/-	12/-	9/-	9
„ 10	11/-	20/-	10/-	12/-	13/-	10/-	10
„ 11	12/-	22/-	11/-	13/-	14/-	11/-	11
„ 12	13/-	24/-	12/-	14/-	15/-	12/-	12
„ 13	14/-	26/-	13/-	15/-	16/-	13/-	13
„ 14	15/-	28/-	14/-	16/-	17/-	14/-	14
„ 15	16/-	30/-	15/-	17/-	18/-	15/-	15
„ 16	17/-	32/-	16/-	18/-	19/-	16/-	16
„ 17	18/-	34/-	17/-	19/-	20/-	17/-	17
„ 18	19/-	36/-	18/-	20/-	21/-	18/-	18
„ 19	20/-	38/-	19/-	21/-	22/-	19/-	19
„ 20	21/-	40/-	20/-	22/-	23/-	20/-	20
over £20, and not exceeding £50	21/-	40/-	20/-	22/-	23/-	20/-	21
over £50, service by bailiff	‖ 31/-	‖ 40/-	‖ 20/-	‖ 22/-	33/-	20/-	2 2
over £50, service otherwise than by bailiff	†‖ 30/-						

* Where the number of defendants exceeds 3, an additional fee of 1*s.* is charged for

† When on entry of plaint a request is made for service otherwise than by bailiff,

‡ Where service is by bailiff, an additional fee of 1*s.* is charged for each additional

§ Where on entry of plaint a request is made for service otherwise than by bailiff,

‖ In an action entered under the Act of 1903 an additional fee of 10*s.* is payable payable for signing judgment under Sch. (B.), part I., pars. 3A and 3B respectively.

OF FEES

AND JUDGMENT SUMMONSES, ON JUDGMENT BY DEFAULT, AND EXECUTION OR COMMITMENT.

SUMMONS.				JUDGMENT SUMMONS.			
	Hearing.		Issue of warrant of execution or commitment.	Issue on a judgment or order of a		Hearing.	
	Full.	Admission by or non-appearance of defendant.		County Court.	Court other than a County Court.		
	Sch. (A.), pars. 7 & 8.	Sch. (A.), par. 5.	Sch. (A.), par. 21.	Sch. (A.), par. 22.	Sch. (B.), Part I., pars. 9 & 42.	Sch. (A.), pars. 23, 24 & 25.	Reference to Schedules of Fees.
1	2/-	1/-	1/6	-/9	1/9	-/6	Amount not exceeding £ 1
2	4/-	2/-	3/-	1/-	2/-	1/-	,, 2
3	6/-	3/-	4/6	1/3	2/9	1/6	,, 3
4	8/-	4/-	6/-	1/6	3/-	2/-	,, 4
5	10/-	5/-	7/6	1/9	3/3	2/6	,, 5
6	12/-	6/-	9/-	2/-	4/-	3/-	,, 6
7	14/-	7/-	10/6	2/3	4/3	3/6	,, 7
8	16/-	8/-	12/-	2/6	4/6	4/-	,, 8
9	18/-	9/-	13/6	2/9	4/9	4/6	,, 9
10	20/-	10/-	15/-	3/-	5/-	5/-	,, 10
11	22/-	11/-	16/-	3/3	5/9	5/6	,, 11
12	24/-	12/-	17/-	3/6	6/-	6/-	,, 12
13	26/-	13/-	18/-	3/9	6/3	6/6	,, 13
14	28/-	14/-	19/-	4/-	6/6	7/-	,, 14
15	30/-	15/-	20/-	4/3	6/9	7/6	,, 15
16	32/-	16/-	21/-	4/6	7/-	8/-	,, 16
17	34/-	17/-	22/-	4/9	7/3	8/6	,, 17
18	36/-	18/-	23/-	5/-	7/6	9/-	,, 18
19	38/-	19/-	24/-	5/-	7/6	9/6	,, 19
20	40/	20/-	25/-	5/-	7/6	10/-	,, 20
21	40	20/-	25/-	5/-	7/6	10/-	over £20, and not exceeding £50
22	40/-	20/-	25/-	5/-	7/6	10/-	over £50, service by bailiff over £50, service otherwise than by bailiff

additional defendant under Sch. (A.), par. 3.
fee of 1*s.* under Sch. (A.), par. 2, is not charged.
ndant, under Sch. (B.), part I., par. 34.
fee of 1*s.* under Sch. (B.), part I., par. 34, is not charged.
ntry of plaint; and on the action being brought on for hearing a fee of 10*s.* is

CLASSIFIED SUMMARY OF COURT FEES.

1.—ORDINARY FEES, 1142.

On the initiation and service of proceedings, the hearing of cases and the enforcement of judgments.

(*a*) Plaint Fees and Calculation of Poundage.
(*b*) Service Fees (including service of all classes of documents).
(*c*) Hearing Fees.
(*d*) Issue and Execution of Warrants and Commitment Orders.
(*e*) Possession and Sale.

2.—EXTRAORDINARY FEES, 1149.

For proceedings under special Acts, incidental and interlocutory proceedings, and for special duties of registrars and high bailiffs in certain cases.

(*a*) Subpœnas and Interlocutory Summonses and Service.
(*b*) Interlocutory Applications and Orders and Applications under Special Acts.
(*c*) Filing Documents.
(*d*) Searches.
(*e*) Copies of Documents.
(*f*) Issuing Notices and giving Receipts.
(*g*) Sittings of Registrars for Various Purposes.
(*h*) Special Duties of Registrars and High Bailiffs not otherwise classified.
(*i*) Taxation of Costs.

ORDINARY FEES.

—	Amount of Fee.	Reference to Schedule.
(*a*) Plaint Fees and Calculation of Poundage.		
Ordinary summons	1*s.* in £. Maximum, 20*s.*	A. 1. A. 29.
If exceeds 40*s.*, for service in addition	1*s.*	A. 2.
For every additional defendant above three	1*s.*	A. 3.
Default summons	1*s.* in £. Maximum, 20*s.*	A. 1. A. 29.
In addition, registrar's fee for filing affidavit—		
Up to 40*s.*	1*s.*	B. I. 1.
Exceeding 40*s.*	2*s.*	B. I. 2.
Under County Courts Act, 1903, in addition	10*s.*	B. I. 3A.
Under sects. 59 and 60, in addition	21*s.*	B. I. 5.
Counterclaim	1*s.* in £. Maximum 20*s.* (less poundage fee paid by plaintiff).	A. 4.

ORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Plaint fees—*continued.*		
Entering remitted action (sect. 65 or 66).	21*s.*	B. I. 3.
Entering remitted interpleader (sect. 17, Judicature Act, 1884) . . .	21*s.*	Note to B. II.
On transfer of equity proceedings from Chancery Division	21*s.*	B. II. 2.
Judgment summons.		
On judgment of county court . .	3*d.* in £, *plus* 6*d.* Maximum 5*s.*	A. 22.
On judgment of court other than county court or under Workmen's Compensation Acts—		
Up to 40*s.*	1*s.*	B. I. 9.
„ 5*l.*	1*s.* 6*d.*	„
„ 10*l.*	2*s.*	„
Exceeding 10*l.*	2*s.* 6*d.*	„
Summons for commitment in Admiralty actions—		
The same fee as on an ordinary judgment summons, but of this fee	3*s.*	
Or if exceeds 100*l.* . . .	5*s.* is payable under	B. III. 19
And the balance (if any) . .	under	A. 22.
Poundage is calculated in special cases as follows:—		
Under sect. 59 or 60	As on 20*l.*	A. 30.
When perpetual injunction claimed .	„	A. 36.
Court of Probate Act, 1857 . .	„	A. 40.
Agricultural Holdings Act for removal of arbitrator or set aside award .	„	A. 42.
Where not otherwise calculable .	„	A. 47.
Charitable Trust Recovery Act, 1891	On annual income or as on 20*l.*	A. 39.
Merchant Shipping Act, 1894 . .	On amount in dispute or failing that on 20*l.*	A. 43.
Literary and Scientific Institutions Act, 1854		
London Buildings Act, 1894 . .		
Friendly Societies Acts, 1875 and 1896		
Building Societies Acts . . .	„ „	A. 44.
Industrial and Provident Societies Act, 1893		
Any Act not mentioned in schedule.	„ „	A. 45.
Money-lenders Act, 1900. . .	On amount in dispute or failing that on 10*l.*	A. 46A.
Succession Duty Act, 1853, or Finance Act, 1894	On amount in dispute.	A. 37.

CLASSIFIED SUMMARY, ORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Plaint fees—*continued.*		
Garnishee	On amount of judgment debt or debt to be attached, whichever smaller.	A. 31.
Replevin	On amount of rent or damage.	A. 32.
Recovery of tenements at termination of tenancy	On the amount of the rent, weekly or otherwise, if no rent reserved on half-yearly value.	A. 33.
	Plus amount of rent or mesne profit when claimed. Maximum as on 20*l.*	A. 34.
Recovery of tenements for non-payment of rent	On amount of half-yearly rent.	A. 35.

(*b*) SERVICE FEES (INCLUDING SERVICE OF ALL CLASSES OF DOCUMENTS).

Ordinary Procedure :	£ *s.* *d.*	
Ordinary summons above 40*s.*.	0 1 0	A. 2.
For each additional defendant over three	0 1 0	A. 3.
Default summons for each defendant	0 1 0	B. I. 34.
Amended ordinary or default summons, (Order VII. Rule 5 (a) and 30 (a)), for each defendant to be served	0 1 0	B. I. 34A.
Notice under Order XXV. Rule 58 or 59, or order authorising warrant of attachment	0 2 6	B. I. 45.
Summons to witness	Included in fee for issue.	
Affidavit of service of order for recovery or possession of land, and disobedience thereto (Order XXV. Rule 68)	0 2 6	B. I. 47.
Attendances and affidavit in support of order for substituted service, and to carry out order—		
Exceeding 40*s.*, not exceeding 10*l.*	0 2 6	Order VII. Rule 33A.
10*l.* to 20*l.*	0 5 0	
20*l.* to 50*l.*	0 10 0	
Exceeding 50*l.*	0 12 6	

ORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Service Fees—*continued.*	£ *s.* *d.*	
Judgment summons on order of court other than county court, or under Workmen's Compensation Acts .	3*d.* in £, *plus* 6*d.* Maximum 5*s.*	B. I. 41.
Equity.		
Summons, petition, subpœna, notice, judgment or order—		
If within one mile . . .	0 2 6	B. II. 29.
Exceeding 100*l.*	0 4 0	,,
For every additional mile . .	0 0 6	,,
In foreign district . . .	0 4 0	B. II. 30.
Exceeding 100*l.*	0 5 0	,,
If personal, in addition . .	0 2 6	B. II. 31.
Admiralty.		
Summons, subpœna, judgment, order or notice	0 2 6	B. III. 34.
Exceeding 100*l.*	0 4 0	,,
(And reasonable expenses for travelling and maintenance.)		
Where personal service ordered, in addition	0 2 6	B. III. 35.
Summons for commitment . .	0 4 0	B. III. 39.
Exceeding 100*l.*	0 8 0	,,
Parliamentary Elections Act, 1875.		
Notice under Order XLIII. Rules 2 and 4, within one mile of office.	0 2 6	B. IV. 9.
For every additional mile or part.	0 0 6	,,

(*c*) HEARING FEES.

Entering judgment in default of defence, or appearance at hearing, or by consent or admission, on amount claimed after deducting any sum abandoned.	1*s.* in £. Maximum 20*s.*	A. 5. A. 11. A. 29.
Entering final or interlocutory judgment in Admiralty cases on default of appearance	1*s.* in £. Maximum 20*s.*	A. 6. A. 29.
Entering judgment on claim to contribution or indemnity . .	1*s.* in £. Maximum 20*s.*	A. 19. A. 29.
For Hearing.		
On amount claimed after deducting any sum abandoned. . . .	2*s.* in £. Maximum, 40*s.*	A. 7. A. 10.

CLASSIFIED SUMMARY, ORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Hearing Fees—*continued.*		
When action referred (except to registrar or officer of the court) .	1*s.* in £. Maximum, 20*s.*	A. 9.
When action referred to registrar or officer of the court . . .	Same as if action tried.	
When defendant does not appear .	1*s.* in £.	A. 12.
Plus when claim does not exceed 40*s.*	1*s.*	
,, ,, exceeding 40*s.* .	2*s.*	
Under County Courts Act, 1903 (extended jurisdiction) in addition	10*s.*	B. I. 3B.
On counterclaim	Same fee as on claim less amount paid by plaintiff	A. 13.
On interpleader	2*s.* in £.	A. 17.
On claim to contribution or indemnity	As on ordinary summons. Maximum, 40*s.*	A. 19.
On claim to contribution or indemnity under the Workmen's Compensation Act or arbitration where workman not concerned . .	,, ,,	A. 46, (*b*) and (*c*).
Of special case under Agricultural Holdings Act	20*s.*	A. 41.
On judgment summons . . .	6*d.* in £. Maximum 10*s.*	A. 23, 24.
For New Trial.		
If ordered at same court as original hearing, including fee previously paid	2*s.* in £.	A. 16.
If subsequently ordered, including fee previously paid	3*s.* in £.	A. 16.
In ejectment actions, in addition .	10*s.* 6*d.*	B. I. 6.
(*d*) ISSUE AND EXECUTION OF WARRANTS AND COMMITMENT ORDERS.		
Ordinary Procedure.		
On judgment of county court—		
Up to 10*l.*	1*s.* 6*d.* in £:	A. 21.
For each additional £ . . .	1*s.* Maximum 25*s.*	A. 26.
On judgment of court other than county court or under Workmen's Compensation Act—		
Up to 10*l.*	6*d.* in £	B I 8.
For each additional £ . . .	4*d.* Maximum 8*s.* 4*d.*	

ORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Issue and Execution of Warrants and Commitment Orders—*continued.*		
And for high bailiff double the above fees	Maximum 16*s.* 8*d.*	B. I. 42.
Of attachment	2*s.*	B. I. 19.
And for high bailiff	10*s.*	B. I. 46.
Renewal of warrant or extension of commitment order	6*d.* in £. Maximum 5*s.*	A. 26A.
Warrant to replevy	2*s.* 6*d.*	A. 51.
And for high bailiff—		
For delivering goods on completion of bond	21*s.*	B. I. 44.
And from court house to place of delivery, per mile	6*d.*	,,
Equity.		
Warrant	2*s.*	B. II. 21.
Exceeding 100*l.*	3*s.*	,,
And for high bailiff—		
In home district	7*s.* 6*d.*	B. II. 32.
Exceeding 100*l.*	10*s.*	,,
Every additional mile beyond one	1*s.*	,,
In foreign district	10*s.*	B. II. 33.
Exceeding 100*l.*	15*s.*	,,
Or, if the total of these fees does not amount to so much, then.	1*s.* 6*d.* in £, up to 10*l.*, and 1*s.* in £ on excess. Maximum, 25*s.*	A. 21.
Admiralty		
Arrest of vessel or property	5*s.*	B. III. 1.
Exceeding 100*l.*	7*s.* 6*d.*	,,
And for high bailiff	15*s.*	B. III. 37.
Exceeding 100*l.*	20*s.*	,,
(And reasonable expenses for travelling and maintenance.)		
Execution against goods or vessel or property.	5*s.*	B. III 20.
Exceeding 100*l.*	7*s.* 6*d.*	,,
And for high bailiff	20*s.*	B. III. 41 and B. III. 43.
Exceeding 100*l.*	30*s.*	
(And reasonable expenses for travelling and maintenance.)		
Commitment order.	5*s.*	B. III. 20.
Exceeding 100*l.*	7*s.* 6*d.*	,,
And for high bailiff	20*s.*	B. III. 40.
Exceeding 100*l.*	30*s.*	,,

CLASSIFIED SUMMARY, ORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Issue and Execution of Warrants and Commitment Orders—*continued.*		
Workmen's Compensation Act.		
For enforcement of award or order—Same fees as on ordinary judgment less amount of Schedule B. fees prescribed by B. I. 42. . .	—	A. 46 (*d*).
(*e*) POSSESSION AND SALE.		
Ordinary Procedure.		
Possession for seven days and thereafter for a reasonable time at the request of the parties, per day .	6*d.* in £. Maximum, 10*s.*	B. I. 35; B. I. 36; B. II. 34. B. III. 42.
In interpleader after seventh day .	Out of pocket expenses allowed by judge.	B. I. 37.
In remitted interpleader . .	As allowed by judge.	B. I. 38
(Not exceeding charges allowable to sheriff.)		
Sale, preparing for, when no sale takes place—		
On goods seized up to 10*l.* . .	Not exceeding 1*s.* in £.	B. I. 40.
For every additional 20*s.* . .	8*d.* in £. Maximum, 16*s.* 8*d.*	B. III. 42.
In addition, costs of advertising, superintending, under Order II. Rule 38, or Order XXIII. Rule 23—		
Percentage on first 50*l.* . .	40*s.*	B. II. 35.
,, balance . .	20*s.*	,,
Replevin.		
Delivery of goods . . . . With 6*d.* per mile to place where the goods are.	21*s.*	B. I. 44
Admiralty.		
Possession of vessel or property under warrant or arrest, per day .	5*s.*	B. III. 38.
Of vessel or property under warrant of execution in action *in rem* .	5*s.*	B. III. 44.
Sale of vessel or property in action *in rem,* in addition to appraisers' and auctioneers' charges—		
For every 50*l.*	10*s.*	B. III. 45.
Appraisers' and auctioneers' fees .	See scale.	B. III. 46.

EXTRAORDINARY FEES.

—	Amount of Fee.	Reference to Schedule.
(*a*) Subpœnas and Interlocutory Summonses and Service.		
Ordinary Procedure.		
To assessor under Employers' Liability Act, 1880 . . .	2*s.* 6*d.*	B. I. 25.
To witness—		
To be served by bailiff in home district	1*s.*	A. 55.
Beyond two miles from court house, per mile in addition . .	6*d.* Maximum, 3*s.*	,,
To be served by bailiff in foreign district	3*s.*	A. 56.
To be served otherwise . .	6*d.*	A. 57.
Equity.		
Summons to proceed with accounts and inquiries	1*s.* 6*d.*	B. II. 27.
High bailiff for service . . .	2*s.* 6*d.*	B. II. 29.
Exceeding 100*l.*	4*s.*	,,
For every mile or part of a mile, beyond one mile, in addition.	6*d.*	,,
Admiralty.		
To witness	2*s.*	B. III. 5.
Exceeding 100*l.*	3*s.*	,,
For attendance of assessor, each .	1*s.* 6*d.*	B. III. 7.
Exceeding 100*l.*	2*s.* 6*d.*	,,
High bailiff for service . . .	2*s.* 6*d.*	B. III. 34.
Exceeding 100*l.*	4*s.*	,,
(And reasonable expenses for travelling and maintenance.)		
(*b*) Interlocutory Applications and Orders.		
	£ *s.* *d.*	
Ordinary Jurisdiction.		
For leave to defend—		
Under Bills of Exchange Act or under sect. 86, when defendant neglects to give notice—		
Up to 40*s.*	0 1 0	B. I. 1 and 2.
Exceeding 40*s.* . . .	0 2 0	,,

CLASSIFIED SUMMARY, EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Interlocutory Applications and Orders—*continued.*	£ s. d.	
For drawing, sealing, and issuing every order, including copy under the following rules—		
Where defendant desires to defend on behalf of others (Order III. Rule 8)		
Security (Order V. Rule 11) . .		
Appointment of guardian *ad litem* (Order VII. Rule 50 (1), and Rule 51 (2))		
Application as to money in court on behalf of infant, or person of unsound mind (Order IX. Rule 25)		
Preservation or interim custody of subject-matter of litigation (Order XII. Rule 1)		
Sale of perishable articles, etc. (Order XII. Rule 2)		
Détention, inspection, etc. of subject-matter (Order XII. Rule 3) .		
Accounts and inquiries (Order XII. Rule 5)	0 4 0	
Interlocutory order for injunction, receiver, or accounts (Order XII. Rule 6)	or amount of plaint fee if less.	B. I. 10.
For recovery of specific property on payment of amount of lien (Order XII. Rule 7)		
That loss of bill shall not be set up (Order XII. Rule 10) . . .		
Appointment of receiver at or after trial (Order XIII. Rule 1) .		
Adding or substituting defendant (Order XIV. Rule 11) . .		
Directions (Order XV. Rules 1 and 3)		
Interrogatories, discovery of documents, production of documents, inspection (Order XVI.) . .		
Examination of witnesses before trial (Order XVIII. Rules 18, 19, 20, and 26)		
Selection of assessors (Order XXI. Rule 10)		
Injunction after judgment (Order XXII. Rule 16 (c)) . .		
Charging order on interest of partner (Order XXV. Rule 12) . .		

EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Interlocutory Applications and Orders—*continued.*	£ *s.* *d.*	
For partner of judgment debtor to purchase share charged (Order XXV. Rule 13) . . .		
For private sale under execution (Order XXV. Rule 24) . .		
To issue warrant of attachment (Order XXV. Rule 61) . . .		
For payment to judgment creditor of money in court under judgment obtained by debtor (Order XXVI. Rule 16)	0 4 0 or amount of plaint fee if less.	B I. 10.
Sale of goods taken in execution claimed under bill of sale (Order XXVII. Rule 13)		
As to conduct of action (Order LIV. Rule 11)		
For extension or abridgment of time (Order LIV. Rule 12) . . .		
For drawing, sealing, and issuing any order on change of parties before judgment (Order XVII. Rules 2, 3 and 4)	,,	B. I. 11.
On change of parties after judgment (Order XXV. Rules 14 and 15) .		
For each additional person to be served	0 1 0	,,
Applications for discharge of person committed for contempt, except under Debtors Act . . .	0 10 0	B. I. 20.
Interlocutory order when not otherwise provided for . . .	0 4 0	B. I. 12.
On order for new trial of action under sects. 59 or 60 (ejectment) .	0 10 6	B. I. 6.
For substituted service or service out of England or Wales—		
Where claim does not exceed 40*s.*.	0 1 0	B. I. 21.
Exceeding 40*s.*	0 2 0	,,
Appointment of receiver by way of equitable execution . . .	0 10 0	B. II. 5 and Order XIII. Rule 14.
Exceeding 100*l.*	0 15 0	
Special judgment or order under Judicature Act, 1873 (injunction)	0 15 0	B. I. 13.

CLASSIFIED SUMMARY, EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
	£ s. d.	
Interlocutory Applications and Orders—*continued.*		
Special judgment or order under the National Insurance Acts 1911 and 1913	0 15 0	B. I. 13.
Directions as to trial and interim custody of goods in remitted interpleader issue (Order XXXIII. Rules 12 and 13) . . .	0 4 0	B. I. 10.
On any notice of application for leave to proceed on a judgment including leave to proceed on any judgment entered or order made against a garnishee, on application for leave to issue an order of commitment, and for a final order for the appointment of a receiver under the Courts (Emergency Powers) Acts, 1914 to 1917, and the Consolidated County Courts (Emergency Powers) Rules, 1916	6*d.* in £. Maximum, 2*s.* 6*d.*	Sched. (B.), Part I., Rule 25, of the Consolidated County Courts (Emergency Powers) Rules 1916, dated August 23rd, 1916.
Equity.		
Order on *ex parte* or interlocutory application	0 10 0	B. II. 5.
Exceeding 100*l.*	0 15 0	,,
Transfer to High Court (Order XXXIII. Rule 5) . . .	0 10 0	B. II. 6.
Exceeding 100*l.* . . .	0 15 0	,,
Special order or judgment and every final order	0 15 0	B. II. 7.
Exceeding 100*l.*	1 5 0	,,
And each additional copy, per folio	0 0 4	B. II. 8.
Judge's further directions under Order XXIV. Rule 37 . .	0 7 0	B. II. 9.
Exceeding 100*l.*	0 12 0	,,
For adjournment	0 2 6	B. II. 10.
Exceeding 100*l.*	0 4 0	,,
Transmitting note of order for registration (Order XXXVI. Rule 2)	0 2 6	B. II. 17.
Exceeding 100*l.*	0 3 6	,,
Admiralty.		
Order of release of vessel or property	0 5 0	B. III. 2.
Exceeding 100*l.*	0 7 6	,,
Transfer of action		
Sale	0 10 0	B. III. 8.
Consolidation		
Exceeding 100*l.*	0 15 0	

EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Interlocutory Applications and Orders —*continued.*	£ s. d.	
Final judgment	0 10 0	B. III. 13.
Exceeding 100*l.*	0 15 0	,,
Transmitting note of order for registration (Order XXXVI. Rule 2)	0 2 6	B. III. 28.
Exceeding 100*l.*	0 3 6	,,
For substituted service	0 2 0	B. III. 30.
Exceeding 100*l.*	0 3 0	,,
Order directing notice of judgment to be given (Order XXXIX. Rule 60)	0 3 0	B. III. 31.
Exceeding 100*l.*	0 5 0	,,

(*c*) APPLICATIONS UNDER SPECIAL ACTS.

Agricultural Holdings Act.		
Appointment or change of guardian or next friend	0 5 0	B. I. 24.
For short service	0 2 6	,,
For arbitrator to state case (Order XL. Rule 2 (6))	0 5 0	B. I. 24.
Hearing of case (Order XL. Rule 3 (5))		
Removal of arbitrator or setting aside award (Order XL. Rule 4 (15))	0 5 0	B. I. 24.
Recovery of money (Order XL. Rule 7 (5))		
And for each additional copy, per folio	0 0 4	,,
Ballot Act, 1872.		
On every application	1 0 0	A. 49.
Drawing, sealing, and filing every order	0 10 0	B. I. 23.
For each additional copy, per folio	0 0 4	,,
Finance Act.		
Order for leave to appeal without paying duty (Order XLII. Rule 10)	0 4 0	B. I. 10.
Protection of property of deserted married women.		
Sealing, entering, and transmitting order to registrar of county courts judgments	0 5 0	B. IV. 1.

CLASSIFIED SUMMARY, EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Applications under Special Acts—*continued.*	£ *s.* *d.*	
Money-lenders Act.		
Every order containing special directions	0 5 0	B. I. 27.
Workmen's Compensation Act.		
Order adding respondent	0 4 0	B. I. 26 (3).
Order for detention of ship or release	0 7 6	B. I. 26 (2).
On application to rectify register	0 4 0	B. I. 26 (4).
For suspension of right to compensation	0 4 0	B. I. 26 (8).
On application for investment	0 4 0	B. I. 26 (9).
On application for payment of weekly payments into court	0 4 0	B. I. 26 (10).
On application for variation of an order	0 4 0	B. I. 26 (11).
Or when liberty to apply has been reserved in a former order	0 2 0	B. I. 26 (11A).
Reference to medical referee under Schedule I. par. 15	1*s.* in £, on twenty-six times amount of weekly payment not exceeding 20*s.*	W. C. Rule 57 (9).
Under sect. 8, sub-s. 1.	0 10 0	B. I. 26 (7).
Under Schedule 1 (18) and Rule 66	0 4 0	B. I. 26 (13).
On application to judge after hearing to determine costs due to solicitor of person claiming compensation	0 4 0	B. I. 26 (18).
On application to enforce solicitor's lien for costs	0 4 0	B. I. 26 (19).
On application to set aside or vary award	0 4 0	B. I. 26 (21).
Certificate of compensation awarded under sect. 1, sub-s. 4	0 5 0	B. I. 26 (5).
Deeds of Arrangement Act, 1914.		
For taking security and giving certificate	When estimated assets are less than £100 0 10 0. In other cases 1 0 0	B. I. 33A.

EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Applications under Special Acts—*continued.*	£ *s. d.*	
On any proceedings under sects. 3 (1), 3 (4), 11 (2), 16, 18 or 23, or under Rule 22 of the Deeds of Arrangement Rules, 1915. .	The like fee on a similar proceeding under the Bankruptcy Act and Rules, unless jurisdiction in equity is exercised and there is no fee for a similar proceeding in bankruptcy, in which case fees are chargeable under Part II. of this schedule.	B. I. 33B.
Courts (Emergency Powers) Acts, 1914 *to* 1917 *and the Consolidated County Courts (Emergency Powers) Rules*, 1916.		
On any summons under Rule 11, that is paragraph (b) of sect. 1, subsect. 1 of the Act of 1914. . .	6*d.* in £. Maximum, 2*s.* 6*d.*	Sched. (B), Part. I., Rule 5, of the County Courts (Emergency Powers) Rules, 1917, dated October 4th, 1917.
For drawing, sealing, and issuing the order (if any)	6*d.* in £. Maximum, 2*s.* 6*d.*	Sched. (B.), Part I., Rule 25 of the Consolidated County Courts (Emergency Powers) Rules, 1916, dated August 23rd, 1916.

CLASSIFIED SUMMARY, EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Applications under Special Acts—*continued.*	£ *s.* *d.*	
On notice of application for an order authorising the grant of a lease under section 2 of the Courts (Emergency Powers) (No. 2) Act, 1916 . . .	0 10 0	Sched. (B.), Part I., Rule 10, of the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916 (No. 2), dated June 26th, 1916.
Applications under Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916.		
On an application for the determination of the question as to the increase of rent of dwelling house	6*d.* in the £, calculated on four weeks' standard rent of the dwelling house. Maximum, 2*s.* 6*d.*	Sched. (B.), Part I., Rule 16, of the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916, dated January 29th, 1916.
On an application for apportionment of rent or rateable value .	0 10 0	Sched. (B.), Part I., Rule 16, of the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916, dated January 29th, 1916.
On an application for an order authorising a mortgagee to call in and enforce a mortgage. .	1 0 0	
Applications under Trading with the Enemy Amendment Act, 1914, and the County Courts Trading with the Enemy (Application of Property) Rules, 1915.		

EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
Applications under Special Acts—*continued.*	£ *s.* *d.*	
On notice of application . .	0 2 6	Sched. (B.), Part I., Rule 10, of the County Courts Trading with the Enemy (Application of Property) Rules, 1915 dated February 15th, 1915.
Applications under Billeting of Civilians Act, 1917, *and the County Court (Billeting of Civilians) Rules*, 1917.		
On an application to the County Court for a certificate On the amount of compensation claimed	6*d.* in the £. Maximum, 10*s.*, together with the fee of 6*d.* for each copy of the summons to be served, and a further fee of 6*d.* for each certificate to be served.	Sched. (B.), Part I., Rule 8 of the County Court (Billeting of Civilians) Rules, 1917.
On appeal against a certificate or order	The like fee under Sched. (B.) as on an application for a certificate.	
Appeals under National Insurance Acts, 1911 *and* 1913.		
On a notice of appeal under section 66 of the Act of 1911 or section 27, sub-section 2 of the Act of 1913	1 0 0	A. 61.

CLASSIFIED SUMMARY, EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
	(*d*) FILING DOCUMENTS.	
Ordinary Procedure.		
Affidavit	£ *s.* *d.*	
Of debt—		
For leave to proceed in default of personal service under sect. 86 or Bills of Exchange Act;		
For leave to defend under Bills of Exchange Act;		
For leave to defend under sect. 86, when notice to defend not given—		
Where claim does not exceed 40*s.*	0 1 0	B. I. 1.
Exceeding 40*s.* . . .	0 2 0	B. I. 2.
Certificate of judgment under Inferior Courts Judgments Extension Act, 1882	0 2 6	B. IV. 3.
And for sealing duplicate . .	0 1 0	B. IV. 4.
Equity.		
Every document not annexed to affidavit or for which separate fee charged	0 1 0	B. II. 19.
Statement of defendant or notice of discontinuance . . .	0 2 6	B. II. 4.
Exceeding 100*l.*	0 4 0	,,
Admission of defendant under Order IX. Rule 5, including attesting .	0 3 6	B. II. 3.
Exceeding 100*l.*	0 5 0	,,
Admiralty.		
On affidavit of justification . .	0 2 6	B. III. 4.
In other cases	0 1 0	B. III. 14.
Agricultural Holdings Act.		
Application for order to state case .		
Special case	0 2 6	B. I. 24.
Application for recovery of money awarded		
Affidavit in opposition to above applications, and applications to remove arbitrator, and set aside award	0 1 0	,,
Workmen's Compensation Act.		
Affidavit of justification . . .	0 7 6	B. I. 26 (2).
For leave to issue execution or judgment summons . . .	0 1 6	B. I. 26 (20).
Special case under Rule 34 . .	0 5 0	B. I. 26 (1).

EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
	(*e*) SEARCHES.	
Equity.	£ *s.* *d.*	
Inspection of registrar's certificate .	0 1 0	B. II. 18.
Exceeding 100*l.*	0 2 0	,,
Application for search, and searching	0 2 0	B. II. 20.
Admiralty.		
Inspecting preliminary act, or examining court books by person not a party or his solicitor . .	0 1 0	B. III. 18.
Examining documents in actions terminated within two years .	0 2 6	B. III. 21.
Examining documents in actions if terminated beyond that period.	0 3 6	B. III. 22.
	(*f*) COPIES OF DOCUMENTS.	
Ordinary Procedure.		
Of every proceeding or document except certified copy of judgment or order, per folio . . .	0 0 4	B. I. 28.
Certificate of judgment . . .	0 0 6	B. I. 7A.
Certificate of judgment under Inferior Courts Judgments Extension Act, 1882	0 2 6	B. IV. 2.
Duplicate of same	0 1 0	B. IV. 4.
Duplicate plaint note, warrant, order or any document issued by the court	0 0 6	B. I. 33.
Or where plaint note refers to more than ten actions, for every additional ten, or fraction .	0 0 6	,,
Equity.		
Additional copies of order or judgment, per folio . . .	0 0 4	B. II. 8.
Every office copy, per folio . .	0 0 4	B. II. 24.
Admiralty.		
Every office copy of a document in the English language, per folio .	0 0 4	B. III. 15.
Office copies of papers in a foreign language, or shorthand writers' or reporters' notes, or of abstracts or translations made in the office, in addition to the above fee .	The charges of the copyist, shorthand writer, reporter or translator.	B. III. 16.
Agricultural Holdings Act.		
Additional copies of order, per folio.	0 0 4	B. I. 24.
Workmen's Compensation Act.		
Every office copy or certified copy of documents filed or records made, per folio	0 0 4	B. I. 26 (22).

CLASSIFIED SUMMARY, EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
(*g*) ISSUING NOTICES AND GIVING RECEIPTS.		
Ordinary Procedure.	£ *s.* *d.*	
On change of plaintiff's or defendant's title before judgment (Order XVII. Rules 2 and 3) . .	0 4 0 (or amount of plaint fee, if less).	B. I. 11.
For each additional person to be served	0 1 0	„
On giving leave to defend to person other than defendant in ejectment action (Order X. Rule 4) .		
Of appointment to select assessors (Order XXI.)		
On addition of parties by judge (Order XXII. Rule 18) . . .	0 2 6	B. I. 18.
Of consequence of disobedience to order (Order XXV. Rule 58) .		
To show cause against attachment (Order XXV. Rule 59) . .		
Appeals under the National Insurance Acts (Order XLII. (A)) . .		
To distrainor in replevin. . .	0 2 6	A. 54.
Equity.		
Notice of judgment under Order III. Rules 27 and 28 . . .	0 3 0	B. II. 23.
Exceeding 100*l.*	0 5 0	„
Other notices required by order .	0 2 0	B. II. 22.
Exceeding 100*l.*	0 2 6	„
Admiralty.		
Of hearing, or re-hearing . .	0 1 6	B. III. 6.
Exceeding 100*l.*	0 2 6	„
Of judgment (Order XXXIX. Rules 57 and 59)	0 3 0	B. III. 29.
Exceeding 100*l.*	0 5 0	„
Agricultural Holdings Act, 1908.		
Of time and place of hearing. Application under Order XL. Rules 3 (3) and 4 (7), and of taxation under Order XL. Rule 5 (2) .	0 2 6	B. I. 24.
Employers' Liability Act, 1880.		
Of application for assessors . .	0 2 6	B. I. 25.
Parliamentary Elections Act, 1875.		
Of time and place for taxation, or examination of claim (Order XLIII. Rules 2 and 4) . .	0 2 6	B. IV. 6.
Receipt.		
For deposit on application for discovery (Order XVI. Rule 23) .	0 2 6	B. I. 18.
For money or papers in Admiralty (however many) . . .	0 1 0	B. III. 17.

EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
	£ s. d.	
(*h*) SITTINGS OF REGISTRARS FOR VARIOUS PURPOSES.		
Ordinary Jurisdiction.		
To take depositions—		
Of person ordered to weigh, measure, inspect, etc. (Order XII. Rule 4)	0 10 0	B. I. 14.
Of witnesses before trial (Order XVIII. Rules 18 and 19)	0 10 0	„
Where difficulty arises in execution (Order XXV. Rule 5)	0 10 0	„
Of judgment debtor as to means (Order XXV. Rule 71)	0 10 0	„
For every additional hour or part	0 7 0	B. I. 15.
Where examination not held at court or office, in addition	0 10 0	B. I. 16.
Mileage one way, per mile	0 0 6	B. I. 17.
To audit receiver's accounts—		
Where sum in account does not exceed 100*l.*	0 5 0	B. I. 22.
Every additional 50*l.*, or fraction	0 2 6	„
Equity.		
To settle conditions, take accounts, etc.	0 10 0	B. II. 12.
For every additional hour or part	0 7 0	B. II. 13.
When not at court or office in addition	0 10 0	B. II. 14.
Exceeding 100*l.*	1 0 0	„
Mileage one way, per mile	0 0 6	B. II. 15.
Admiralty.		
As examiner—		
On cross-examination of sureties		
On reference	0 7 0	B. III. 23.
For assessment of damages where claim exceeds 20*l.*		
Exceeding 100*l.*	0 10 0	„
For every additional hour or fraction	0 5 0	B. III. 24.
Exceeding 100*l.*	0 7 0	„
When attendance not at court or office, in addition	0 10 0	B. III. 25.
Exceeding 100*l.*	1 0 0	„
Mileage one way, per mile	0 0 6	B. III. 26.
Companies (Consolidation) Act, 1908.		
To take evidence under sect. 226	2 0 0	A. 59.
Money-lenders Act, 1900.		
To take accounts, per hour or part	0 5 0	B. I. 27.
Workmen's Compensation Act, 1906.		
On examination of employer as to insurance, under Rule 37	0 10 0	B. I. 26 (23).

CLASSIFIED SUMMARY, EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
(*i*) SPECIAL DUTIES OF REGISTRARS AND HIGH BAILIFFS NOT OTHERWISE CLASSIFIED.		
Ordinary Procedure.	£ *s.* *d.*	
On investment or payment out of money recovered for benefit of infant or person of unsound mind, per 10*l.* or part . .	0 5 0 Maximum, 2 10 0	B. I. 10A.
Bond with sureties . . .	0 5 0	B. I. 31.
Return to writ of *certiorari* . .	0 15 0	B. I. 32.
Replevin bond or deposit—		
When rent or damage does not exceed 20*l.*	0 10 6	A. 52.
Exceeding 20*l.*	1 1 0	A. 53.
Equity.		
Drawing advertisements and inserting	0 5 0	B. II. 11.
Exceeding 100*l.*	0 7 0	,,
Attesting admission of defendant, and filing	0 3 6	B. II. 3.
Exceeding 100*l.*	0 5 0	,,
Preparing certificate under Order XXIV. Rule 27 . . .	0 15 0	B. II. 16.
Exceeding 100*l.*	1 10 0	,,
Bond with sureties . . .	0 5 0	B. II. 26.
Exceeding 100*l.*	0 7 6	,,
Admiralty.		
Registrar's attendance, where a special court is held for trial of action .	1 5 0	B. III. 9.
Exceeding 100*l.*	1 15 0	,,
Beyond three miles from registrar's office, in addition . . .	0 15 0	B. III. 10.
Mileage one way, per mile . .	0 0 6	B. III. 11.
When registrar cannot return the same night	1 1 0	B. III. 12.
High bailiff's attendance at special court if required by judge .	0 7 6	B. III. 36.
Exceeding 100*l.*	0 15 0	,,
Report as to damages (Order XXXIX. Rule 101)	0 10 0	B. III. 27.
Exceeding 100*l.*	0 15 0	,,
Drawing advertisements and inserting	0 5 0	B. III. 32.
Exceeding 100*l.*	0 7 0	,,
Bail bond	0 5 0	B. III. 3.
Exceeding 100*l*	0 7 6	,,
Agricultural Holdings Act, 1908.		
Registrar's duties where hearing takes place at another court under Order XL. Rule 4 (16) . .	0 10 0	B. I. 24.

EXTRAORDINARY FEES—*continued.*

—	Amount of Fee.	Reference to Schedule.
	£ *s.* *d.*	
Parliamentary Elections (Returning Officers) Act, 1875.		
Examination of claim, on amount of claim	1*s.* in £. Maximum, 10*s.*	B. IV. 8.
Remitted Interpleader Issue.		
Registrar's duties when hearing takes place at another court under Order XXXIII. Rule 13 . .	0 10 0	B. II. 28.
Exceeding 100*l.*	0 15 0	,,
Taking acknowledgment of married woman	1 0 0	A. 50.
For each additional woman . .	0 10 0	,,
Trustee Act, 1893.		
Inclusive fee on payment into court of trust fund, under Order XXVIII. Rules 9 to 22 . .	0 10 0	B. II. 1.
Exceeding 100*l.*	0 15 0	,,
Workmen's Compensation Act, 1906.		
For investment, per 10*l.*, or part .	0 5 0 Maximum, 2 10 0	B. I. 26 (12).
Receiving and forwarding any sum to workman residing out of United Kingdom . . .	0 5 0	B. I. 26 (15).
Certificate of identity, where workman intends to cease to reside in United Kingdom (Rule 66 (10) (c))	0 5 0	B. I. 26 (14).
(*j*) TAXATION OF COSTS.		
County Courts Act, 1903.		
Extended jurisdiction . . .	0 10 6	B. I. 3c.
Equity.		
Except under Order XXXVIII. Rules 9 to 22 (where an inclusive fee is provided to cover all duties by registrar)	0 7 0	B. II. 25.
Exceeding 100*l.*	0 10 0	,,
Admiralty	0 5 0	B. III. 33.
Exceeding 100*l.*	0 7 0	,,
Agricultural Holdings Act, 1908.		
Where account does not exceed 50*l.*	0 10 0	B. I. 24.
For each additional 50*l.*, or fraction.	0 10 0	,,
Costs of application for removal of arbitrator, or to set aside award	0 5 0	,,

CLASSIFIED SUMMARY, EXTRAORDINARY FEES—*continued.*

	Amount of Fee.			Reference to Schedule.
	£	s.	d.	
Ejectment.				
Sect. 59	0	10	6	B. I. 7.
Employers' Liability Act, 1880.				
Where amount recovered (or claimed, in case of defendant) does not exceed 100*l.*	0	7	0	B. I. 25.
Exceeding 100*l.*	0	10	0	,,
Law of Distress Amendment Act, 1888.				
Where rent does not exceed 20*l.*	0	5	0	Treasury Order, Sept. 15th, 1888.
Exceeding 20*l.*	0	10	0	
Parliamentary Elections (Returning Officers) Act, 1875.				
Where the amount does not exceed 50*l.*	0	10	0	B. IV. 7.
For every additional 50*l.*, or fraction	0	10	0	,,
Remitted Actions.				
Under sects. 65 or 66	0	5	0	B. I. 4.
Remitted interpleader issue, under sect. 17, Judicature Act, 1884	0	7	0	B. II. 25, and note to Schedule (B.) Part II.
Exceeding 100*l.*	0	10	0	
Solicitor and Client Costs.				
Under sect. 118—				
Bill not exceeding 25*l.*	0	5	0	B. I. 30.
For each additional 25*l.*, or fraction	0	5	0	,,
Title to Corporeal or Incorporeal Hereditaments.				
Sect. 60	0	10	6	B. I. 7.
Workmen's Compensation Act, 1906.				
Costs of award or between third parties and other parties to arbitration	0	10	0	B. I. 26 (16).
Every other taxation	0	5	0	B. I. 26 (17).
All other Actions or Matters.				
Where amount recovered (or claimed, in case of defendant) exceeds 50*l.*, but does not exceed 100*l.*	0	7	0	B. I. 29.
Exceeding 100*l.*	0	10	0	,,

CHAPTER IV.

PRECEDENTS OF COSTS.

The following precedents of costs are added as a guide to practitioners with reference to the items that can reasonably be inserted in a bill. When the amount of the item is discretionary, the maximum has, as a rule, been specified. At the same time, it should be pointed out that the practice of registrars as to the allowance of particular items varies very considerably. Although no general rule can be made in a particular court as to the allowance or disallowance of any special item under particular circumstances (*R.* v. *Marylebone C. C. Judge*, (1890) 34 S. J. 459), experience shows that the same result is frequently attained on consideration of the facts of each particular case. The fees payable on the various proceedings detailed are also set out with references to the items in the Schedules of Fees under which they become chargeable.

A perusal of these precedents will satisfy any person of experience in litigation that there are two very important points in which the scales might very well, and should be, amended, namely :—

(1) That the amount of the maximum fee for instructions for brief is lamentably inadequate in many of the numerous important cases now tried in the county courts; and (2) that the scale fee for conducting a case in court (excluding that for which a special order of the judge must be obtained) is so slightly in excess of that for attending to instruct counsel, that in the great majority of cases it is to the pecuniary interest of the solicitor to adopt the latter course, notwithstanding the fact that the total cost of the litigation is thereby increased.

Precedents of costs under the Workmen's Compensation Act will be found in that portion of this work devoted to that subject.

LIST OF PRECEDENTS.

Default summons, liquidated demand	Plaintiff's costs, 1166.
Claim, liquidated or unliquidated	Defendant's costs, 1172.
Counter-claim, when plaintiff succeeds on claim	Defendant's costs, 1173.
Remitted action under sect. 66.	Defendant's costs, 1174.
Remitted interpleader issue	Execution creditor's costs, 1175.
Interpleader	Claimant's costs, 1175.
Interpleader	Execution creditor's costs, 1176.
Courts (Emergency Powers) Acts, 1914 to 1917 and Increase of Rent, etc., Act, 1915, and Billeting of Civilians Act, 1917.	Plaintiff's or applicant's costs of application or summons, 1176.
Administration action	Plaintiff's costs, 1177.
Trustee Act	Costs of payment into court, 1179.
Trustee Act	Costs of payment out of court, 1179.
Admiralty	Plaintiff's costs of action and reference *in rem* and *in personam*, 1181.
Admiralty	Defendant's costs of action and reference *in rem* and *in personam*, 1193.
Companies winding-up	Petitioning creditors' costs, 1195

PLAINTIFF'S COSTS.

Default Summons.

Liquidated Demand.

	No. in Scale.	—	A			B.			C.		
			£	s.	d.	£	s.	d.	£	s.	d.
	96	Letter before action	0	3	6	0	3	6	0	3	6
	20	Instructions to sue	0	3	4	0	6	8	0	13	4
	1	Preparing particulars of claim	0	4	0	0	7	0	0	10	0
	38	Drawing affidavit of debt, engrossing, attending to be sworn, oath and filing	0	4	0	0	6	8	0	6	8
	54	Attending to enter plaint	0	3	4	0	6	8	0	6	8
	A. 1	Paid plaint fee		—			—			—	
	B. I. 2	Paid registrar's fee for filing affidavit	0	2	0	0	2	0	0	2	0
	B. I. 3A	Paid registrar's fee for plaint under Act of 1903		—			—		0	10	0
Service.	B. I. 34	Where served by bailiff, paid service fee	0	1	0	0	1	0	0	1	0
	O. VII. r. 33A.	Substituted service by bailiff	0	5	0	0	10	0	0	12	6
	14	Where served by solicitor	0	5	0	0	5	0	0	5	0
	15	Mileage per mile beyond two and not exceeding ten	0	0	6	0	0	6	0	1	0
	16	Correspondence with agent, if applicable	0	4	0	0	7	0	0	7	0
	39	Affidavit of service	0	3	4	0	5	0	0	6	8
	17	Obtaining order for substituted service	0	10	0	1	0	0	1	5	0
	B. I. 21	Paid registrar's fee on order	0	2	0	0	2	0	0	2	0
	45	Perusing special defence	0	2	0	0	3	4	0	6	8
	45	Or per folio	0	0	2	0	0	4	0	0	4
	63	Attending plaintiff thereon	0	3	4	0	6	8	0	6	8
	4	Preparing further particulars of claim demanded under Order VI. r. 7	0	2	0	0	3	0	0	5	0
	4	Or per folio	0	0	8	0	0	8	0	1	0
	55	Attending to file	0	2	0	0	3	4	0	3	4
	44	Copy of same for service, per folio	0	0	2	0	0	4	0	0	4
Directions.	55	Attending to deliver	0	2	0	0	3	4	0	3	4
	11	Notice of application for directions and copies	0	2	0	0	3	0	0	5	0
	83	Attending registrar obtaining appointment	0	2	0	0	3	4	0	6	8
	19	Service of notice	0	1	0	0	1	6	0	1	6
	66	Attending on registrar when order made	0	2	0	0	3	4	0	6	8
	B. I. 10	Paid registrar's fee	0	4	0	0	4	0	0	4	0
	44	Copy order, per folio	0	0	2	0	0	4	0	0	4
	19	Service of copy order	0	1	0	0	1	6	0	1	6
nterroga-	22	Instructions for interrogatories	0	3	4	0	6	8	0	6	8
ories.	36	Drawing same and copy to file	0	2	6	0	5	0	0	6	8
	36	Or per folio	0	0	6	0	1	0	0	1	0

PLAINTIFF'S COSTS—DEFAULT SUMMONS—*continued.*

No. in Scale.	—	A. £ s. d.	B. £ s. d.	C. £ s. d.	
93	Fee to counsel to settle, if applicable and allowed	—	1 3 6	1 3 6 to 2 4 6	
11	Notice of application for leave to deliver interrogatories, including copy to file and serve	0 2 0	0 3 0	0 5 0	
19	Service	0 1 0	0 1 6	0 1 6	
66	Attending registrar when order made	0 2 0	0 3 4	0 6 8	
B. I. 10	Paid registrar's fee for drawing	0 4 0	0 4 0	0 4 0	
B. I. 18	Paid registrar's fee on receipt for deposit	0 2 6	0 2 6	0 2 6	
44	Copy order and receipt, per folio	0 0 2	0 0 4	0 0 4	
44	Copy interrogatories for defendant, per folio	0 0 2	0 0 4	0 0 4	
19	Service of same and copy order and receipt	0 1 0	0 1 6	0 1 6	
51	Perusing defendant's answers, per folio	0 0 4	0 0 4	0 0 4	
66	Attending defendant's application when order made	0 2 0	0 3 4	0 6 8	
47	Perusing defendant's interrogatories	0 4 0	0 6 8	0 6 8	Defendant's
47	Or per folio	—	—	0 0 4	interroga-
83	Attending defendant's solicitor, applying for extension of time for answering when he declined to consent.	0 2 0	0 3 4 to 0 6 8	0 6 8	tories.
11	Notice of application to registrar	0 2 0	0 3 0	0 5 0	
19	Service	0 1 0	0 1 6	0 1 6	
66	Attending registrar when order made	0 2 0	0 3 4	0 6 8	
B. I. 10	Paid registrar's fee	0 4 0	0 4 0	0 4 0	
23	Instructions for affidavit in answer	0 3 4	0 6 8	0 6 8	
36	Drawing and copy answers to file	0 2 6	0 5 0	0 6 8	
36	Or per folio	0 0 6	0 1 0	0 1 0	
61	Attending plaintiff to be sworn	0 2 0	0 3 4	0 6 8	
100	Paid oath	0 1 6	0 1 6	0 1 6	
55	Attending to file	0 2 0	0 3 4	0 3 4	
44	Copy for defendant, per folio	0 0 2	0 0 4	0 0 4	
55	Attending to deliver	0 2 0	0 3 4	0 3 4	
66	Attending registrar on application for order for discovery of documents when order made and to pay deposit	0 2 0	0 3 4	0 6 8	Discovery of documents.
B. I. 10	Paid registrar's fee on order	0 4 0	0 4 0	0 4 0	
B. I. 18	Paid registrar's fee on receipt for deposit	0 2 6	0 2 6	0 2 6	
44	Copy order and receipt for deposit, per folio	0 0 2	0 0 4	0 0 4	
19	Service	0 1 0	0 1 6	0 1 6	
52	Perusing defendant's affidavit of documents, per folio	0 0 4	0 0 4	0 0 4	
44	Defendant having disobeyed order, further copy order and receipt for deposit, per folio	0 0 2	0 0 4	0 0 4	

PLAINTIFF'S COSTS—DEFAULT SUMMONS—*continued.*

No. in Scale.		A. £ s. d.	B. £ s. d.	C. £ s. d.
83	Attending registrar obtaining signature to notice to be endorsed on order.	0 2 0	0 3 4 to 0 6 8	0 6 8
B. I. 18	Paid registrar's fee on notice	0 2 6	0 2 6	0 2 6
14	Service	0 5 0	0 5 0	0 5 0
39	Affidavit of service where necessary.	0 3 4	0 5 0	0 6 8
23	Instructions for affidavit of documents	0 3 4	0 6 8	0 6 8
37	Drawing same and engrossing.	0 2 6	0 5 0	0 5 0
37	Or per folio	0 0 6	0 1 0	0 1 0
61	Attending deponent	0 2 0	0 3 4	0 6 8
100	Paid oath	0 1 6	0 1 6	0 1 6
55	Attending to file	0 2 0	0 3 4	0 3 4
44	Copy for defendant, per folio	0 0 2	0 0 4	0 0 4
55	Attending to deliver	0 2 0	0 3 4	0 3 4
Notices. 7	Drawing notice to produce and one copy.	0 3 0	0 4 0	0 5 0
8	Or not exceeding, per folio	—	0 0 8	0 0 8
44	Copy to serve	0 0 2	0 0 4	0 0 4
19	Service	0 1 0	0 1 6	0 1 6
40	Affidavit of service where necessary, oath and filing	0 2 0	0 2 0	0 3 4
44	Copy notice (exhibit), per folio	0 0 2	0 0 4	0 0 4
48	Perusing defendant's notice to produce.	0 2 0	0 5 0	0 6 8
7	Drawing notice to admit and inspect and one copy	0 3 0	0 4 0	0 5 0
8	Or not exceeding, per folio	—	0 0 8	0 0 8
44	Copy to serve, per folio	0 0 2	0 0 4	0 0 4
19	Service (One service where notices to produce and admit served together or same date.)	0 1 0	0 1 6	0 1 6
12	Drawing notice to produce for inspection, including copies	0 1 6	0 2 0	0 2 6
19	Service	0 1 0	0 1 6	0 1 6
57	Attending to produce for inspection	0 3 4	0 6 8	0 6 8
	Or per hour	—	0 6 8	0 6 8
59	Attending defendant's solicitor on his signing admission	0 2 0	0 3 4	0 6 8
48	Perusing defendant's notice to admit and inspect	0 2 0	0 5 0	0 6 8
57	Attending to inspect	0 3 4	0 6 8	0 6 8
	Or per hour	—	0 6 8	0 6 8
58	Sum paid for locomotion (if applicable) not exceeding	0 10 0	1 0 0	1 0 0
59	Attending signing admission	0 2 0	0 3 4	0 6 8
40	Defendant having disregarded notice to inspect and admit, affidavit of service	0 2 0	0 2 0	0 3 4
44	Copy notice (exhibit), per folio	0 0 2	0 0 4	0 0 4
7	Drawing notice to admit facts and copy.	0 3 0	0 4 0	0 5 0
8	Or not exceeding, per folio	—	0 0 8	0 0 8

PLAINTIFF'S COSTS—DEFAULT SUMMONS—*continued.*

No. in Scale.	—	A. £ s. d	B. £ s. d	C. £ s. d	
19	Service	0 1 0	0 1 6	0 1 6	
63	Having received defendant's admissions, attending plaintiff thereon	0 3 4	0 6 8	0 6 8	
40	Defendant not having made the required admissions, drawing affidavit of service of notice, including engrossing, attending to be sworn, oath and filing	0 2 0	0 2 0	0 3 4	
48	Perusing defendant's notice to admit facts	0 2 0	0 5 0	0 6 8	
63	Attending plaintiff thereon	0 3 4	0 6 8	0 6 8	
32	Drawing admission of facts and copy	0 3 0	0 5 0	0 6 8	
	Or per folio above 3	—	0 1 0	0 1 0	
55	Attending to deliver	0 2 0	0 3 4	0 3 4	
26	Instructions to counsel to advise on evidence	—	0 3 4	0 6 8	Advice on evidence.
94	Fee to counsel and clerk (if advice given in writing and allowed by judge).	—	1 3 6	1 3 6 to 2 4 6	
12	Drawing notice of demand for jury, including all copies	0 1 6	0 2 0	0 2 6	Jury.
83	Attending bespeaking jury	0 2 0	0 3 4 to 0 6 8	0 6 8	
	Paid jury fees	0 8 0	0 8 0	0 8 0	
97	Notice under Order XXII. r. 5 (3), that action settled or withdrawn, and that jury not required	0 2 0	0 3 6	0 3 6	
23	Instructions for affidavit under Order XVIII. r. 11	0 3 4	0 6 8	0 6 8	Evidence by affidavit.
37	Drawing same and engrossing	0 2 6	0 5 0	0 5 0	
	Or per folio	0 0 6	0 1 0	0 1 0	
61	Attending deponent to be sworn	0 2 0	0 3 4	0 6 8	
100	Paid oath	0 1 6	0 1 6	0 1 6	
12	Drawing notice to use affidavit at trial	0 1 6	0 2 0	0 2 6	
44	Copy affidavit to annex, per folio	0 0 2	0 0 4	0 0 4	
19	Service	0 1 0	0 1 6	0 1 6	
11	Notice of application for examination of witness under Order XVIII. r. 18	0 2 0	0 3 0	0 5 0	Examination of witness before trial.
19	Service	0 1 0	0 1 6	0 1 6	
23	Instruction for affidavit	0 3 4	0 6 8	0 6 8	
37	Drawing affidavit in support	0 2 6	0 5 0	0 5 0	
	Or per folio	0 0 6	0 1 0	0 1 0	
44	Copy for other side	0 0 2	0 0 4	0 0 4	
61	Attending plaintiff to be sworn	0 2 0	0 3 4	0 6 8	
66	Attending registrar when order made	0 2 0	0 3 4	0 6 8	
12	Notice (where necessary) to witness, including copy to serve	0 1 6	0 2 0	0 2 6	
44	Order and copies, per folio	0 0 2	0 0 4	0 0 4	
19	Service	0 1 0	0 1 6	0 1 6	
B. I. 10	Paid registrar's fee for order	0 4 0	0 4 0	0 4 0	
83	Attending Registrar obtaining appointment to examine	0 2 0	0 3 4 to 0 6 8	0 6 8	

PLAINTIFF'S COSTS—DEFAULT SUMMONS—*continued.*

	No. in Scale.	—	A. £ s. d.	B. £ s. d.	C. £ s. d.
	27	Instructions for brief (if counsel allowed by judge)	0 3 4	0 6 8	0 6 8 to 0 10 0
	35	Brief (if counsel allowed by judge)	0 5 0	0 6 8	0 6 8 to 0 13 4
	92	Fee to counsel and clerk (if allowed by judge) not exceeding	1 3 6	2 4 6	3 5 6
	67	Attending counsel with brief	0 3 4	0 3 4	0 6 8
	60	Attending examination per hour	0 3 4	0 6 8	0 10 0
	B. I. 14	Paid registrar's fee, first hour	0 10 0	0 10 0	0 10 0
	B. I. 15	For every additional hour or part thereof	0 7 0	0 7 0	0 7 0
	B. I. 16	If registrar required to attend elsewhere than at court or office in addition to above	0 10 0	0 10 0	0 10 0
	B. I. 17	Mileage, if applicable (6*d.* per mile one way).			
Subpœna.	5	Subpœna to witness and attending to issue.	0 2 0	0 3 0	0 5 0
		If served by bailiff.			
	A. 55	Paid (Every mile beyond two, 6*d.* Total fee not to exceed 3*s.*)	0 1 0	0 1 0	0 1 0
		If served by solicitor.			
	A. 57	Paid	0 0 6	0 0 6	0 0 6
	18	Service	0 1 6	0 2 6	0 2 6
	40	Affidavit of service	0 2 0	0 2 0	0 2 0
	59A	Attending witness, arranging attendance without subpœna	0 2 6	0 3 4	0 5 0
	98	Circular letters to witnesses with notice of day and hour of trial, each	—	0 1 0	0 1 0
		Where counsel is not retained.			
Proofs	29	Examining and taking minutes of evidence for each witness afterwards allowed on taxation	0 2 0	0 3 4	0 6 8
	30	If exceeding 6 folios, for each additional folio	0 0 6	0 1 0	0 1 0
	31	Preparation of minutes of fact or argument if ordered by judge	0 15 0	1 1 0	2 2 0
Trial without counsel.	69	Attending court conducting case	0 15 0	1 1 0	1 1 0 to 2 2 0
	70	Or in cases within Order LIII. r. 8 if ordered by judge.	1 1 0	2 2 0	3 3 0 to 5 5 0
	78A	If action is referred. Attending court when action referred	0 10 0	0 15 0	1 1 0
	72	Attending court on adjourned hearing.	0 10 0	0 15 0 to 1 1 0	1 1 0 to 3 3 0

PLAINTIFF'S COSTS—DEFAULT SUMMONS—*continued.*

No. in Scale.	—	A. £ s. d.	B. £ s. d.	C. £ s. d.	
73	Attending court, trial adjourned for want of time.	0 10 0	0 15 0 to 1 1 0	1 1 0 to 3 3 0	
74	Paid for locomotion, not exceeding .	0 10 6	1 1 0	1 1 0	
75	In addition if solicitor cannot travel to and from court same day .	0 10 6	1 1 0	1 1 0	
	Where counsel is retained.				
28	Instructions for brief . . .	0 6 8 to 0 10 0	0 10 6 to 1 11 6	1 1 0 to 3 3 0	Brief.
34	Drawing brief and observations, per folio, not exceeding 10*s.* . .	0 1 0	0 1 0	0 1 0	
44	Fair copy, per folio . .	0 0 2	0 0 4	0 0 4	
43	Copies of necessary documents to accompany brief, per folio . .	0 0 2	0 0 4	0 0 4	
85	Fee to counsel not exceeding . .	2 4 6	3 5 6	5 10 0	
86	Further fee to counsel in cases mentioned in Order LIII. r. 8, where there is no local bar in the court town or within 20 miles if ordered by judge	1 3 6	2 4 6	2 4 6	
67	Attending counsel with brief . .	0 3 4	0 3 4	0 6 8	
87	Conference fee (if registrar considers same necessary, and if marked on brief when delivered) . . .	—	1 6 0	1 6 0	
68	Attending to appoint conference and attending thereon . . .	—	0 6 8	0 13 4	
71	Attending court on trial with counsel, trial concluded.	0 10 0	0 15 0 to 1 1 0	1 1 0 to 3 3 0	Trial with counsel.
72	The like on adjourned hearing .	0 10 0	0 15 0 to 1 1 0	1 1 0 to 2 2 0	
73	The like, trial adjourned for want of time.	0 10 0	0 15 0 to 1 1 0	1 1 0 to 2 2 0	
74	Paid for locomotion, not exceeding .	0 10 6	1 1 0	1 1 0	
75	When unable to go and return same day	0 10 6	1 1 0	1 1 0	
78B	If action is referred. Attending court with counsel when action referred.	0 6 8	0 10 0 to 0 15 0	0 15 0 to 1 1 0	
A. 7	Paid hearing fee				
B. I. 3B	Paid registrar's fee under County Courts Act, 1903	—	—	0 10 0	
	If the Hearing be Adjourned.				
41	Drawing accounts, statements and other documents required by the judge and fair copy, per folio .	0 0 8	0 0 8	0 0 8	
88	Refresher to counsel . . .	1 3 6	1 3 6 to 2 4 6	2 4 6 to 3 5 6	Subsequent hearing.
81B	Attending court to enter judgment on award	0 10 0	0 15 0	1 1 0	

PLAINTIFF'S COSTS—DEFAULT SUMMONS—*continued.*

No. in Scale.	—	A.	B.	C.
		£ s. d.	£ s. d.	£ s. d
81c	Attending court with counsel to enter judgment on award.	0 6 8	0 10 0 to 0 15 0	0 15 0 to 1 1 0
90	Fee to counsel with brief on argument or to enter judgment on award.	1 3 6	1 3 6 to 2 4 6	2 4 0 to 3 5 0
78	Attending to hear deferred judgment	0 5 0	0 6 8	0 6 8 to 0 10 0
90	Fee to counsel with brief to hear deferred judgment.	1 3 6	1 3 6 to 2 4 6	2 4 0 to 3 5 0
Taxation.				
42	Drawing bill of costs and copy, per folio	0 0 4	0 0 8	0 0 8
44	Copy for defendant	0 0 2	0 0 4	0 0 4
83	Attending for appointment to tax	0 2 0	0 3 4 to 0 6 8	0 6 8
12	Notice of taxation.	0 1 6	0 2 0	0 2 0
19	Service	0 1 0	0 1 6	0 1 6
82	Attending taxation after trial	0 3 4	0 6 8	0 6 8 to 0 13 4
101	Postages, etc.	0 2 6	0 5 0	0 10 0
	Paid for plans, charts, or models for use of judge at trial, if allowed by judge, not exceeding in the whole	1 1 0	2 2 0	3 3 0
	Paid witnesses			
B. I. 3c	Paid fee on taxation (extended jurisdiction)	—	—	0 10 0

DEFENDANT'S COSTS.

Whether Claim Liquidated or Unliquidated.

No. in Scale.	—	A.	B.	C.
		£ s. d.	£ s. d.	£ s. d
20	Instructions to defend	0 3 4	0 6 8	0 13 4
45	Perusing particulars of claim	0 2 0	0 3 4	0 6 8
	Or per folio	0 0 2	0 0 4	0 0 8
Further particulars.				
12	Drawing notice for further particulars of claim	0 1 6	0 2 0	0 2 0
19	Service	0 1 0	0 1 6	0 1 6
45	Perusing further particulars	0 2 0	0 3 4	0 6 8
	Or per folio	0 0 2	0 0 4	0 0 8
Special defence.				
32	Drawing special defence	0 3 0	0 5 0	0 6 8
	Or per folio beyond 3	—	0 1 0	0 1 4
44	Copy for other side	0 0 2	0 0 4	0 0 8
55	Attending to deliver	0 2 0	0 3 4	0 3 4

DEFENDANT'S COSTS, WHETHER CLAIM LIQUIDATED OR UNLIQUIDATED —*continued.*

No. in Scale.	—	A. £ s. d.	B. £ s. d.	C. £ s. d.	
	Discovery of documents	See last precedent.			
	Interrogatories				
	Application for directions				
	Notice to produce				
	Notice to admit				
	Notice to admit facts				
	Summons or subpœna to witness				
	Attending witness, arranging attendance without subpœna				
	Advice on evidence				
	Demand for jury				
	Examination of witness before trial				
12	Notice of claim for contribution or indemnity under Order IX., and all copies	0 1 6	0 2 0	0 2 6	Third party notice.
83	Attending to file	0 2 0	0 3 4 to 0 6 8	0 6 8	
14	Service (Add items 15 and 16 if applicable.)	0 5 0	0 5 0	0 5 0	
39	Affidavit of service, oath and filing	0 3 4	0 5 0	0 6 8	
	Preparation for trial	See last precedent.			
	(*a*) where counsel not retained				
	(*b*) where counsel retained				
	Conducting trial				
	(*a*) without counsel				
	(*b*) with counsel				
	Completing judgment				
	Drawing and taxing costs				

DEFENDANT'S COSTS ON COUNTERCLAIM WHERE BOTH CLAIM AND COUNTERCLAIM ARE CONTESTED AND PLAINTIFF SUCCEEDS ON CLAIM.

		£ s. d.	£ s. d.	£ s. d.	
21	Instructions for counterclaim	0 3 4	0 6 8	0 13 0	
1	Preparing particulars	0 4 0	0 7 0	0 10 0	
2	If unliquidated	0 6 0	0 12 0	1 1 0	
55	Attending to file	0 3 0	0 3 4	0 3 4	
A. 4	Paid fee (only when counterclaim exceeds claim)				
28	Instructions for brief	The scale fee applicable to each of these items must be apportioned between claim and counterclaim.			
34	Drawing same				
44	Fair copy				
43	Copy correspondence to accompany				
85	Paid counsel's fee				
43	Copy counterclaim per folio	0 0 2	0 0 4	0 0 4	
68	Attending to appoint conference and attending thereon	Chargeable only if relating to counterclaim.			
87	Paid conference fee				
71	Attending court with counsel	To be apportioned as above.			

DEFENDANT'S COSTS ON COUNTERCLAIM, ETC.—*continued.*

	No. in Scale.	—	A. £ s. d.	B. £ s. d.	C. £ s. d.
	A. 13	Paid hearing fee (only when hearing fee on claim amounts to less than 40*s.*)			
Taxation.	42	Drawing bill of costs and copy, per folio	0 0 4	0 0 8	0 0 8
	44	Copy for plaintiff, per folio	0 0 2	0 0 4	0 0 4
	83	Attending for appointment to tax	0 2 0	0 3 4	0 6 8
	12	Notice of taxation	0 1 6	0 2 0	0 2 6
	19	Service	0 1 0	0 1 6	0 1 6
	82	Attending taxing	0 3 4	0 6 8	0 6 8 to 0 13 4

DEFENDANT'S COSTS IN ACTION REMITTED TO COUNTY COURT UNDER SECT. 66.

		—	Payments. £ s. d.	Charges. £ s. d.
		In High Court.		
		Instructions to defend	—	0 6 8
		Attending, entering appearance	—	0 6 8
		Paid	0 2 0	—
Directions.		Notice of appearance, copy and service	—	0 4 0
		Attending summons for directions when order made	—	0 6 8
		Perusing statement of claim	—	0 6 8
		Attending defendant going through statement of claim and receiving instructions	—	0 6 8
		Preparing notice of application for further directions, viz., to remit action to county court failing security for costs. Copy and service	—	0 5 0
		Instructions for affidavit in support of application	—	0 6 8
		Drawing same (fols. 6)	—	0 6 0
		Engrossing	—	0 2 0
		Attending defendant on being sworn	—	0 6 8
		Paid commissioner's fee	0 1 6	—
		Paid filing	0 2 6	—
		Copy for the other side	—	0 2 0
		Attending hearing of application when order made to remit to county court	—	0 6 8
		Order copy and service	—	0 3 6
		Paid	0 5 0	—
		Sittings fee	—	0 15 0
	No. in Scale.	*In County Court.*		
		Interlocutory applications	See first precedent.	
		Preparation for trial		
		Conducting trial		
		Completing judgment		
		Drawing and taxing costs		
	B. I. 4	Paid registrar's fee on taxation	0 5 0	

EXECUTION CREDITOR'S COSTS AFTER TRIAL, INTERPLEADER ISSUE REMITTED UNDER SECT. 17, JUDICATURE ACT, 1884.

—	—	Payments. £ s. d.	Charges. £ s. d.	
	In High Court.			
	On receipt of notice of claim from sheriff to goods seized instructions to oppose same .	—	0 6 8	
	Notice to sheriff to interplead. Copy and service	—	0 4 0	Interpleader summons.
	Perusing claimant's affidavit (fols. 8) . .	—	0 2 8	
	Close copy	—	0 2 8	
	Agent attending interpleader summons when order made directing an issue and remitting same for trial to the county court . .	—	0 6 8	
	Agent attending settling order . . .	—	0 6 8	
	Close copy order	—	0 1 0	
	Term fee	—	1 1 0	
No. in Scale.	*In County Court.*	B.	C.	
45	Perusing copy of claimant's particulars .	0 3 4	0 6 8	Particulars.
63	Attending execution creditor conferring and advising thereon	0 6 8	0 6 8	
	Interlocutory applications	See first precedent.		
	Preparation for trial			
	Conducting trial			
	Completing judgment			
	Drawing and taxing costs			
B. II. 25 & note.	Paid registrar's fee on taxation . . .	0 7 0	0 7 0	

INTERPLEADER.

Claimant's Costs.

No. in Scale.	—	A £ s. d.	B. £ s. d.	C. s. d.	
20	Instructions to prefer claim to goods taken in execution . . .	0 3 4	0 6 8	0 13 4	Instructions.
12	Notice of claim to high bailiff .	0 1 6	0 2 0	0 2 6	Notice.
19	Service	0 1 0	0 1 6	0 1 6	
63	On receipt of notice from high bailiff attending client for amount of deposit	0 3 4	0 6 8	0 6 8	Deposit.
83	Attending at high bailiff's office, depositing same	0 2 0	0 3 4	0 6 8	
2	Preparing particulars of claim .	0 6 0	0 12 0	1 1 0	
55	Attending to deliver . . . (Add charges for preparing for trial and trial.)	0 2 0	0 3 4	0 3 4	
A. 17	Paid hearing fee				
83	Attending court on return of deposit (Add charges for taxation.)	0 2 0	0 3 4	0 6 8	

EXECUTION CREDITOR'S COSTS.

	No. in Scale.	—	A. £ s. d.	B. £ s. d.	C. £ s. d.
Instructions.	45	Perusing notice of claim	0 2 0	0 3 4	0 6 8
	20	Instructions to oppose	0 3 4	0 6 8	0 13 4
	12	*Notice to high bailiff to interplead	0 1 6	0 2 0	0 2 6
	19	Service	0 1 0	0 1 6	0 1 6
	45	Perusing claimant's particulars of claim	0 2 0	0 3 4	0 6 8
Order for sale.	7	Preparing notice to produce bill of sale for inspection	0 3 0	0 4 0	0 5 0
		Or per folio	0 0 2	0 0 4	0 0 4
	19	Service	0 1 0	0 1 6	0 1 6
	57	Attending to inspect	0 3 4	0 6 8	0 6 8
	11	Preparing notice of application for sale and copies	0 2 0	0 3 0	0 5 0
	19	Service	0 1 0	0 1 6	0 1 6
	27	Instructions for brief on application	0 3 4	0 6 8	0 6 8
	35	Drawing	0 5 0	0 6 8	0 13 4
	44	Copy, per folio	0 0 2	0 0 4	0 0 4
	67	Attending counsel	0 3 4	0 3 4	0 6 8
	91	Paid his fee	1 3 6	1 3 6	2 4 6
	65	Attending court, order made	0 3 4	0 6 8	0 10 0
	64	The like if counsel not employed	0 10 0	0 13 4	1 1 0
		(Add charges for preparing for trial and trial.)			
		(Add charges for taxation.)			

PLAINTIFF'S OR APPLICANT'S COSTS OF APPLICATION OR SUMMONS UNDER COURTS (EMERGENCY POWERS) ACT, 1914, AS AMENDED BY SECTION 1 OF COURTS (EMERGENCY POWERS) (No. 2) ACT, 1916, COURTS (EMERGENCY POWERS) (AMENDMENT) ACT, 1916, COURTS (EMERGENCY POWERS) ACT, 1917; AND INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915, AND BILLETING OF CIVILIANS ACT, 1917.

No. in Scale.	—	A. £ s. d.	B.† £ s. d.
11	Preparing notice of application and copies	0 2 0	0 3 0
23	Attending registrar, obtaining appointment	0 2 0	0 3 4
Rule 25	Paid fee on same	0 2 6	0 2 6
19	Service of notice on defendant	0 1 0	0 1 6
66	Attending registrar on hearing of application	0 2 0	0 3 4
Rule 25	Paid fee on order if drawn up	0 2 6	0 2 6
84	Drawing costs, copy, notice, service and taxation	0 2 0	0 4 0

* This notice is, of course, not necessary as the high bailiff interpleads when notice of admission is not sent within four days under Order XXVII. r. 2. If not a "necessary" it is at least a "proper" notice, and frequently results in a saving of possession fees.

† NOTE.—By Rule 26 (2) of the Consolidated County Courts (Emergency Powers) Rules, 1916, dated August 23rd, 1916, and Rule 17 (c) of the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916, dated January 29th, 1916, and Rule 9 of the County Court (Billeting of Civilians) Rules, 1917, dated July 31st, 1917, Column B of the scale is to apply to all cases above £20 to the exclusion of Column C.

PLAINTIFF'S COSTS IN ADMINISTRATION ACTION.

No. in Scale.	—	B. £ s. d.	C. £ s. d.	
96	Letter before action	0 3 6	0 3 6	Instructions.
20	Instructions to sue	0 6 8	0 13 4	
2	Preparing particulars of claim and copies	0 12 0	1 1 0	
93	Paid fee to counsel to settle (if allowed by judge)	1 3 6	2 4 6	
54	Attending to enter plaint	0 6 8	0 6 8	Plaint.
A. 29 or 47	Paid plaint fee	1 0 0	1 0 0	
B. II. 29	Paid service fee	0 2 6	0 2 6	
	Or if subject matter exceeds 100*l.*	—	0 4 0	
23	Instructions for affidavit of plaintiff in support of claim	0 6 8	0 6 8	Evidence by affidavit.
37	Drawing and engrossing same (fols. 5)	0 5 0	0 5 0	
61	Attending deponent to be sworn	0 3 4	0 6 8	
100	Paid oath	0 1 6	0 1 6	
83	Attending to file	0 3 4	0 6 8	
B. II. 19	Paid filing fee	0 1 0	0 1 0	
12	Notice of intention to read same at hearing	0 2 0	0 2 6	
44	Copy affidavit to annex (fols. 5)	0 1 8	0 1 8	
19	Service on defendant's solicitor	0 1 6	0 1 6	
52	Perusing affidavit of defendant (fols. 7)	0 2 4	0 2 4	
7	Preparing notice to produce and copy	0 4 0	0 5 0	Notice.
7	The like notice to admit	0 4 0	0 5 0	
19	Service of both notices	0 1 6	0 1 6	
48	Perusing defendant's notice to produce	0 5 0	0 6 8	
48	The like notice to admit	0 5 0	0 6 8	
28	Instructions for brief	1 11 6	3 3 0	Brief.
34	Drawing same (fols. 30)	1 10 0	1 10 0	Note:—
44	Fair copy	0 10 0	0 10 0	Where
43	Copy will of testator to accompany (fols. 40)	0 13 4	0 13 4	counsel is
43	Copy affidavit of plaintiff (fols. 5)	0 1 8	0 1 8	not retained
43	Copy affidavit of defendant (fols. 7)	0 2 4	0 2 4	substitute
43	Copy particulars of claim (fols. 10)	0 3 4	0 3 4	the appro-
67	Attending counsel with brief	0 3 4	0 6 8	priate items
85	Paid his fee	3 5 6	5 10 0	from p. 1170.
68	Attending to appoint conference and attending thereon	0 6 8	0 13 4	
87	Paid conference fee	1 6 0	1 6 0	
71	Attending court on hearing when order made for accounts and inquiries	1 1 0	2 2 0	Trial.
A. 7	Paid hearing fee (Order prepared by registrar.)	2 0 0	2 0 0	
83	Attending registrar for appointment to settle order	0 3 4	0 6 8	Decree.
53	Perusing order	0 3 4	0 6 8	
44	Copy order for defendant (fols. 8)	0 2 8	0 2 8	
12	Notice of appointment to settle	0 2 0	0 2 6	
18	Service	0 1 6	0 1 6	
83	Attending registrar settling	0 6 8	0 6 8	
B. II. 7	Paid fee for drawing order, etc.	0 15 0	0 15 0	
	Or if over 100*l.*	—	1 5 0	

PLAINTIFF'S COSTS IN ADMINISTRATION ACTION—*continued.*

	No. in Scale.	—	B. £	B. s.	B. d.	C. £	C. s.	C. d.
	B. II. 17	Paid fee for transmitting note of judgment	0	2	6	0	2	6
		Or if over 100*l.*		—		0	3	6
	B. II. 29	Paid fee for service of order	0	2	6	0	2	6
		Or if over 100*l.*		—		0	4	0
Accounts, etc.	6	Summons to proceed with accounts and inquiries and copy	0	3	0	0	3	0
	B. II. 27	Paid registrar's fee on summons	0	1	6	0	1	6
	B. II. 29	Paid high bailiff's service fee	0	2	6	0	2	6
		Or if over 100*l.*		—		0	4	0
Advertisements.	83	Attending summons when order made for advertisements for claims and summons adjourned	0	6	8	0	6	8
	B. II. 12	Paid registrar's fee for sitting	0	10	0	0	10	0
	B. II. 7	Paid registrar's fee for drawing and sealing order for advertisements	0	15	0	0	15	0
		Or if over 100*l.*		—		1	5	0
		(Advertisement drawn by registrar.)						
	83	Attending registrar settling advertisement	0	6	8	0	6	8
	B. II. 11	Paid registrar's fee for drawing and inserting	0	5	0	0	5	0
		Or if over 100*l.*		—		0	7	0
	Treasury Regulation 22	Paid fee for insertion in *London Gazette*	0	10	0	0	10	0
	44	Copy advertisement for local paper	0	1	0	0	1	0
		Paid insertion	1	5	0	1	5	0
	44	Paid for copy affidavit of defendant's answers to inquiries (fols. 10)	0	3	4	0	3	4
	52	Perusing same (fols. 10)	0	3	4	0	3	4
		Paid for account exhibited thereto	0	1	8	0	1	8
	52	Perusing same	0	1	8	0	1	8
	83	Attending adjourned summons when accounts taken and inquiries completed	0	6	8	0	6	8
	B. II. 12	Paid registrar's sitting fee	0	10	0	0	10	0
Certificate.	B. II. 16	Paid court fee on registrar's certificate	0	15	0	1	10	0
	B. II. 22	Paid fee for notice of signing certificate	0	2	0	0	2	0
		Or if over 100*l.*		—		0	2	6
	83	Attending inspecting certificate and bespeaking copy	0	6	8	0	6	8
	B. II. 18	Paid fee for inspection	0	1	0	0	1	0
		Or if over 100*l.*		—		0	2	0
	B. II. 8	Paid for office copy (fols. 15)	0	5	0	0	5	0
Further consideration.	35	Drawing brief on further consideration	0	6	8	0	13	4
	44	Fair copy (fols. 10)	0	3	4	0	3	4
	43	Copy certificate to accompany (fols. 15)	0	5	0	0	5	0
	67	Attending counsel therewith	0	3	4	0	6	8
	90	Paid his fee	2	4	6	3	5	6
	72	Attending court on further consideration, order made	1	1	0	2	2	0
		(Order prepared by registrar.)						
Final order.	53	Perusing draft order	0	3	4	0	6	8
	83	Attending registrar for appointment to settle	0	3	4	0	6	8
	44	Copy order for defendant (fols. 4)	0	1	4	0	1	4
	12	Notice of appointment to settle	0	2	0	0	2	6

PLAINTIFF'S COSTS IN ADMINISTRATION ACTION—*continued.*

No. in Scale.	—	B. £ s. d.	C. £ s. d.	
19	Service	0 1 6	0 1 6	
83	Attending registrar settling order	0 6 8	0 6 8	
3. II. 7	Paid registrar's fee for drawing and sealing	0 15 0	0 15 0	
	Or if over 100*l.*	—	1 5 0	
3. II. 17	Paid high bailiff's fee for service	0 2 6	0 2 6	
	Or if over 100*l.*	—	0 3 6	
42	Drawing bill of costs and copy (fols. 20)	0 13 4	0 13 4	Taxation.
44	Copy for defendant (fols. 20)	0 6 8	0 6 8	
83	Attending for appointment to tax	0 3 4	0 6 8	
12	Notice of taxation	0 2 0	0 2 6	
19	Service	0 1 6	0 1 6	
82	Attending taxation	0 6 8	0 13 4	
3. II. 25	Paid taxing fee	0 7 0	0 7 0	
	Or if over 100*l.*	—	0 10 0	
101	Postages, etc.	0 5 0	0 10 0	

TRUSTEE'S COSTS OF PAYMENT OF FUND INTO COURT UNDER SECT. 70.

		£ s. d.	£ s. d.	
22	Instructions for affidavit by trustee	0 6 8	0 6 8	Trustee's
37	Drawing and engrossing (fols. 9)	0 9 0	0 9 0	affidavit.
61	Attending deponent to be sworn	0 6 8	0 6 8	
100	Paid oath	0 1 6	0 1 6	
3. II. 19	Paid filing	0 1 0	0 1 6	
83	Attending registrar filing affidavit and leaving probate for inspection	0 3 4	0 6 8	
83	Subsequently attending him for probate, and obtaining certificate of filing affidavit. (Certificate prepared by registrar)	0 6 8	0 6 8	Registrar's certificate.
	Attending paying money into Post Office Savings Bank and obtaining receipt (no charge allowed). (Acknowledgment of receipt prepared by registrar.)			
83	Attending registrar filing receipt and obtaining acknowledgment signed	0 3 4	0 6 8	
42	Drawing bill of costs and copy (fols. 4)	0 2 8	0 2 8	Taxation.
83	Attending obtaining appointment to tax	0 3 4	0 6 8	
82	Attending taxing	0 6 8	0 6 8	
3. II. 1	Paid registrar's fees	0 10 0	0 10 0	
	Or if over 100*l.*	—	0 15 0	
101	Postages, etc.	0 5 0	0 10 0	

PETITIONER'S COSTS OF OBTAINING ORDER FOR PAYMENT OUT OF MONEY PAID IN BY TRUSTEES UNDER SECT. 70.

		£ s. d.	£ s. d.	
20	Instructions for petition for payment out of amount in court	0 6 8	0 13 4	Petition.
3	Drawing petition (fols. 20)	1 0 0	1 0 0	
93	Fee to counsel to settle (if allowed by judge)	1 3 6	2 4 6	
44	Copy to file	0 6 8	0 6 8	
44	Copy for service	0 6 8	0 6 8	
54	Attending court filing petition	0 6 8	0 6 8	
A. 29	Paid plaint fee	1 0 0	1 0 0	

PETITIONER'S COSTS OF OBTAINING ORDER FOR PAYMENT OUT, ETC.—*cont.*

	No. in Scale.	—	B. £	B. s.	B. d.	C. £	C. s.	C. d.
	B. II. 24	Paid for office copy affidavit of trustee for use of judge under Order XXXVIII. r. 23 (fols. 10)	0	3	4	0	3	4
	B. II. 22	Paid registrar's fee for notice of day of hearing	0	2	0	0	2	6
	B. II. 29	Paid high bailiff's fee for service	0		6	0	2	6
		Or if over 100*l.*		—		0	4	0
	B. II. 30	If in a foreign district	0	4	0	0	4	0
		Or if over £100		—		0	5	0
Affidavit in support.	23	Instructions for affidavit in support of petition	0	6	8	0	6	8
	37	Drawing same and engrossing (fols. 5)	0	5	0	0	5	0
	61	Attending on deponent being sworn	0	3	4	0	6	8
	100	Paid oath	0	1	6	0	1	6
	B. II. 19	Paid filing fee	0	1	0	0	1	0
	12	Notice of filing	0	2	0	0	2	6
	19	Service	0	1	6	0	1	6
Brief.	28	Instructions for brief	1	11	6	3	3	0
	34	Drawing same (fols. 10)	0	10	0	0	10	0
	44	Fair copy	0	3	4	0	3	4
	43	Copy petition to accompany (fols. 20)	0	6	8	0	6	8
	43	The like affidavit in support (fols. 5)	0	1	8	0	1	8
	67	Attending counsel with brief	0	3	4	0	6	8
	85	Paid his fee	3	5	6	5	10	0
	68	Attending to appoint conference and attending thereon	0	6	8	0	13	4
	87	Paid conference fee	1	6	0	1	6	0
	98	Notice to petitioner to attend hearing	0	1	0	0	1	0
	71	Attending court with counsel. Order made for payment out	1	1	0	2	2	0
	A. 29	Paid hearing fee	2*s.* in £					
Order.	83	Attending registrar for draft order	0	3	4	0	6	8
	53	Perusing same	0	3	4	0	6	8
	12	Notice to respondent of appointment to settle	0	2	0	0	2	6
	19	Service	0	1	6	0	1	6
	83	Attending settling	0	6	8	0	6	8
	B. II. 7	Paid registrar's fee for preparing and sealing order	0	15	0	0	15	0
		Or if over 100*l.*		—		1	5	0
	B. II. 29	Paid for service (if necessary)	0	2	6	0	2	6
		Over 400*l.*		—		0	4	0
	83	For attending obtaining appointment to take fund out of court	0	3	4	0	6	8
	83	Attending with petitioner receiving fund out of court	0	3	4	0	6	8
Taxation.	42	Drawing bill of costs and copy (fols. 5)	0	3	4	0	3	4
	44	Copy for respondent (fols. 5)	0	1	8	0	1	8
	83	Attending for appointment to tax	0	3	4	0	6	8
	12	Notice of taxation	0	2	0	0	2	6
	19	Service	0	1	6	0	1	6
	82	Attending taxation	0	6	8	0	13	4
	B. II. 25	Paid taxing fee	0	7	0	0	7	0
		Or if over 100*l.*		—		0	10	0
	101	Letters, messengers, postages, etc.	0	5	0	0	10	0

ADMIRALTY JURISDICTION.

Plaintiff's Costs of Action and Reference.

In Rem and in Personam.

No. in Scale.	—	B.	C.	
		£ s. d.	£ s. d.	
96	Letter before action	0 3 6	0 3 6	
20	Instructions to sue	0 6 8	0 13 4	
2	Particulars of claim and copies, including præcipe	0 12 0	1 1 0	
93	Fee to counsel to settle (if allowed by order of judge, may be increased, Order LIII. r. 8, 3A).	1 3 6	1 3 6 to 2 4 6	
54	Attending to issue	0 6 8	0 6 8	
A. I. 47	Paid plaint fee	1 1 0	1 1 0	
O. LIII. r. 8, 4	Drawing undertaking for costs (where plaintiffs are foreigners)	0 3 4	0 3 4	
B. III. 14	Paid filing	0 1 0	0 1 0	
14	Service of summons	0 5 0	0 5 0	Service.
17	Substituted service	1 0 0	1 5 0	
83	Attending defendant's solicitors with summons, and obtaining acceptance of service and undertaking to appear and put in bail.	0 6 8	0 6 8	
83	Attending filing original summons	0 3 4	0 3 4	
B. III. 14	Paid filing	0 1 0	0 1 0	
23	Instructions for affidavit to lead to warrant for arrest	0 6 8	0 6 8	Arrest.
37	Drawing and engrossing	0 5 0	0 5 0	
	Or per folio	0 1 0	0 1 0	
61	Attending deponent on his being sworn	0 3 4	0 6 8	
100	Paid oath	0 1 6	0 1 6	
B. III. 14	Paid filing affidavit	0 1 0	0 1 0	
83	Attending extracting warrant for arrest	0 6 8	0 6 8	
83	Attending high bailiff with warrant and instructing him	0 6 8	0 6 8	
B. III. 1	Paid fees	0 5 0	0 5 0 exceeding 100*l.* 0 7 6	
59	Attending defendant's solicitors giving consent to release	0 3 4	0 6 8	
63	On receipt of notice requiring further and better particulars of claim. Attending plaintiffs taking instructions	0 6 8	0 6 8	Further particulars.
4	Preparing further particulars, including copy to file	0 3 0	0 3 0	
93	Fee to counsel to settle, if allowed by judge (may be increased (Order LIII. r. 8, 3A)).	1 3 6	1 3 6 to 2 4 6	
55	Attending filing further particulars	0 3 4	0 3 4	
B. III. 14	Paid filing	0 1 0	0 1 0	
44	Copy for service, per folio	0 0 4	0 0 4	

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

	No. in Scale.	—	B. £ s. d.	C £ s. d.
	55	Attending to deliver	0 3 4	0 3 4
	99	Paid for copy depositions		
Bail bond.	83	Attending defendant's solicitors on their requiring bail to be completed in the sum of *l.* in respect of their counterclaim . .	0 6 8	0 6 8
	63	Attending plaintiffs for names of sureties to submit to other side	0 6 8	0 6 8
	O. XXXIX r. 109	Writing defendant's solicitors submitting names of Mr. and Mr. as sureties	0 3 6	0 3 6
	63	Attending making inquiries as to defendant's sureties	0 6 8	0 6 8
	O. XXXIX r. 109	Writing defendant's solicitors accepting their sureties for bail	0 3 6	0 3 6
	O. XXXIX r. 48A	Instructions for bail bond	0 6 8	0 6 8
	O. XXXIX r. 48A	Drawing and engrossing . . .	0 6 8	0 6 8
	37	Preparing affidavit of justification of first surety	0 5 0	0 5 0
	37	The like second surety	0 5 0	0 5 0
	61	Attending with sureties before commissioner on completion	0 6 8	0 6 8
	100	Paid commissioner's fee	1 1 0	1 1 0
	12, 18	Notice of bail copy and service . . .	0 4 6	0 5 0
	37	Drawing and engrossing affidavit of notice of bail	0 5 0	0 5 0
	100	Paid oath	0 1 6	0 1 6
	83	Attending filing bail papers. . . .	0 3 4	0 3 4
	B. III. 3	Paid fee on bond	0 5 0	0 5 0 exceeding 100*l.* 0 7 6
	B. III. 4	Paid fee on affidavits of justification, each .	0 2 6	0 2 6
	12, 19	Notice of filing copy and service . . .	0 3 6	0 4 0
	O. XXXIX r. 49	Paid bail fees (being 1 per cent. on the amount in which bail is given divided between the sureties).		
Preliminary act.	22	Instructions for preliminary act . . .	0 6 8	0 6 8
	2	Preparing and fair copies	0 12 0	1 1 0
	93	Fee to counsel to settle, if allowed by order of the judge, and may be increased under scale C, Order LIII. r. 8, 3A.	1 3 6	1 3 6 to 2 4 6
	59	Attending defendant's solicitors giving consent to further time for preliminary act .	0 3 4	0 6 8
	55	Attending filing preliminary act . . .	0 3 4	0 3 4
	B. III. 14	Paid filing.	0 1 0	0 1 0
	12, 19	Notice, copy and service	0 3 6	0 4 0

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.	—	B. £ s. d.	C. £ s. d.	
83	Attending at court searching and finding defendant's preliminary act not filed	0 6 8	0 6 8	
O. XXXIX r. 109	Writing defendant's solicitors for same to be filed at once	0 3 6	0 3 6	
11	Notice of application to registrar for preliminary act or for directions and copy	0 3 0	0 5 0	Directions.
83	Attending filing	0 3 4	0 3 4	
B. III. 14	Paid filing	0 1 0	0 1 0	
19	Service on defendant's solicitors	0 1 6	0 1 6	
66	Attending application when order made	0 3 4	0 6 8	
27	Instructions for brief on application	0 6 8	0 6 8 to 0 10 0	
35	Drawing brief	0 6 8	0 6 8 to 0 13 4	
91	Fee to counsel (if judge certifies for counsel)	1 3 6	2 4 6	
67	Attending him	0 3 4	0 6 8	
44	Copy preliminary act for defendant's solicitors, per folio	0 0 4	0 0 4	
83	Attending defendant's solicitors exchanging copies	0 3 4	0 3 4	
51	Perusing defendant's preliminary act, per folio	0 0 4	0 0 4	
59	When no further pleadings: Attending defendant's solicitors obtaining consent to preliminary acts being opened	0 6 8	0 6 8	
83	Attending at court, filing consent, and opening and collating preliminary acts	0 6 8	0 6 8	
99	Paid for office copy defendant's preliminary act, per folio	0 0 4	0 0 4	
22	Instructions for statement of claim	0 6 8	0 6 8	Statement of
2	Preparing same	0 12 0	1 1 0	claim.
93	Fee to counsel to settle, if allowed by judge (may be increased (Order LIII. r. 8, 3A)).	1 3 6	1 3 6 to 2 4 6	
55	Attending filing statement of claim	0 3 4	0 3 4	
B. III. 14	Paid filing	0 1 0	0 1 0	
55	Attending to deliver statement of claim	0 3 4	0 3 4	
45	Perusing defence and counterclaim, per folio	0 0 4	0 0 4	Defence and counterclaim.
63	Attending plaintiffs advising thereon	0 6 8	0 6 8	
45	Perusing particulars of counterclaim, further particulars or special defence	0 3 4	0 6 8	
11	Notice for further and better particulars	0 3 0	0 5 0	
19	Service	0 1 6	0 1 6	
45	Perusing further particulars	0 3 4	0 6 8	
22	Instructions for reply and defence to counterclaim	0 6 8	0 6 8	Reply.
3	Drawing same, per folio	0 1 0	0 1 0	

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

	No. in Scale.	—	B. £	B. *s.*	B. *d.*	C. £	C. *s.*	C. *d.*
	93	Fee to counsel to settle, if allowed by judge (may be increased (Order LIII. r. 8, 3A)).	1	3	6	1 to 2	3	6 to 4 6
	44	Engrossing reply, per folio	0	0	4	0	0	4
	44	Copy to deliver	0	0	4	0	0	4
	55	Attending to file	0	3	4	0	3	4
	55	Attending to deliver	0	3	4	0	3	4
Discovery.	66	Attending before registrar on application for order for discovery	0	3	4	0	6	8
	B. I. 10, 18	Paid fees on order	0	6	6	0	6	6
	44	Copy order and receipt	0	2	0	0	2	0
	19	Service	0	1	6	0	1	6
	83	On letter from plaintiffs as to movements of witnesses, attending defendant's solicitors as to fixing a day for the trial, when they stated that they could not agree as some of their witnesses were at sea	0	6	8	0	6	8
	97	On receipt of admission of liability, writing registrar to withdraw case from list	0	3	6	0	3	6
	63	Attending plaintiffs on defendant's solicitors asking for consent to refer this matter to arbitration and taking instructions to agree	0	6	8	0	6	8
	O. XXXIX r. 109	Writing defendant's solicitors accordingly	0	3	6	0	3	6
Adjournment.	59	Consent to adjournment	0	3	4	0	6	8
	83	Attending filing consent	0	3	4	0	3	4
	B. III. 14	Paid filing	0	1	0	0	1	0
	66	Attending before registrar on application for adjournment when order made	0	3	4	0	6	8
	63	Attending plaintiffs informing them of adjournment and arranging for attendance of witnesses	0	6	8	0	6	8
Affidavit of documents.	52	Perusing defendant's affidavit of documents, per folio	0	0	4	0	0	4
	23	Instructions for plaintiff's affidavit of documents	0	6	8	0	6	8
	37	Drawing and engrossing	0	5	0	0	5	0
		Or per folio	0	1	0	0	1	0
	61	Attending deponent on his being sworn	0	3	4	0	6	8
	100	Paid oath	0	1	6	0	1	6
	44	Copy for defendant's solicitors, per folio	0	0	4	0	0	4
	55	Attending to deliver	0	3	4	0	3	4
	55	Attending filing affidavit	0	3	4	0	3	4
	B. III. 14	Paid filing	0	1	0	0	1	0
Inspection.	12, 19	Notice of appointment to inspect copy and service	0	3	6	0	4	0

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.	—	B. £ s. d.	C. £ s. d.	
83	Attending arranging appointment for mutual inspection	0 3 4	0 6 8	
57	Attending inspecting defendant's documents	0 6 8	0 6 8	
57	Attending defendant's solicitors giving them inspection of plaintiff's documents	0 6 8	0 6 8	
99	Paid for copy defendant's documents, per folio	0 0 4	0 0 4	
	In salvage actions:—			
52	Perusing affidavit of values, per folio	0 0 4	0 0 4	
63	Attending plaintiffs thereon taking instructions	0 6 8	0 6 8	
11	Notice for order for appraisement	0 3 0	0 5 0	Appraisement.
55	Attending serving	0 1 6	0 1 6	
66	Attending before registrar when order made	0 3 4	0 6 8	
64	*Or* attending before judge when order made	0 6 8 to 0 13 4	0 10 0 to 1 1 0	
44, 18	Copy and service of order	0 3 6	0 3 6	
B. III. 20	Paid fees	0 5 0	0 5 0 exceeding 100*l.* 0 7 6	
22	Instructions for interrogatories	0 6 8	0 6 8	Interrogatories.
36	Drawing same, including copy to file	0 5 0	0 6 8	
	Or per folio	0 1 0	0 1 0	
93	Fee to counsel to settle, if allowed by judge (may be increased (Order LIII. r. 8, 3A)).	1 3 6	1 3 6 to 2 4 6	
11	Notice of application to registrar for leave to administer interrogatories	0 3 0	0 5 0	
83	Attending filing	0 3 4	0 3 4	
B. III. 14	Paid filing	0 1 0	0 1 0	
19	Service	0 1 6	0 1 6	
66	Attending application before registrar when order made	0 3 4	0 6 8	
B. I. 10, 18	Paid fees	0 6 6	0 6 6	
44	Copy order and receipt, per folio	0 0 4	0 0 4	
44	Copy interrogatories, per folio	0 0 4	0 0 4	
18	Service of same	0 2 6	0 2 6	
59	Attending defendant's solicitors giving consent to further time for answers to interrogatories	0 3 4	0 6 8	
51	Perusing defendant's affidavit in answer to interrogatories, per folio	0 0 4	0 0 4	
11	Notice of application for further and better answers	0 3 0	0 5 0	Further answers.
19	Service	0 1 6	0 1 6	
83	Attending filing	0 3 4	0 3 4	

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

	No. in Scale.	—	B. £ s. d.	C. £ s. d.
	B. III. 14	Paid filing.	0 1 0	0 1 0
	66	Attending application when order made	0 3 4	0 6 8
	51	Perusing further affidavit in answer to interrogatories, per folio	0 0 4	0 0 4
	66	Attending defendant's application for leave to deliver interrogatories	0 3 4	0 6 8
	47	Perusing defendant's interrogatories . .	0 6 8	0 6 8
		Or per folio	—	0 0 4
	63	Attending plaintiffs thereon, conferring and taking instructions	0 6 8	0 6 8
	59	Attending defendant's solicitors obtaining consent to further time for answers . . (If declined, insert items 12, 19 and 66.)	0 3 4	0 6 8
	23	Instructions for affidavit in answer to defendant's interrogatories	0 6 8	0 6 8
	36	Drawing same, including copy to file . .	0 5 0	0 6 8
		Or per folio	0 1 0	0 1 0
	93	Fee to counsel to settle, if allowed by judge (may be increased (Order LIII. r. 8, 3A)).	1 3 6	1 3 6 to 2 4 6
	61	Attending deponent on his being sworn .	0 3 4	0 6 8
	100	Paid oath	0 1 6	0 1 6
	55	Attending filing	0 3 4	0 3 4
	B. III. 14	Paid filing.	0 1 0	0 1 0
	44	Copy affidavit for defendant's solicitors, per folio	0 0 4	0 0 4
Examination of witnesses.	55	Attending to deliver	0 3 4	0 3 4
	11	Notice of application for order to examine witnesses	0 3 0	0 5 0
	19	Service	0 1 6	0 1 6
	23	Instructions for affidavit in support . .	0 6 8	0 6 8
	37	Drawing and engrossing	0 5 0	0 5 0
		Or per folio	0 1 0	0 1 0
	61	Attending deponent on his being sworn .	0 3 4	0 6 8
	100	Paid oath	0 1 6	0 1 6
	44	Copy affidavit for defendant's solicitors, per folio	0 0 4	0 0 4
	55	Attending to deliver	0 3 4	0 3 4
	66	Attending application before registrar . .	0 3 4	0 6 8
	64	Attending application before judge . .	0 6 8 to 0 13 4	0 10 0 to 1 1 0
	B. I. 10	Paid for order	0 4 0	0 4 0
	44, 19	Copy order and receipt and service . .	0 3 6	0 3 6
	83	Attending registrar obtaining appointment to examine	0 3 4 to 0 6 8	0 6 8
	12, 19	Notice copy and service	0 3 6	0 4 0

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.	—	B. £ s. d.	C. £ s. d.	
O. XXXIX r. 109	Writing witness A. with instructions to attend	0 3 6	0 3 6	
O. XXXIX r. 109	The like witness B.	0 1 6	0 1 6	
5	Subpœna to witness to attend	0 3 0	0 5 0	
B. III. 5	Paid.	0 2 0	0 2 0 exceeding 100*l.* 0 3 0	
44	Copy for service	0 1 0	0 1 0	
18	Service	0 2 6	0 2 6	
15	Mileage for each mile beyond two, but not to exceed ten	0 0 6	0 1 0	
16	If served by agent, correspondence	0 7 0	0 7 0	
59A	Attending witness, arranging attendance without subpœna	0 3 4	0 5 0	
27	Instructions for brief on examination of witnesses, if allowed by order of judge	0 6 8	0 10 0	Brief on examination
35	Drawing same	0 6 8	0 6 8 to 0 13 4	
67	Attending counsel with brief	0 3 4	0 6 8	
92	Paid his fee and clerk (if allowed by judge) (may be increased (Order LIII. r. 8, 3A))	2 4 6	3 5 6	
68	Attending to appoint conference and thereon	0 6 8	0 13 4	
87	Paid fee on conference	1 6 0	1 6 0	
60	Attending examination, per hour	0 6 8	0 10 0	
B. III. 23	Paid examiner's fee usually, and when applicable in addition B. III. 24, 25 and 26	0 7 0	0 7 0 exceeding 100*l.* 0 10 0	
B. III. 16	Paid shorthand writers' fees	—	—	
83	Attending registrar bespeaking copy depositions	0 3 4	0 6 8	
B. III. 15	Paid for office copy, per folio	0 0 4	0 0 4	
44	Copy for defendant's solicitors, per folio	0 0 4	0 0 4	
83	Attending to deliver	0 3 4	0 3 4	
O. XXXIX r. 97	If evidence printed— Examining proof, per folio	0 0 2	0 0 2	
	Paid printer's charges	—	—	
59	Attending defendant's solicitors for consent to use depositions at the trial	0 3 4	0 6 8	
83	Attending at court setting case down for hearing	0 6 8	0 6 8	
B. III. 6	Paid for notice of hearing	0 1 6	0 1 6 exceeding 100*l.* 0 2 6	

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

	No. in Scale.	—	B. £	B. s.	B. d.	C. £	C. s.	C. d.
	O. XXXIX r. 109	Writing plaintiffs informing them of date of trial and to keep witnesses in readiness .	0	3	6	0	3	6
	O. XXXIX r. 109	Letters to independent witnesses informing them, each	0	1	6	0	1	6
		Where no counsel employed—						
Minutes of evidence.	29	Examining and taking minute of evidence for each witness afterwards allowed on taxation or properly examined for preliminary act .	0	3	4	0	6	8
	30	If exceeding six folios, for each additional folio	0	1	0	0	1	0
	31	Preparing minutes of fact or argument, if allowed by order of judge	1	1	0	2	2	0
	26	Instructions to counsel to advise on evidence	0	3	4	0	6	8
	94	Paid his fee and clerk, if allowed by order of judge (may be increased (Order LIII. r. 8, 3A))	1	3	6	2	4	6
	59	Attending defendant's solicitors obtaining admission of plan of *locus in quo*, etc., to save expenses	0	3	4	0	6	8
Notices.	7	Notice to produce and copy . . .	0	4	0	0	5	0
	7	Notice to admit and copy	0	4	0	0	5	0
	8	Or per folio	0	0	8	0	0	8
	19	Service	0	1	6	0	1	6
Inspection.	57	Attending defendant's solicitors giving inspection of documents	0	6	8	0	6	8
	59	Attending defendant's solicitors obtaining admission of official depositions to dispense with calling Board of Trade official . . .	0	3	4	0	6	8
	5, 18, 44	Subpœna to Board of Trade official to produce depositions, copy and service . . .	0	6	6	0	8	6
	59A	Attending Board of Trade official, arranging attendance without subpœna . .	0	3	4	0	5	0
	O. LIII. 37	Paid his fee	1	1	0	1	1	0
	83	Attending defendant's solicitors on their inspecting plan of *locus in quo*	0	6	8	0	6	8
	48	Perusing defendant's notice to produce .	0	5	0	0	6	8
	48	The like to admit	0	5	0	0	6	8
	57	Attending inspecting documents . . .	0	6	8	0	6	8
	59	Attending defendant's solicitors giving admission of their documents	0	3	4	0	6	8
Admission of facts.	7	Notice to admit facts and copy . . .	0	4	0	0	5	0
	19	Service	0	1	6	0	1	6
	48	Perusing defendant's notice to admit facts .	0	5	0	0	6	8
	63	Attending plaintiffs thereon	0	6	8	0	6	8
	32	Drawing admission of facts, and copies. .	0	5	0	0	6	8
		Or per folio	0	1	0	0	1	0
	55	Attending to deliver	0	3	4	0	3	4
	55	Attending filing	0	3	4	0	3	4
	B. III. 14	Paid filing.	0	1	0	0	1	0
Assessors.	12	Preparing notice bespeaking assessors . .	0	2	0	0	2	6

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.	—	B.	C.
		£ s. d.	£ s. d.
83	Attending at court, filing notice and bespeaking assessors	0 6 8	0 6 8
B. III. 14	Paid filing	0 1 0	0 1 0
B. III. 7	Paid for summons to assessors	0 1 6	0 1 6 exceeding 100*l.* 0 2 6
O. XXI. r. 6	Paid assessors' fee	—	—
5	Subpœna for service on witness and attending to issue	0 3 0	0 5 0
B. III. 5	Paid	0 2 0	0 2 0 exceeding 100*l.* 0 3 0
18 44	Copy and service	0 3 6	0 3 6
15	Mileage, per mile, over two and not exceeding ten	0 0 6	0 1 0
40	Affidavit of service of subpœna	0 2 0	0 3 4
59A	Attending witness, arranging attendance without subpœna	0 3 4	0 5 0
28	Instructions for brief	0 10 6 to 1 11 6	1 1 0 to 3 3 0 Brief.
34	Drawing same, per folio	0 1 0	0 1 0
44	Fair copy, per folio	0 0 4	0 0 4
43	Fair copy documents to accompany, per folio Summons and particulars (fols.). Preliminary act (fols.). Defendant's act (fols.). Counterclaim (fols.). Depositions (fols.). Statement of claim (fols.) Defence (fols.). Reply (fols.). Correspondence (fols.). Plaintiff's documents (fols.). Extract from logbooks (fols.). Advice on evidence (fols.). Plaintiff's notice to produce (fols.). The like to admit (fols.). Defendant's notice to admit (fols.). Survey reports (fols.). Interrogatories and answers (fols.).	0 0 4	0 0 4
95	Paid for chart, usually	0 3 0	0 3 0
95	For plans, charts or models, if allowed by judge not exceeding	2 2 0	3 3 0
67	Attending counsel with brief	0 3 4	0 6 8
85	Paid his fee and clerk	3 5 6	5 10 0
88	Paid refresher (may be increased (Order LIII. r. 8, 3A), by order of the judge).	1 3 6 to 2 4 6	2 4 6 to 3 5 6

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

	No. in Scale.	—	B. £ s. d.	C. £ s. d.
	41	Fair copy documents for judge, per folio . Correspondence (fols.). Extracts from log (fols.). Masters' report (fols.). Paid for chart (fols.). Pleadings (fols.).	0 0 4	0 0 4
	68	Attending appointing conference and thereon	0 6 8	0 13 4
	87	Paid fee and clerk (may be increased (Order LIII. r. 8, 3A))	1 6 0	1 6 0
	59	Attending defendant's solicitors obtaining consent to admit copy of River Bye-laws .	0 3 4	0 6 8
	59	Attending defendant's solicitors obtaining consent to question of liability only being		
Trial.		decided on hearing	0 3 4	0 6 8
	71	Attending court on the hearing with counsel (may be increased under scale C to 3*l.* 3*s.* (Order LIII. r. 8, 2), by order of judge).	1 1 0	1 1 0 to 2 2 0
	69	Attending court on hearing without counsel .	1 1 0	1 1 0 to 2 2 0
	70	Attending court on hearing without counsel, if allowed by order of the judge (may be increased under scale C to 5*l.* 5*s.* (Order LIII. r. 8, 2) by order of judge) . . .	2 2 0	3 3 0
	A. 7	Paid hearing fee	—	—
	72	Where trial commenced but not concluded, etc., for each day or part of a day, etc., with or without counsel (may be increased under scale C to 3*l.* 3*s.*, by order of judge (Order LIII. r. 8, 2)).	0 15 0 to 1 1 0	1 1 0 to 2 2 0
	73	Where trial is adjourned for want of time, or upon payment of costs of the day, in lieu of items 69 and 71, with or without counsel (may be increased under scale C to 3*l.* 3*s.*, by order of judge (Order LIII. r. 8, 2)).	0 15 0 to 1 1 0	1 1 0 to 2 2 0
	74	Where the solicitor does not reside or carry on business within two miles of the town where the trial takes place, in addition the sum paid for locomotion to attend the trial not exceeding	1 1 0	1 1 0
	75	When the solicitor cannot travel to and from the court the same day in addition . . .	1 1 0	1 1 0
Deferred judgment.	78	Attending at court to hear a deferred judgment.	0 6 8	0 6 8 to 0 10 0
	90	Paid fee to counsel to hear deferred judgment (may be increased under scale C by order of judge (Order LIII. r. 8, 3A)).	1 3 6 to 2 4 6	2 4 6 to 3 5 6
Decree.	83	Attending at court taking up decree . .	0 3 4 to 0 6 8	0 6 8

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.	—	B.	C.	
		£ *s.* *d.*	£ *s.* *d.*	
B. III. 13	Paid fee for drawing	0 10 0	0 10 0 exceeding 100*l.* 0 15 0	
B. III. 28	Paid fee for transmitting	0 2 6	0 2 6 exceeding 100*l.* 0 3 6	
53	Perusing decree	0 3 4	0 6 8	
44	Copy for service, per folio	0 0 4	0 0 4	
19	Service	0 1 6	0 1 6	
O. XXXIX r. 97	Instructions for claim on reference	0 13 4	0 13 4	
O. XXXIX r. 97	Drawing same, per folio	0 1 0	0 1 0	Reference.
44	Fair copy, per folio	0 0 4	0 0 4	
44	Copy vouchers to keep on filing originals, per folio	0 0 4	0 0 4	
44	The like survey reports, per folio	0 0 4	0 0 4	
55	Attending filing claim and vouchers	0 3 4	0 3 4	
B. III. 14	Paid filing	0 1 0	0 1 0	
44	Copy claim and vouchers and survey reports from defendants, per folio	0 0 4	0 0 4	
55	Attending to deliver	0 3 4	0 3 4	
63	Attending plaintiffs obtaining further particulars required by defendants	0 6 8	0 6 8	
57	Attending defendant's solicitors giving them inspection of logbooks	0 6 8	0 6 8	
83	On inquiry from defendant's solicitors attending plaintiffs ascertaining whether any other damage was repaired at same time as collision damage	0 6 8	0 6 8	
O. XXXIX r. 109	Writing defendant's solicitors informing them	0 3 6	0 3 6	
63	Attending informing plaintiffs that defendants required inspection of their books and arranging appointment (If a foreign vessel an affidavit is usually made by the owner verifying the earnings of the vessel.)	0 6 8	0 6 8	
12, 19	Notice of appointment, copy and service on defendant's solicitors	0 3 6	0 4 0	
57	Attending defendant's solicitors giving inspection of books and accounts, per hour	0 6 8	0 6 8	
63	Attending plaintiffs on defendant's offer in settlement and taking instructions to decline	0 6 8	0 6 8	
O. XXXIX r. 109	Writing defendant's solicitors accordingly	0 3 6	0 3 6	

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.	—	B. £ s. d.	C. £ s. d.
63	On letter from defendant's solicitor with an offer of , and enclosing cheque as tender. Attending plaintiffs for instructions	0 6 8	0 6 8
O. XXXIX r. 109	Writing defendant's solicitors agreeing to accept cheque as a cash tender.	0 3 6	0 3 6
63	Attending plaintiffs taking instructions to accept tender	0 6 8	0 6 8
12	Notice of acceptance of tender	0 2 0	0 2 6
83	Attending filing	0 3 4	0 3 4
B. III. 14	Paid filing.	0 1 0	0 1 0
44, 19	Copy and service on defendant's solicitors	0 3 0	0 3 0
O. XXXIX r. 109	Writing witness A. that case settled	0 3 6	0 3 6
,,	The like witness B.	0 1 6	0 1 6
59	Attending defendant's solicitors obtaining consent to take money out of court	0 3 4	0 6 8
83	Attending at court taking out amount of tender	0 6 8	0 6 8
66	Attending registrar for a day for the hearing of the reference when a day fixed	0 3 4	0 6 8
B. III. 6	Paid for notice of appointment	0 1 6	0 1 6 exceeding 100*l.* 0 2 6
O. XXXIX r. 109	Writing witness A. to attend reference.	0 3 6	0 3 6
,,	The like witness B.	0 1 6	0 1 6
63	On letter from defendant's solicitors requiring appointment to inspect plaintiff's vessel. Attending plaintiffs thereon and arranging appointment	0 3 4	0 6 8
O. XXXIX r. 109	Writing defendant's solicitors with appointment and authority for surveyor to inspect	0 3 6	0 3 6
28	Instructions for brief on reference	0 10 6 to 1 11 6	1 1 0 to 3 3 0
34	Drawing same, per folio	0 1 0	0 1 0
44	Fair copy, per folio	0 0 4	0 0 4
43	Copy documents to accompany, per folio	0 0 4	0 0 4
67	Attending counsel with brief	0 3 4	0 6 8
92	Paid fee and clerk if judge certifies for counsel (may be increased under scale C by order of judge (Order LIII. r. 8, 3A))	2 4 6	3 5 6
68	Attending to appoint conference and thereon	0 6 8	0 13 4
87	Paid fee and clerk (may be increased (Order LIII. r. 8, 3A))	1 6 0	1 6 0
80	Attending hearing with counsel	0 15 0	1 1 0

Brief on reference.

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.	—	B. £ s. d.	C. £ s. d.	
	Where no counsel employed—			
29	Examining and taking minutes of evidence of witness	0 3 4	0 6 8	
30	If exceeding six folios, for each additional folio	0 1 0	0 1 0	
79	Attending hearing of reference without counsel	1 1 0	1 1 0 to 2 2 0	
B. III. 23	Paid registrar's fees usually, and when applicable in addition, B. III. 24, 25, and 26.	0 7 0	0 7 0 exceeding 100*l.* 0 10 0	
83	Attending inspecting registrar's report and obtaining copy.	0 3 4 to 0 6 8	0 6 8	Report.
B. III. 27	Paid for report and filing	0 10 0	0 10 0 exceeding 100*l.* 0 15 0	
83	Attending obtaining amount of damages and interest out of court	0 6 8	0 6 8	
42	Drawing bill of costs and copy for registrar, per folio	0 0 8	0 0 8	Taxation.
44	Copy for defendant's solicitors, per folio	0 0 4	0 0 4	
83	Attending obtaining appointment to tax	0 3 4	0 6 8	
12, 19	Notice copy and service	0 3 6	0 4 0	
82	Attending taxing	0 6 8	0 6 8 to 0 13 4	
B. III. 33	Paid taxing fee	0 5 0	0 5 0 exceeding 100*l.* 0 7 0	
	Witnesses. *See* Defendant's Costs.			
101	Postages, etc.	0 5 0	0 10 0	

ADMIRALTY JURISDICTION.

DEFENDANT'S COSTS OF ACTION AND REFERENCE.

In Rem and in Personam.

		£ s. d.	£ s. d.	
20	Instructions to defend	0 6 8	0 13 4	
83	Attending plaintiff's solicitors accepting service of summons and giving undertaking for appearance and bail.	0 3 4 to 0 6 8	0 6 8	
83	Præcipe for appearance and attending to enter	0 6 8	0 6 8	
B. III. 14	Paid filing.	0 1 0	0 1 0	
12, 19	Notice copy and service	0 3 6	0 4 0	Release.
63	Attending defendant's solicitors on arrest of vessel and taking instructions to obtain release	0 6 8	0 6 8	
59	Attending plaintiff's solicitors obtaining consent to release	0 3 4	0 6 8	

ADMIRALTY JURISDICTION—DEFENDANT'S COSTS—*continued.*

	No. in Scale.	—	B. £	B. *s.*	B. *d.*	C. £	C. *s.*	C. *d.*
	66	Attending filing and obtaining order for release	0	3	4	0	6	8
	B. III. 14	Paid filing.	0	1	0	0	1	0
	83	Attending high bailiff with order to release and instructing him	0	6	8	0	6	8
	B. III. 43	Paid fees, and reasonable fees for travelling and maintenance.	1	0	0	1 exceeding 100*l.* 1	0 10	0 0
	B. III. 44	Paid possession fees		—			—	
	12, 19	Notice requiring delivery of statement of claim, copy, service on plaintiff's solicitor	0	3	6	0	4	0
	O. XXXIX r. 109	Writing plaintiff's solicitors that their statement of claim was overdue, and to file same	0	3	6	0	3	6
	59	Attending plaintiff's solicitors giving consent to further time for statement of claim	0	3	4	0	6	8
	51	Perusing statement of claim, per folio	0	0	4	0	0	4
		In salvage actions—						
Affidavit of values.	23	Instructions for affidavit of values	0	6	8	0	6	8
	37	Drawing and engrossing	0	5	0	0	5	0
		Or per folio	0	1	0	0	1	0
	61	Attending deponent on his being sworn	0	3	4	0	6	8
	100	Paid oath	0	1	6	0	1	6
	55	Attending filing	0	3	4	0	3	4
	B. III. 14	Paid filing.	0	1	0	0	1	0
	44	Copy affidavit for plaintiff's solicitors, per folio	0	0	4	0	0	4
	55	Attending to deliver	0	3	4	0	3	4
	66	Attending plaintiff's summons to appraise	0	3	4	0	6	8
Defence and counterclaim.	22	Instructions for defence and counterclaim	0	6	8	0	6	8
	2	Preparing same	0	12	0	1	1	0
	93	Fee to counsel to settle (may be increased (Order LIII. r. 8, 3A)).	1	3	6	1 to 2	3 4	6 6
	55	Attending filing	0	3	4	0	3	4
	B. III. 14	Paid filing	0	1	0	0	1	0
	44	Copy for plaintiff's solicitors, per folio	0	0	4	0	0	4
	55	Attending to deliver	0	3	4	0	3	4
		If case tried on preliminary acts—						
	11, 19	Notice of counterclaim copy and service	0	4	6	0	6	6
	55	Attending filing	0	3	4	0	3	4
	B. III. 14	Paid filing.	0	1	0	0	1	0
Tender.	83	Præcipe for tender attending to file and pay amount into court	0	6	8	0	6	8
	B. III. 14	Paid filing.	0	1	0	0	1	0

ADMIRALTY JURISDICTION—DEFENDANT'S COSTS—*continued.*

No. in Scale.	—		C.	
		£ *s.* *d.*	£ *s.* *d.*	
44, 19	Notice of tender copy and service on plaintiff's solicitors	0 3 0	0 3 0	
83	Præcipe for admission of liability and attending to file	0 6 8	0 6 8	
B. III. 14	Paid filing	0 1 0	0 1 0	
44, 19	Notice to plaintiff's solicitors, copy and service	0 3 0	0 3 0	
	(For bail and other steps in the action, see "Plaintiff's Costs.")			
O. LIII. r. 42	Witnesses, *e.g.*,			Witnesses.
	John Smith, Master of ——	—	—	
	Detention from —— to —— days at	—	—	
	Rails and expenses from ——	—	—	
O. LIII. rr. 38, 39, 41	*John Brown, Pilot*	—	—	
	Attending court or trial, per day	—	—	
	Rails and expenses from ——	—	—	
	John Robinson, Marine Surveyor	—	—	
O. LIII. r. 43	Fee to qualify if allowed by order of the judge	1 1 0 to 3 3 0	1 1 0 to 5 5 0	
O. LIII. rr. 38, 39, 41	Attending at court on trial or reference	1 1 0 to 2 2 0	1 1 0 to 3 3 0	

PETITIONING CREDITORS' COSTS OF OBTAINING WINDING-UP ORDER AGAINST A LIMITED COMPANY.

TAXABLE UNDER COMPANIES WINDING-UP RULES, 1909, RULE 184, ON THE LOWER SCALE OF THE HIGH COURT.

(*The Fees are regulated by the Scale of Fees annexed to the Rules in question.*)

No. in Scale.	—	Payments.	Charges.	
		£ *s.* *d.*	£ *s.* *d.*	
	Instructions for petition to wind up company	—	0 13 4	Instructions.
	Attending obtaining copy memorandum and articles of association	—	0 6 8	
	Drawing petition (fols. 16)	—	0 16 0	Petition.
	Engrossing petition in duplicate	—	0 10 8	
	Attending the petitioning creditors on their signing same	—	0 13 4	
	Attending court presenting same	—	0 6 8	
A. 1	Paid fee	2 0 0	—	
	Instructions for affidavit verifying petition	—	0 6 8	Affidavit
	Drawing same (fols. 4)	—	0 4 0	verifying.
	Engrossing	—	0 1 4	
	Marking exhibit	—	0 1 0	
	Attending swearing	—	0 6 8	

PETITIONING CREDITORS' COSTS, ETC.—*continued.*

	No. in Scale.	—	Payments. £ s. d.	Charges. £ s. d.
	A. 10, 11	Paid oath and exhibit	0 2 6	—
		Attending to file	—	0 6 8
	A. 9	Paid filing	0 2 0	—
		Copy for office copy (fols. 4)	—	0 1 4
	A. 14	Paid marking	0 1 4	—
		If served by solicitor—		
Service.		Service of petition	—	0 5 0
		Drawing affidavit of service and attending to swear	—	0 5 0
		Marking exhibit	—	0 1 0
		Paid oath and exhibit	0 2 6	—
		Attending to file affidavit of service and verifying petition	—	0 6 8
		If served by bailiff—		
	C. 2	Paid bailiff for service of petition, including affidavit of service	0 3 6	—
	A. 9	Paid filing affidavit of service of petition	0 2 0	—
Advertisement.		Drawing advertisement of petition (fols. 6)	—	0 6 0
		Copies for *London Gazette* and local paper	—	0 4 0
		Attending agent of *London Gazette* instructing him to insert advertisement	—	0 6 8
		Paid for advertisement	—	—
		Attending to insert in local paper	—	0 6 8
		Paid for advertisement	—	—
Provisional Liquidator.		Instructions for application to appoint official receiver as provisional liquidator	—	0 6 8
		Preparing summons and attending issuing	—	0 6 8
	A. 3	Paid sealing	0 3 0	—
		Copy for chambers	—	0 2 0
		Copy for service on company	—	0 2 0
		Service	—	0 1 6
		Instructions for affidavit in support	—	0 6 8
		Drawing same (fols. 5)	—	0 5 0
		Engrossing	—	0 1 8
		Attending deponent to be sworn	—	0 6 8
	A. 9	Paid filing	0 2 0	—
		Attending summons when order made	—	0 13 4
		Preparing and drawing up order and attending to get same entered	—	0 13 4
		Copy for filing	—	0 2 0
		Copy for service on official receiver	—	0 2 0
		Service	—	0 1 6
		Copy for service on company	—	0 2 0
		Service	—	0 1 6
Restraining action by creditor.		Drawing notice of motion to restrain action by creditor pending hearing of petition and fair copy (fols. 5)	—	0 6 8
		Attending before the registrar obtaining leave for short return	—	0 6 8
		Instructions for affidavit in support	—	0 6 8
		Drawing same (fols. 13)	—	0 13 0
		Fair copy	—	0 4 0
		Attending deponent to be sworn	—	0 6 8

PETITIONING CREDITORS' COSTS, ETC.—*continued.*

No. in Scale.	—	Payments £ s. d.	Charges £ s. d.	
A. 10	Paid commissioner's fee	0 1 6	—	
	Attending filing notice and affidavit in support	—	0 6 8	
A. 9	Paid filing	0 2 0	—	
	Copy notice and affidavit for service on creditors' solicitors	—	0 5 8	
	Service	—	0 5 0	
	Attending court when restraining order made	—	1 1 0	
A. 4	Paid filing order made in court	1 0 0	—	
	Drawing and fair copy, statement of compliance with the rules	—	0 5 0	
	Attending registrar with same and producing advertisements	—	0 6 8	
	Drawing statement of parties attending, etc.	—	0 5 0	
	Drawing brief for counsel (fols. 35)	—	1 15 0	Brief.
	Fair copy thereof	—	0 11 8	Instructions for brief not allowable, see Appendix N., item 80, note.
	Copy petition to accompany	—	0 5 4	
	The like affidavit in support	—	0 4 4	
	The like restraining order	—	—	
	Fee to counsel with brief and clerk	5 10 0	—	
	Attending him	—	0 6 8	
	Attending to appoint conference	—	0 6 8	
	Paid fee	1 6 0	—	
	Attending conference	—	0 13 4	Note:— Where counsel is not retained substitute the appropriate items from p. 1170. Hearing.
	Attending court with counsel on hearing of petition when order made	—	1 1 0	
	Paid high bailiff's fee	0 6 0	—	
	Attending at registrar's office lodging documents	—	0 6 8	
	Order prepared by registrar (no appointment to settle except in special cases (r. 39))	—	—	
	Three fair copies of order for service (r. 41 (1A))	—	—	
	Attending sealing (order served by registrar)	—	—	
	Paid fee on order	0 5 0	—	
	Drawing bill of costs and copy (fols. 9)	—	0 6 0	
	Attending obtaining appointment to tax	—	0 6 8	
	Attending taxing	—	0 13 4	
	Paid taxing fee	1*s.* in every £2 or fraction thereof on the nett amount of the bill.		
	Letters, etc.	—	0 10 6	
	Term fee	—	0 15 0	

PART III.

ADMIRALTY AND MERCHANT SHIPPING.

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THE COUNTY COURTS ADMIRALTY JURISDICTION ACT, 1868.

[31 & 32 Vict. c. 71. July 31, 1868.]

Section 1.

Short title

1. This Act may be cited as The County Courts Admiralty Jurisdiction Act, 1868.

This Act is to be read and interpreted as one Act with the County Courts Admiralty Jurisdiction Act, 1869 (32 & 33 Vict. c. 51) (see sect. 1 of the Act of 1869, *post*).

Appointment of county courts for admiralty purposes.

2. If at any time after the passing of this Act it appears to Her Majesty in council, on the representation of the Lord Chancellor, expedient that any county court should have admiralty jurisdiction, it shall be lawful for Her Majesty, by Order in Council, to appoint that court to have admiralty jurisdiction accordingly, and to assign to that court as its district for admiralty purposes any part or parts of any one or more district or districts of county courts; and the district so constituted for that court, with the parts of the sea (if any) adjacent to that district to a distance of three miles from the shore thereof, shall be deemed its district for admiralty purposes; and accordingly the judge and all officers of the court shall have jurisdiction and authority for those purposes throughout that district, as if the same was the district of the court for all purposes; and, from a time to be specified in each such order, this Act shall have effect in and

throughout the district so constituted; and any such order may be from time to time varied as seems expedient; and a county court so appointed to have admiralty jurisdiction, and no other county court, shall, for the purposes of this Act, be deemed a county court having admiralty jurisdiction: provided that no judge of a county court, except the judges of the London court, shall have jurisdiction in the city of London. Section 2.

A limited jurisdiction in admiralty had been conferred upon county courts by the Merchant Shipping Acts of 1854 and 1862, but this Act first gave to county courts their real admiralty and maritime jurisdiction.

County Courts having Admiralty Jurisdiction.]—The courts which have been appointed to exercise the admiralty jurisdiction are as follows: Newcastle-on-Tyne, Sunderland, West Hartlepool, Stockton-on-Tees, Middlesbrough, Kingston-upon-Hull, Great Grimsby, Boston, King's Lynn, Great Yarmouth, Lowestoft, Ipswich, Colchester, City of London, Rochester, Ramsgate, Dover, Brighton, Portsmouth, Southampton, Poole, Dorchester, Exeter, Totnes, Plymouth and East Stonehouse, Truro, Barnstaple, Bridgwater, Bristol, Gloucester, Newport (Mon.), Cardiff, Swansea, Carmarthen, Pembroke Dock, Aberystwith, Bangor, Chester, Liverpool, Manchester, Preston. Blackpool and Fleetwood, Barrow-in-Furness and Ulverston, and Whitehaven. [See Order in Council dated May 19th, 1899 (repealing previous orders), which also specifies the district assigned to each court for admiralty purposes, and amending Order in Council dated Aug. 12th, 1913.]

3. Any county court having admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine, subject and according to the provisions of this Act, the following causes (in this Act referred to as admiralty causes): Extent of admiralty jurisdiction of county courts.

Original Admiralty Jurisdiction.]—The decisions under the Act of 1868, establish that under that Act no claim can be maintained which is incapable of being maintained under the original jurisdiction of the admiralty division (see *Everard* v. *Kendall*, (1870) L. R. 5 C. P. 428; 39 L. J. C. P. 234; *The Dowse*, (1870) L. R. 3 A. & E. 135; 39 L. J. Adm. 46; *Robson* v. *The Kate*, (1888) 21 Q. B. D. 13; 57 L. J. Q. B. 546; *R.* v. *City of London Court* (3) (C. A.), (1892) 1 Q. B. 273; 61 L. J. Q. B. 337; *Gas Float Whitton*, (1896) P. 42; 65 L. J. P. 17; affirmed, House of Lords, (1897) A. C. 337; 60 L. J. P. 99.

Costs in High Court.]—If an action be brought in the Admiralty Division of the High Court, when it might have been brought in a county court, the plaintiff will be in peril of being deprived by the judge of his costs, sect. 9 of this Act being repealed by 56 & 57 Vict. c. 14 (see *Rockett* v. *Clippingdale* (C. A.), (1891) 2 Q. B. 293; 60 L. J. Q. B. 782; and also 57 & 58 Vict. c. 60, s. 547, sub-s. 2).

In an ordinary collision case in which a person claimed 328*l.* and recovered 246*l.*, Butt, J., gave him no costs (*The Herald*, (1890) 63 L. T. 324; see also *The Asia*, (1891) P. 121; 60 L. J. Adm. 38; 64 L. T. 327; *The Saltburn*, (1892) P. 333).

Where a claim for 330*l.* was settled for 218*l.*, Bucknill, J., allowed costs on the High Court scale (*The Emden*, (1907) 23 T. L. R. 546, following *The Saltburn*, (1892) P. 333).

(1) As to any claim for salvage—Any cause in which the value of the property saved does not exceed one thousand pounds, or in which the amount claimed does not exceed three hundred pounds:

Section 3. Notes.

Or beyond these limits by agreement, see sub-s. 4 below.

For the general admiralty jurisdiction in the case of wreck and of salvage of life or property, see Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 544—556.

Other Claims recoverable as Salvage.]—(1) Claims by the Board of Trade for the costs of, and incidental to, the detention and survey of a ship finally detained under the Merchant Shipping Act, 1894, as an unsafe ship, or of a ship provisionally detained, which was, at the time of the detention, an unsafe ship (sect. 460 of the Merchant Shipping Act, 1894).

(2) Claims by an owner or occupier of land for any damage sustained by the passing and repassing thereon of persons rendering assistance to any vessel or the crew thereof, or for the deposit on any land of cargo or other articles recovered from the vessel. These damages are a charge on the vessel, cargo or articles in respect of or by which the damage is occasioned (sect. 513 of the Merchant Shipping Act, 1894).

(3) Claims by a receiver of wreck for the recovery of his expenses and fees (sect. 567 of the Merchant Shipping Act, 1894).

(4) Claims by a local authority for the expenses of the burial or destruction of carcases washed ashore, from the owner of the vessel (sect. 46 of the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57)). This includes carcases shipped as frozen meat (*The Suevic*, (1908) 24 T. L. R. 699).

Disputed Title to Wreck.]—Also by sect. 526 of the Merchant Shipping Act, 1894, the disputed title to wreck may be determined as if it were a dispute as to salvage, to be determined summarily under the Act.

Apportionment of Salvage.]—By sect. 556 of the Merchant Shipping Act, 1894, the aggregate amount of salvage payable in respect of salvage services rendered within the United Kingdom finally ascertained, to any amount, provided it exceeds 200*l.*, and elsewhere, whatever the amount, may be apportioned by a county court having admiralty jurisdiction, amongst the persons entitled thereto, and the court may appoint any person to carry that apportionment into effect, and may compel any person in whose hands or under whose control the amount may be, to distribute the same, or to bring the same into court to be dealt with.

(2) As to any claim for towage, necessaries, or wages—Any cause in which the amount claimed does not exceed one hundred and fifty pounds.

Or beyond this limit by agreement, see sub-s. 4 below.

Necessaries.]—For the general admiralty jurisdiction in the case of necessaries see sect. 6 of the Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), and sect. 5 of the Admiralty Court Act, 1861 (24 Vict. c. 10); see also *The Henrich Björn*, (1886) 11 App. Ca. 270.

A county court having admiralty jurisdiction has no greater jurisdiction in respect of a claim for necessaries than that possessed by the Admiralty Division of the High Court (*Allen* v. *Garbutt*, (1880) 6 Q. B. D. 165; 50 L. J. Q. B. 141; see also *The Dowse*, (1870) L. R. 3 A. & E. 135; 39 L. J. Adm. 46, and *The Alina*, 5 Ex. D. 227; 49 L. J. Adm. 10).

For stevedores' claims as necessaries, see sect. 3 of the Merchant Shipping (Stevedores and Trimmers) Act, 1911, *post*, p. 1335.

Limitation of above Jurisdiction in Suits for Wages.]—By sect. 165 of the Merchant Shipping Act, 1894, a proceeding for the recovery of wages not exceeding 50*l.* shall not be instituted by or on behalf of any seaman or apprentice to the sea service in any superior court of record, nor as an admiralty proceeding in any court having admiralty jurisdiction, except in the four following cases:—

(1) Where the owner of the ship is adjudged bankrupt.

(2) Where the ship is under arrest, or is sold by the authority of any such court as aforesaid.

(3) Where a court of summary jurisdiction acting under the authority of the Act, refers the claim to any such court.

Section 3. Notes.

(4) Where neither the owner nor the master of the ship is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

As to the jurisdiction of courts of summary jurisdiction for claims for wages not exceeding 50*l.*, see sect. 164 of the Merchant Shipping Act, 1894.

Seaman's Lien.]—A ship's husband, not being a seaman within sect. 10 of the Admiralty Court Act, 1861, has no maritime lien on which he can found an action *in rem* (*The Ruby* (*No.* 2), (1898) P. 59; 67 L. J. P. 28).

Other Claims recoverable as Wages.]—By the Merchant Shipping Acts, 18[illegible] and 1906, there are numerous matters which, though not wages, may be recovered in the same court and manner in which wages of seamen may be recovered. The limits to the jurisdiction mentioned above ["Limitation of above Jurisdiction in Suits for Wages"] will apply in claims made in such matters. Such other claims include the following:—

(1) The property of seamen who die during a voyage (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 169—171).

(2) By the Board of Trade, the wages of seamen lost with their ship (*ib.*, sect. 174).

(3) The expenses of maintenance and passage home of seamen improperly discharged in foreign countries (Merchant Shipping Act, 1906 (6 Edw. VII. c. 48), s. 42).

(4) As a debt due to the Crown, the repayment of expenses attendant on the illness or injury of a seaman which ought, under the provisions of the Act, to have been paid by the master or owner, or any other expenses in respect of illness or injury of any seaman, whose wages have not been accounted for under the Act (*ib.*, sect. 35).

(5) By the Board of Trade, the repayment of expenses incurred on account of any distressed seaman [NOTE.—A seaman shipwrecked abroad is a "distressed seaman," although the wages due to him and paid abroad are in excess of the expenses incurred for his maintenance and passage home (*Board of Trade* v. *S.S. Glenpark*, (1903) 2 K. B. 324; 72 L. J. K. B. 697; (C. A.), (1904) 1 K. B. 682; 73 L. J. K. B. 315).] discharged or left abroad (*ib.*, sect. 42, sub-s. 2); except where there is a certificate of desertion or disappearance (*ib.*, sect. 42, sub-s. 4).

(6) Wages earned subsequent to desertion to reimburse the owner or master the expenses caused by desertion (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 232, sub-s. 2).

(7) The amount awarded by a superintendent who has been called in to determine a dispute between the owner and skipper, or between the skipper and seaman of a fishing boat (*ib.*, sect. 387).

(8) Compensation to seaman who has signed a fishing boat agreement, and been improperly discharged (*ib.*, sect. 411).

(3) As to any claim for damage to cargo, or damage by collision [*or otherwise*]—Any cause in which the amount claimed does not exceed three hundred pounds.

Or beyond this limit by agreement, see sub-s. 4 below.

"Damage by Collision."]—This covers a claim for damage done to a ship in a collision between it and a barge within the body of a county (*Purkis* v. *Flower*, (1873) L. R. 9 Q. B. 114; 43 L. J. Q. B. 33); also a claim for negligence against a dock board, whereby a steamer was injured by colliding with a dock wall (*Mersey Docks* v. *Turner*, (1893) A. C. 468; 63 L. J. P. 17; see also *The Zeta*, (1893) A. C. 468; 63 L. J. Adm. 17); but it does not cover damage done by a ship to a pier (*The Normandy*, (1904) P. 187; 73 L. J. P. 55); nor does it include damage by one barge propelled by oars to another similar craft, because they are not "ships" (*Everard* v. *Kendall*, L. R. 5 C. P. 428; 39 L. J. C. P. 234); nor by a ship to a floating gas-buoy (*The Upcerne*, (1912) P. 160; 81 L. J. P. 110, following *The Normandy*,

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supra); nor by the sailing gea of a barge coming in contact with a pile-driving machine on the bank of the Thames (*Robson* v. *The Kate*, (1888) 21 Q. B. D. 13; 57 L. J. Q. B. 546); nor to an action *in personam* against a compulsory pilot (*The Alexandria*, (1872) L. R. 3 A. & E. 574; 41 L. J. Adm. 94).

"By Collision [or otherwise]."]—The words "*or otherwise*," were added by sect. 4 of the County Courts Admiralty Jurisdiction Act, 1869, *post*, p. 1211.

(4) Any cause in respect of any such claim or claims as aforesaid, but in which the value of the property saved or the amount claimed is beyond the amount limited as above mentioned, when the parties agree by a memorandum signed by them or by their attorneys or agents that any county court having admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction.

Refer in connection with sub-ss. 1, 2, and 3, above.

[NOTE.—It is advisable that the memorandum should refer to this section.]

"Any County Court."]—This seems to be modified by sect. 548 of the Merchant Shipping Act, 1894, in the cases of disputes as to salvage therein specified (see note to sect. 21, sub-s. 4, *post*).

Restrictions on county court jurisdiction in certain cases.

4. Nothing in this Act, or in any order in council under it, shall confer on a county court jurisdiction in any prize cause, or in any other matter within the Naval Prize Act, 1864, or in any matter arising under any of the Acts for the suppression of the slave trade, or any admiralty jurisdiction by way of appeal.

No county court other than that appointed to have jurisdiction.

5. From and after the time specified in each order in council under this Act appointing a county court to have admiralty jurisdiction within any district as the time from which this Act shall have effect in and throughout that district, no county court, other than the county court so appointed, shall have jurisdiction within that district in any admiralty cause; provided that all admiralty causes at that time pending in any county court within that district may be continued as if no such order in council had been made.

As to transfer from county court by order of High Court of Admiralty.

6. The High Court of Admiralty of England, on motion by any party to an admiralty cause pending in a county court, may, if it shall think fit, with previous notice to the other party, transfer the cause to the High Court of Admiralty, and may order security for costs, or impose such other terms as to the court may seem fit.

The application to the High Court is made by summons in chambers, not by motion in court (*The Indra*, 94 L. T. 110).

This section is resorted to when it is necessary to take evidence abroad on commission, or for the purpose of being consolidated with an action pending in Admiralty Division. See *The Swan*, (1871) L. R. 3 A. & E. 314; 40 L. J. Adm. 8; *The Rio Lima*, (1874) L. R. 4 A. & E. 157; 43 L. J. Adm. 4; *The Immacolata Concezione*, (1882) 8 P. D. 34; *The Never Despair*, (1884) 9 P. D. 34; 53 L. J. Adm. 30; *The Africano*, (1894) P. 141; 63 L. J. Adm. 125. See also where proceeds of sale in High Court, *The Montrosa*, (1917) P. D. 1.

See Order XXXIX. rr. 50 and 51.

Section 7.

As to transfer of causes by order of county court to High Court of Admiralty.

7. If during the progress of an admiralty cause in a county court it appears to the court that the subject-matter exceeds the limit in respect of amount of the admiralty jurisdiction of the court, the validity of any order or decree theretofore made by the court shall not be thereby affected, but (unless the parties agree, by a memorandum signed by them or by their attorneys or agents, that the court shall retain jurisdiction) the court shall by order transfer the cause to the High Court of Admiralty; but that court may, nevertheless, if the judge of that court in any case thinks fit, order that the cause shall be prosecuted in the county court in which it was commenced, and it shall be prosecuted accordingly.

It seems doubtful whether this section applies after judgment in the county court, and transfer is only required for purpose of reference for claim found to exceed county court jurisdiction.

See Order XXXIX. r. 50, and Form 385, *post*.

As to transfer of causes to other county courts or Court of Admiralty.

8. If during the progress of an admiralty cause in a county court it shall appear to the court that the cause could be more conveniently prosecuted in some other county court, or in the High Court of Admiralty of England, the court may by order transfer it to such other county court, or to the High Court of Admiralty of England, as the case may be, and the cause shall thenceforward be prosecuted accordingly.

See Order XXXIX. r. 50, and Form 386, *post*.

After transfer pleadings will be as in High Court of Admiralty. See *The Carisbrook*, (1890) 15 P. D. 98; 59 L. J. Adm. 37.

[NOTE.—Sect. 9 of this Act is repealed by 56 & 57 Vict. c. 14.]

Powers, &c. of judges and registrars.

10. In an admiralty cause in a county court the cause shall be heard and determined in like manner as ordinary civil causes are now heard and determined in county courts; save and except that in any admiralty cause of salvage, towage, or collision the county court judge shall, if he think fit, or on the request of either party to such cause, be assisted by two nautical assessors in the same way as the judge of the High Court of Admiralty is now assisted by nautical assessors.

As to nautical assessors, see sect. 11.

Power to judge of county court to summon nautical assessors to his assistance.

11. In any such admiralty cause as last aforesaid it shall be lawful for the judge of the county court, if he think fit, and he shall, upon request of either party, summon to his assistance in such manner as general orders shall direct, two nautical assessors, and such nautical assessors shall attend and assist accordingly.

See Order XXXIX. rr. 88—92, and Forms 392—394.

As to the function of assessors, see *The City of Berlin*, (1908) P. 110; 77 L. J. P. 76; *The Beryl*, (1884) 9 P. D. 137; 53 L. J. Adm. 75; *The Gannet*, (1900) A. C. 234; 69 L. J. P. 49.

Section 12.

Decrees in county courts in admiralty causes to have same force as those in civil causes.

12. The decree of the county court in an admiralty cause shall be enforced against the person or persons summoned as the defendant or defendants in the same manner as the decrees of the said court are enforced in ordinary civil causes, save and except as in this Act otherwise provided.

See also sect. 23, *post*.

Admiralty causes to be heard at usual courts.

13. The judge of every county court having admiralty jurisdiction shall hear and determine admiralty causes at the usual courts held within his jurisdiction, or at special courts to be held by him, and which he is hereby required to hold as soon as may be after he shall have had notice of an admiralty cause having arisen within the jurisdiction of his court.

See Order XXXIX. rr. 1, 2, and 3, *post*.

Appointment of assessors in county court.

14. The registrar of each county court having admiralty jurisdiction shall from time to time frame a list, to be approved by the judge of the High Court of Admiralty before whom the same shall be laid by the county court judge, and without whose approval it shall have no validity, of assessors, of persons of nautical skill and experience residing or having places of business within the district of the county court, to act as assessors in that court, and shall cause the list to be published in the *London Gazette*.

See Form 392.

Attendance of assessors.

15. Every person named in the list of assessors so framed and approved shall attend the county court under such circumstances and in such rotation, and subject to such regulations, and shall receive such fees, for his attendance, as general orders shall direct, and for every wilful non-attendance shall be liable, at the discretion of the court, to a penalty not exceeding five pounds.

See Forms 393 and 394.

Removal of assessors.

16. Every assessor named in such list shall hold his office until a new list of assessors shall have been framed and approved as aforesaid, or until he shall resign his appointment.

Remuneration of registrars.

17. The registrars of the county courts shall be remunerated for their duties in admiralty causes by receiving for their own use such fees as general orders shall direct.

As to fees, see p. 1260.

Scale of costs.

18. A scale of costs and charges in admiralty causes in the county courts shall be prescribed by general orders.

As to scale of costs, see pp. 1181 *et seq.*

19. The registrar of a county court shall have power to administer oaths in relation to any admiralty cause in a county court; [and any person who shall wilfully depose or affirm falsely before the registrar in any admiralty cause shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.] **Section 19.** Power to registrars to administer oaths and take evidence.

By the Perjury Act, 1911 (1 & 2 Geo. V. c. 6), the words in brackets were repealed.

20. Evidence taken in any admiralty cause before the registrar of a county court, as the judge of a county court or general orders shall direct, shall be received as evidence in any other county court, saving all just exceptions; and the registrar of any county court shall, for the purpose of the examination of any witnesses within the district of that court, have all and the like powers and authorities of an examiner of the High Court of Admiralty of England, and evidence taken by him in that capacity shall be received as evidence in the High Court of Admiralty of England, saving all just exceptions. Evidence before registrar receivable in Admiralty Court.

As to examination of witnesses, see R. S. C., Order XXXVII. rr. 5—25.

21. Proceedings in an admiralty cause shall be commenced— As to proceedings in county court for commencement of cause.

(1) In the county court having admiralty jurisdiction within the district of which the vessel or property to which the cause relates is at the commencement of the proceedings: . . . . . .

But in disputes relating to salvage, see note under sub-s. 4, below.

(2) If the foregoing rule be not applicable, then in the county court having admiralty jurisdiction in the district of which the owner of the vessel or property to which the cause relates, or his agent in England, resides, or if such owner or agent does not reside within any such district, then in the county court having admiralty jurisdiction the district whereof is nearest to the place where such owner or agent resides:

"Vessel or Property."]—Where an action was for demurrage for the detention of a ship through delay in discharging cargo, it was held that the cause related to the "vessel," not to the "property," and that, the ship being on the high seas at the commencement of the action, the action was properly brought in the court of the district in which the owner of the ship resided (*Pugsley* v. *Ropkins* (C. A.), (1892) 2 Q. B. 184; 61 L. J. Q. B. 645).

"Agent in England" in sub-s. 2 means a person acting for another in relation to the vessel or property proceeded against at the time service is effected; when a ship has been lost, the agency in relation thereto is determined (*The City of Agra*, (1898) P. 198; 67 L. J. P. 81).

Section 21.

(3) If for any reason the last foregoing rule is not applicable or cannot be acted on, then in such county court having admiralty jurisdiction as general orders direct:

County Courts Act, 1888.]—Sect. 74 of the Act of 1888 applies to admiralty causes (*The Hero*, (1891) P. 294; 60 L. J. Adm. 99, and sect. 74 of 51 & 52 Vict. c. 43, *ante*, p. 72).

(4) In any case in the county court or one of the county courts having admiralty jurisdiction in which the parties by a memorandum, signed by them or by their attorneys or agents, agree shall have jurisdiction in the cause.

Disputes relating to Salvage.]—By sect. 548, sub-s. 1 (*a*), if the dispute relates to salvage of wreck, the court must be one at or near the place where the wreck is found. And by sect. 548, sub-s. 1 (*b*), of the same Act, if the dispute relates to salvage services rendered to any vessel or cargo or apparel thereof, or in saving life therefrom, the court must be one having jurisdiction at or near where the vessel is lying, or at or near the port in the United Kingdom into which the vessel is first brought after the occurrence of the salvage service. As to such disputes, the County Courts Admiralty Jurisdiction Act seems to be modified by the Merchant Shipping Act.

Act of 1869.]—The provisions of this sect. 21 apply to actions under the County Courts Admiralty Jurisdiction Act, 1869 (*The County of Durham*, (1891) P. 1; 60 L. J. P. 5).

Where proceeds of sale were in the High Court, see *The Montrosa*, (1917) P. D. 1.

Limitation of arrest.

22. In an admiralty cause in a county court if evidence be given to the satisfaction of the judge, or in his absence the registrar of the court, that it is probable that the vessel or property to which the cause relates will be removed out of the jurisdiction of the court before the plaintiff's claim is satisfied, it shall be lawful for the said judge, or in his absence for the registrar, to issue a warrant for the arrest and detention of the said vessel or property, unless or until bail to the amount of the claim made in such cause, and to the reasonable costs of the plaintiff in such cause, be entered into and perfected, according to general orders, by or on behalf of the owner of the vessel or property or his agent, or other the defendant in such cause; and, except as in this section expressly provided, there shall be no arrest or detention of a vessel or property in an admiralty cause in a county court otherwise than in execution.

The evidence is given by affidavit (see Order XXXIX. rr. 11—14, and Form 372).

Power to issue process.

23. For the execution of any decree or order of a county court in an admiralty cause the court may order, and the registrar on such order may seal and issue, and any officer of any county court may execute, process according to general orders; provided that where under such process a vessel or property would or might be sold, then, if the owner of the vessel or property desires that the sale should be conducted in the High Court of Admiralty

instead of in the county court, he shall be entitled, on security for costs being first given, and subject and according to such other provisions as general orders direct, to obtain an order of the county court for transfer of the proceedings for sale, with or without (as the judge of the county court thinks fit) the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which court shall have jurisdiction and all powers and authorities relating thereto accordingly. Section 23.

See Order XXXIX. rr. 70—72, and Form 413; see also sect. 12, *supra*.

24. Such decrees and orders of county courts in admiralty causes as general orders shall direct shall be registered with the registrar of county court judgments in London in such manner as general orders shall direct. Registration of decrees and orders.

See sect. 183 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), and Order XXXVI. r. 2.

25. The court of passage of the borough of Liverpool shall, upon an order in council being made which shall appoint the county court of Lancashire holden at Liverpool to have admiralty jurisdiction, have the like jurisdiction, powers, and authorities as by that order are conferred on the said county court; but nothing herein shall be deemed to enlarge the area over which the jurisdiction of the court of passage extends, or to alter the rules and regulations for holding the said court, or to take away or restrict any jurisdiction, power, or authority already vested in that court; and fees received in that court under this Act shall be dealt with as fees received in that court under its ordinary jurisdiction. Concurrent jurisdiction of the court of passage.

26. An appeal may be made to the High Court of Admiralty of England from a final decree or order of a county court in an admiralty cause, and, by permission of the judge of the county court, from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provisions as general orders shall direct. Appeal to Court of Admiralty.

[NOTE.—There is no appeal where, before the decree or order is made, the parties, by a memorandum, agree that the decree or order shall be final (see sect. 28, below). Also the right of appeal is limited by sect. 31, below; and see notes to that section.]

"Security for Costs."]—Security for costs must be given in the county court, if the appeal is on a question of fact (*The Forest Queen*, (1870) L. R. 3 A. & E. 299; 40 L. J. Adm. 17), but not if it be upon a point of law, because sect. 120 of the County Courts Act, 1888, overrides the particular provisions of this Act (see note to sect. 31, below, "Questions of Law").

The security for costs must be given before the appeal is lodged, and the bond of the solicitor is usually given and accepted as security in lieu of deposit of money; the amount of bond or deposit is fixed by the registrar of the County Court.

Salvage.]—Sect. 549 of the Merchant Shipping Act, 1894, gives the same power of appeal in cases of salvage disputes as is given by this Act.

Section 26. Notes.

Viva Voce Evidence.]—The court may, on the hearing of an appeal, under special circumstances, take the examination of witnesses *viva voce* (*The Busy Bee*, (1868) L. R. 3 A. & E. 527; see also *The Crescent* (C. A.), (1893) 62 L. J. P. 63).

Further Evidence.]—An application to adduce further evidence may be made to a single judge (*The Eclipse*, (1889) 14 P. D. 71).

Elder Brethren of Trinity House.]—By sect. 125 of the County Courts Act, 1888, if an action has been heard with the assistance of nautical assessors, Elder Brethren of the Trinity House must be summoned on the hearing of the appeal, if either party requires it, and the High Court deems it necessary or desirable.

Time for appeal.

27. No appeal shall be allowed unless the instrument of appeal is lodged in the registry of the High Court of Admiralty within ten days from the date of the decree or order appealed from, but the judge of the High Court of Admiralty of England may, on sufficient cause being shown to his satisfaction for such omission, allow an appeal to be prosecuted, notwithstanding that the instrument of appeal has not been lodged within that time.

[NOTE.—Refer in connection with this section to *The Two Brothers*, (1875) 1 P. D. 52; 45 L. J., Adm. 47.]

The ordinary practice as to appeals from inferior courts extends only to appeals to the King's Bench Division (R. S. C., Order LIX. r. 9); nevertheless, appeals are in fact brought to the Admiralty Division by motion. As to service of notice of motion on adverse solicitor before original filed in registry, see R. S. C., Order LII., r. 10, and *The Gratia*, (1912) 28 T. L. R. 474.

"Within ten days."]—As a point of practice it is safer to lodge all notices of appeal within ten days, even in cases of appeals on questions of law to which s. 120 of the County Courts Act, 1888, applies. But see R. S. C., Order LIX., r. 12.

Court of Appeal.]—An appeal lies of right to the Court of Appeal if the court alters the judgment of the county court (*The Dart* (C. A.), (1893) P. 33; 62 L. J. P. 32; in other cases no appeal lies without leave (36 & 37 Vict. c. 66, s. 45). The appeal will not be granted unless the law is doubtful, or the facts leave a substantial doubt in the mind of the court as to whether its decision is right, or the pecuniary interest is large (*The Samuel Laing*, (1870) L. R. 3 A. & E. 284; 39 L. J. Adm. 42; see *Cargo ex Argos*, (1873) L. R. 5 P. C. 134, 166; 42 L. J. Adm. 1).

When an admiralty judge at chambers refuses an order for a prohibition, the appeal lies straight to the Court of Appeal (*The Recepta* (1) (C. A.), (1893) P. 255; 62 L. J. P. 118).

Judge's Notes.—These must be provided for the hearing of the appeal. See *McGrah* v. *Cartwright*, (1889) 23 Q. B. D. 3; 58 L. J. Q. B. 331; and also *The Crescent*, (1893) 62 L. J. P. 63.

Agreement not to appeal.

28. No appeal shall be allowed if, before the decree or order is made, the parties shall have agreed by a memorandum signed by them, or by their attorneys or agents, that the decree or order shall be final; and any such agreement need not be stamped, except in respect of any fee imposed by general orders.

[NOTE.—It is advisable that the memorandum should refer to this section.]

29. [Sect. 29 was repealed by the County Courts Act, 1875.]

Section 30.

30. On an appeal under this Act, when the appellant is unsuccessful, he shall pay the costs of the appeal, unless the appellate court shall otherwise direct. Costs of appeal.

See *Cargo ex Argos*, (1873) L. R. 5 P. C. 134, 166; 42 L. J. Adm. 1.

31. No appeal shall be allowed unless the amount decreed or ordered to be due exceeds the sum of fifty pounds. No appeal unless amount exceeds 50*l*.

Questions of Law.]—The limit on appeal imposed by this section applies only to questions of fact. As to appeals on questions of law, the Court of Appeal has held that the general provisions of the County Courts Act, 1888, s. 120, override the particular provisions of the County Courts Admiralty Jurisdiction Act, 1868, ss. 26, 31; so that against a final decree or order of the county court there is an appeal on questions of law whether the amount is over or under 50*l*. (*The Delano* (C. A.), (1895) P. 40; 64 L. J. P. 8; following *The Eden*, (1892) P. 67; 61 L. J. P. 68; see *The Burma* (*No.* 2), (1899) 80 L. T. 839).

Interlocutory Decree or Order.]—There is an appeal, by leave of the judge, from any interlocutory decree or order, even when the amount is under 50*l*. (sect. 26 of this Act, and *The Alert*, (1894) 72 L. T. 124). This right appears to apply to all actions.

Without the judge's consent, no such appeal will lie, notwithstanding the general provisions of sect. 120 of the County Courts Act, 1888 (*The Cashmere*, (1890) 15 P. D. 121; 59 L. J. Adm. 57).

The refusal of an application for taxation and payment of costs is a final order, and appealable without leave (*The Vulcan*, (1898) P. 222; 67 L. J. P. 101).

32. On an appeal under this Act, the judge of the High Court of Admiralty, if it appears to him expedient that any sale decreed or ordered to be made of the vessel or property to which the cause relates should be conducted in the High Court of Admiralty instead of in the county court from which the appeal is brought, may direct the transfer of the proceedings for sale, with or without the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which court shall have jurisdiction, and all powers and authorities relating thereto accordingly. Conduct of sale, &c., in Court of Admiralty.

33. In all cases which shall arise within the jurisdiction of the Cinque Ports as defined by the Act first and second George the Fourth, chapter seventy-six, section eighteen, causes may be transferred by the county court and appeals made to the Court of Admiralty of the Cinque Ports in lieu of the High Court of Admiralty; and in the case of appeals the instrument of appeal shall be lodged in the registry of the Cinque Ports, and the same discretion vested in the judge official and commissary of the said Cinque Ports court as is by this Act vested in the judge of the High Court of Admiralty. In certain cases causes may be transferred by county court and appeals made to Court of Admiralty of the Cinque Ports.

34. This Act shall be read as one Act with so much of the County Courts Act, 1846, and the Acts amending or extending the same, as is now in force. County Court Acts applied to this.

Section 35.

Practice, &c. to be regulated by general orders.

35. General orders shall be from time to time made under this Act for the purposes in this Act directed, and for regulating the practice and procedure of the admiralty jurisdiction of the county courts, the forms of processes and proceedings therein or issuing therefrom, and the days and places of sittings for admiralty causes, the duties of the judges and officers thereof, and the fees to be taken therein.

Authority for making general orders.

36. General orders under this Act shall be made by the Lord Chancellor, with the advice and assistance of the judge of the High Court of Admiralty of England, and, as far as they relate to fees, or to the receipt and expenditure of and accounting for money, with the approval of the commissioners of Her Majesty's Treasury.

THE COUNTY COURTS ADMIRALTY JURISDICTION AMENDMENT ACT, 1869.

[32 & 33 Vict. c. 51. August 2, 1869.]

Short title.

1. This Act may be cited as The County Courts Admiralty Jurisdiction Amendment Act, 1869, and shall be read and interpreted as one Act with the County Courts Admiralty Jurisdiction Act, 1868.

Extension of jurisdiction over ships and goods.

2. Any county court appointed or to be appointed to have admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine the following causes :

(1) As to any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship, and also as to any claim in tort in respect of goods carried in any ship, provided the amount claimed does not exceed three hundred pounds :

[Note.—For extension of limit of jurisdiction by agreement, see sub-s. 2, below.]

Original Admiralty Jurisdiction.]—The decisions under the Act of 1868 establish that under that Act no claim can be maintained which is incapable of being maintained under the original jurisdiction of the Admiralty Division. It has been held, however, that the jurisdiction conferred by the Act of 1869 extends to cases both within and beyond the jurisdiction possessed by the Admiralty Division (*Cargo ex Argos*, (1873) L. R. 5 P. C. 134 ; 42 L. J. Adm. 1 ; *The Alina* (C. A.), (1880) 5 Ex. D. 227 ; 49 L. J. Adm. 40), *e.g.*, claims not exceeding 300*l.* for freight, demurrage and expenses (*Cargo ex Argos, supra*, overruling *Simpson* v. *Blues*, (1872) L. R. 7 C. P. 290 ; 41 L. J. C. P. 121) ; also claims for breach of charterparties (*The Alina* (C. A.), (1880) 5 Ex. D. 227 ; 49 L. J. Adm. 40 ; 5 P. D. 138, overruling *Gunnestead* v. *Price*, (1875) L. R. 10 Ex. 65 ; 44 L. J. Ex. 44) ; also a claim by the holders of a bill of lading for damage to goods on board ship during the voyage (*The Rona*, (1882) 7 P. D 247 ; 51 L. J. Adm. 65).

Section 2. Notes.

But the following claims have been held to be outside the jurisdiction conferred by this section, viz., a claim for commission for effecting a charter-party (*The Nuova Raffallina*, (1871) L. R. 3 A. & E. 483; 41 L. J. Adm. 37); also a claim for a penalty of so much per day for late delivery under an agreement to deliver coals on board ship within a certain time (*The Zeus*, (1888) 13 P. D. 188); also a claim for loss on board ship of a passenger's luggage (*R.* v. *City of London Court* (1), (1883) 12 Q. B. D. 115; 53 L. J. Q. B. 28); also a claim for negligence against a pilot (*R.* v. *City of London Court* (3) (C. A.), (1892) 1 Q. B. 273; 61 L. J. Q. B. 337).

If parties agree, causes in respect of claims of higher amount may be determined by county court.

(2) As to any cause in respect of any such claim or claims as aforesaid, but in which the amount claimed is beyond the amount limited as above mentioned, when the parties agree, by a memorandum signed by them or by their attorney or agents, that any county court having admiralty jurisdiction, and specified in the memorandum shall have jurisdiction.

"**Any County Court.**"]—See notes to sect. 3, sub-s. 4, and sect. 21 of Act of 1868.

Proceedings *in rem* or *in personam*.

3. The jurisdiction conferred by this Act and by the County Courts Admiralty Jurisdiction Act, 1868, may be exercised either by proceedings *in rem* or by proceedings *in personam*.

Amendment of sect. 3 of 31 & 32 Vict. c. 71.

4. The third section of the County Courts Admiralty Jurisdiction Act, 1868, shall extend and apply to all claims for damage to ships, whether by collision or otherwise, when the amount claimed does not exceed three hundred pounds.

See note to sect. 3, sub-s. 3 of Act of 1868.

As to appointment of mercantile assessors.

5. In any admiralty or maritime cause the judge may, if he thinks fit, or on the request of either party, be assisted by two mercantile assessors; and all the provisions of the County Courts Admiralty Jurisdiction Act, 1868, with reference to nautical assessors, shall apply to the appointment, approval, summoning, and remuneration of such mercantile assessors.

See sects. 10 and 11 of the Act of 1868; also Order XXXIX. rr. 88—92, and Forms 392—394.

Power of assessor of court of passage to make general rules and orders.

6. The assessor of the court of passage of the borough of Liverpool shall have power from time to time to make general rules and orders for regulating the practice and procedure of the admiralty and maritime jurisdiction in the said court, and for other purposes mentioned in section thirty-five of the County Courts Admiralty Jurisdiction Act, 1868; and any general rules and orders already made or hereafter to be made by the said assessor for any of the purposes aforesaid shall be of full force and effect as if the same had been made under this or the aforesaid Act.

COUNTY COURT RULES, 1903.

ORDER XXXIX.

Admiralty Actions.

Sittings of the Court.

Rule 1.

1. The judge may try or partly try any admiralty action at any place within the admiralty district of the court.

Where action may be tried.

"**Admiralty District.**"]—This is fixed by the Order in Council under which the court is appointed to have admiralty jurisdiction (see the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 2).

Undertaking for expenses of trial at place where court is not held.

2. Where application is made to the judge for the trial or part trial of an admiralty action at a place in which a court is not held, the party making the application shall file a præcipe undertaking to provide at his expense a place to the satisfaction of the judge in which the action may be tried, and to pay the necessary expenses of the judge and officers attending at such place.

For form of præcipe, see Form 369.

Sittings of the court in Admiralty.

3. The days of the sitting of the court for the trial of admiralty actions shall be those appointed for the transaction of the ordinary general business of the court held in the city or town mentioned in the name of the court, or such other days as the judge may from time to time appoint on the written application of either party.

Special day for trial.

Provided that where, from the detention of a vessel or otherwise, a prompt determination of any action is desirable, a special sitting shall on the application of any party be appointed by the judge at as early a date as possible. Such application shall be made on notice being given to the other party, who shall have the right to be heard.

[Note.—In most courts admiralty cases are tried upon admiralty action days or other special days, fixed by the judge on application by either party.]

See sect. 10 of the County Courts Admiralty Jurisdiction Act, 1868.

Commencement of Action.

Commencement of action.

4. A plaintiff desiring to commence an admiralty action shall file a præcipe stating the nature of the action, and, when practicable, his name, address, and description; and if the proceedings are commenced through a solicitor, the name of the solicitor, and an address within three miles of the office of the registrar at which it shall be sufficient to leave all instruments and documents in the action required to be served upon the party commencing

such proceedings, and also stating the name of the owner or other person against whom the action is instituted, or that the action is instituted against the vessel or other property to which the action relates. Rule 4.

For form of præcipe, see Form 368.

5. When it is not practicable at the time of filing the præcipe to state therein the name of the plaintiff, it shall be sufficient (subject to the right of the defendant to demand his name) to describe the plaintiff as "owner of the ship or vessel ." Plaintiff may be described as owner.

[NOTE.—In a case of damage to *cargo*, the following description of the plaintiffs has been used in the Admiralty Division, viz., "Owners of the cargo lately laden on board the steamship ."]

6. In admiralty actions *in rem*, no further service of a summons than delivery thereof in accordance with Order VII. Rule 12, and no execution of a warrant of arrest shall be required where a solicitor represents that he is authorised to accept service on behalf of the defendant, and signs a memorandum agreeing to accept service, and undertaking to appear and to put in bail or to pay money into court in lieu of bail, and, in an action for salvage, to file an affidavit of the value of the vessel or property, unless such value is agreed. Where solicitor accepts service and undertakes to appear, &c., in action *in rem*.

This rule is as amended by Rule 57 of 1904.

[NOTE.—For full form of solicitor's acceptance, etc., see Form 373; but in practice, abbreviated forms of indorsement are used, *e.g.* :—

"I (we) accept service of this summons on behalf of the defendant(s), and undertake to enter appearance and put in bail in due course (in a sum not exceeding £)."

"(Signed) .

"(Date)

or, in an action for *salvage* :—

"I (we) accept service of this summons on behalf of the defendant(s), and undertake to enter appearance, put in bail and prove values in due course.

"(Signed) .

"(Date) ."

The endorsed summons is filed in court by the plaintiff's solicitor.]

7. A solicitor not entering an appearance or putting in bail or paying money into court in lieu of bail, in pursuance of his written undertaking so to do, shall be liable to attachment. Solicitor not fulfilling undertaking liable to attachment.

Cf. R. S. C., Order XII., r. 18, and *Re Kerly*, (1901) 1 Ch. 467; 70 L. J. Ch. 189.

8. In an admiralty action for wages against the owners of a foreign vessel, notice of the commencement of the action shall be given to the consul or vice-consul of the State to which the vessel belongs, if there is one resident within the district of the court, and a copy of the notice shall be annexed to the præcipe. Notice of commencement of action to be given to consul in certain cases.

[NOTE.—It is advisable to refer to this section in the notice to the consul.]

Particulars and Summons.

Rule 9. Particulars.

9. A plaintiff desiring to commence an admiralty action shall file with the præcipe particulars of his claim, with, in an action *in rem*, a copy thereof for service, and, in an action *in personam*, as many copies thereof as there are defendants to be served. If the proceedings are commenced by a solicitor, the particulars must be signed in accordance with Order VI. Rule 9, otherwise the costs of such particulars shall not be allowed.

See Order VI. r. 9, and cases thereunder.

[NOTE.—In cases of salvage and damage to cargo the usual practice is to give brief particulars specifying the nature of the action, date, place, and the like, and naming a round sum as the claim not exceeding the jurisdiction as to amount, and for the defendant to demand a statement of claim.

In cases of collision where the rule as to preliminary acts applies (see Rule 32), the particulars of claim are very general in character, so that the case of one party may not be disclosed to the other before the parties have committed themselves to their respective stories in the filed preliminary acts.

In cases of necessaries, towage, and wages, and also cases coming within the jurisdiction conferred by the Act of 1869, such as freight, demurrage, and the like, full particulars of claim are usually given which render the statement of the claim by pleading unnecessary.]

Summons.

10. Immediately upon the filing of the præcipe the registrar shall enter a plaint and issue a summons according to one or other of the forms in the Appendix, for service by the solicitor if the proceedings have been commenced by a solicitor, or by the bailiff of the court. The particulars shall be annexed to the summons before service, and shall be deemed to be part thereof.

For forms of summons, see Forms 370 and 371.

Arrest.

Affidavit to be filed.

11. Where after the commencement of an admiralty action it is desired to arrest any vessel or property, the plaintiff or defendant counter-claiming shall file an affidavit stating the facts which render it probable that the vessel or property will be removed out of the jurisdiction of the court before the claim or counter-claim is satisfied. It shall not be necessary to show in such affidavit that the vessel or property is likely to be removed immediately.

Action against Vessel already under Arrest.]—Where a cause is instituted against a vessel which is already under the arrest of the Admiralty Division, it is unnecessary, so long as it remains under arrest, for the officer of the county court to place a person in possession, and two sets of possession costs will not be allowed (see *The Rio Lima*, (1873) L. R. 4 A. & E. 157; 43 L. J. Adm. 4). *Cf.* where proceeds of sale in High Court, *The Montrosa*, (1917) P. D. 1.

When nationality of vessel to be stated.

12. In an admiralty action for necessaries or wages the nationality of the vessel shall be stated in the affidavit.

13. Where upon the filing of the affidavit the court is satisfied with the evidence, it may issue a warrant in duplicate for the arrest and detention of the vessel or property; and where the court is not satisfied, it may require further evidence to be adduced, and may order the detention of the said vessel or property for the purpose of adducing such evidence. Rule 13. When warrant of arrest may issue.

For form of warrant, see Form 372.

[NOTE.—In case of damage done to property by a foreign ship, and the time is insufficient to enable proceedings to be commenced and a warrant of arrest issued, the powers of detention through the customs under sect. 688 of the Merchant Shipping Act, 1894, may be utilised. Also in case of salvage, the receiver of wreck is under an obligation to detain the salved vessel or other property by virtue of sect. 552 of the Act of 1894, and in cases of salvage where the time is insufficient to obtain warrant of arrest, the practice is to apply to the receiver of wreck to exercise these powers.]

14. A summons *in rem* may be served and a warrant of arrest may be executed on Sunday, Good Friday, or Christmas Day, as well as on any other day. When summons *in rem* may be served or warrant of arrest executed.

Service of Summons or Warrant.

15. Service of a summons or execution of a warrant against a vessel, freight, or cargo on board shall be effected by delivering the summons, or a duplicate of the warrant, to the person who is at the time of service of the summons or execution of the warrant apparently in charge of the vessel or property, or, by nailing or affixing the summons or duplicate warrant on the main mast or on the single mast of the vessel. In other cases the summons must be served personally upon the defendant, unless the court, upon facts duly verified upon affidavit, allows of substituted service. Service of summons or warrant of arrest.

This rule is as amended in 1911.

16. If the cargo has been landed or transhipped, service of a summons or execution of a warrant to arrest the cargo and freight shall be effected by placing the summons or warrant for a short time on the cargo, and afterwards leaving a true copy or duplicate of such summons or warrant on the cargo. Service where cargo landed or transhipped.

17. If the cargo is in the custody of a person who will not permit access to it, service of the summons or warrant may be made upon the custodian. Where access to cargo denied.

18. In cases in which proceedings are commenced under section 21, sub-section 2, of the County Courts Admiralty Jurisdiction Act, 1868, in a county court in the district of which the agent in England of the owner of the vessel or property to which the action relates resides, the summons shall be served personally Service on agent.

Rule 18. upon such agent, unless the court, upon facts duly verified upon affidavit, allows of substituted service.

Appearance in Admiralty Actions.

Appearance. **19.** A defendant desiring to enter an appearance in an action shall file a præcipe, and thereupon an entry of his appearance shall be made in the admiralty actions book.

For form of præcipe, see Form 374.

Contents of præcipe. **20.** The præcipe shall state, when practicable, the name, address, and description of the party on whose behalf the appearance is entered, and when such appearance is entered by a solicitor, the name of the solicitor, and in either case shall state an address within three miles of the office of the registrar at which it shall be sufficient to leave all instruments and documents in the action required to be served upon the defendant entering the appearance.

Præcipe in actions *in rem* when defendant's name, &c., is not known. **21.** Where it is not practicable at the time of entering the appearance to state the name, address, and description of the defendant, it shall be sufficient in actions *in rem* (subject to the right of the plaintiff to demand further particulars) to state that the appearance is entered on behalf of the "owners" of the property proceeded against, or on behalf of "the defendant."

Intervention in action *in rem*. **22.** In an admiralty action *in rem* any person not named in the summons may intervene by entering an appearance in the action, on filing an affidavit showing that he is interested in the vessel or property, or the fund in court; and any person so intervening shall be deemed to be a defendant. If the interest claimed by such person is not cognisable by the court, any party may apply to the court or to the High Court to have the action transferred to the High Court.

For form of præcipe on entry of appearance, see Form 374.
Cf. R. S. C., Order XII., r. 24.

Appearance on arrest of vessel, &c. **23.** Upon the arrest of any vessel or property an appearance may be entered in the same manner as upon the service of the summons.

Notice of appearance. **24.** A defendant or other person entering an appearance shall deliver to the registrar so many duplicate copies of the præcipe as there are persons to be served with notice of appearance; and the registrar shall seal such copies and enter thereon the date of sealing, and return them to the person entering the appearance; and such person shall forthwith give notice of appearance to the plaintiff, and in the case of an intervener to all other parties who have appeared, according to the form in the Appendix; and such notice shall be accompanied by a sealed duplicate of the

æcipe. Such notice and duplicate shall be served at the dress for service of the party to be served, and may be served accordance with Order LIV. Rules 2 to 4. Rule 24.

For form of notice of appearance, see Form 374A.
Cf. R. S. C., Order XII., rr. 8 and 9.

25. If two or more defendants in the same action appear by the me solicitor and at the same time, the names of all the defen- nts so appearing shall be inserted in one præcipe. Defendants appearing by same solicitor.

Cf. R. S. C., Order XII., r. 17.

26. A defendant may appear at any time before final judgment. he appears at any time after the time limited by the summons r appearance, he shall not, unless the court otherwise orders, be titled to any further time for any purpose than if he had peared according to the summons. Time for appearance.

Cf. R. S. C., Order XII., r. 22.

Statement of Claim. Counterclaim. Defence. Reply. Preliminary Act.

27. The defendant at the time of entering appearance, or within ven days thereafter, may give notice in writing to the plaintiff to liver a statement of the circumstances in which his claim arises ; d the plaintiff shall within ten days from the time of receiving ch notice, or within such further time as may be allowed by the urt, file a concise statement accordingly, and deliver a copy ereof to the defendant. Defendant may require statement of claim.

Collision Actions.]—In an action for damage by collision between vessels ere the amount claimed exceeds 20*l.*, and preliminary acts are required, is tried without pleadings, unless the court otherwise orders (see Rule 32, *st*).

28. If the defendant does not require a statement of claim to be livered, he shall within ten days after appearance, or within ch further time as may be allowed by the court, file a concise atement of his defence, set off, or counterclaim (if any), and liver a copy thereof to the plaintiff. Provided that the defen- nt may at any time within such ten days give notice to the aintiff and to the court that he does not intend to file any atement, and thereupon either party may apply to the court der Rule 35 of this order to have the action set down for aring. Defence, set off, or counter-claim, where statement of claim not required.

The proviso was added in 1905.

29. If the defendant requires a statement of claim to be livered, he shall within ten days from the delivery thereof or thin such further time as may be allowed by the court, file a ncise statement of his defence, set off, or counterclaim (if any), d deliver a copy thereof to the plaintiff. Defence, set off, or counterclaim, where state-ment of claim required.

Rule 30. Reply.

30. The plaintiff shall within six days from the delivery of the defendant's defence, set off, or counterclaim, or within such further time as may be allowed by the court, file a concise statement of his reply (if any) to such defence, set off, or counterclaim, and deliver a copy thereof to the defendant.

Rules as to pleadings and amendment.

31. Subject to these rules, the rules of the Supreme Court for the time being in force with respect to pleadings and amendment of pleadings shall, with the necessary modifications, apply to every statement of claim, defence, set off, counterclaim, and reply delivered pursuant to these rules.

Preliminary act in actions for damage by collision between vessels.

32.—(1) In actions for damage by collision between vessels where the amount claimed exceeds 20*l.*, unless the court otherwise orders, the plaintiff shall within seven days after the commencement of the action, and the defendant shall within seven days after appearance, file with the registrar a document to be called a preliminary act, which shall contain a statement of the following particulars :—

"Damage by Collision."]—A Preliminary Act is only required in actions for damage "by collision." See *Armstrong* v. *Gaselee*, (1889) 22 Q. B. D. 250; 58 L. J. Q. B. 149; *The John Boyne* (1877) 3 Asp. M. C. 3 1; *Secretary of State for India* v. *Hewitt*, (1883) 6 Asp. M. C. 384; *Webster* v. *Manchester*, (1886) 11 P. D. 20.

Alterations in Preliminary Act.]—Not usually allowed, *The Miranda*, (1881) 7 P. D. 185; 51 L. J. Adm. 56; *The Frankland*, (1872) L. R. 3 A. & E. 511; 41 L. J. Adm. 3; *The Seacombe*, (1912) P. 59. But see *The Godiva*, (1886) 11 P. D. 20; 55 L. J. Adm. 13.

(1) The names of the vessels which came into collision and the names of their masters;
(2) The time of the collision;
(3) The place of the collision;
(4) The direction and force of the wind;
(5) The state of the weather;
(6) The state and force of the tide;
(7) The course and speed of the vessel when the other was first seen;
(8) The lights (if any) carried by her;
(9) The distance and bearing of the other vessel when first seen;
(10) The lights (if any) of the other vessel which were first seen;
(11) Whether any lights of the other vessel, other than those first seen, came into view before the collision;
(12) What measures were taken, and when, to avoid the collision;
(13) The parts of each vessel which first came into contact;
(14) What sound signals (if any), and when, were given;
(15) What sound signals (if any), and when, were heard from the other vessel;

(16) What acts of negligence, or what breach of any navigation rule, bye-law, or regulation, was committed by those in charge of the other vessel: Rule 32.

and, in the case of a defendant:

(17) The name of any vessel, other than the plaintiff's vessel, which the defendant alleges to have caused the collision or damage, or with reference to which those in charge of the defendant's vessel had to act.

Cf. R. S. C., Order XIX., r. 28; pars. 16 and 17 are not in High Court Rule.

[NOTE.—In the event of the defendant blaming another vessel under head (17) of his preliminary act, the plaintiff will usually desire to add the other vessel as co-defendant. Order XIV. rr. 2 and 11, and Form 94 of County Court Rules, p. 718, do not appear to contemplate proceedings *in rem*. The following are forms of order and notice respectively, recently adopted in such a case by the learned registrar of a county court which has a large number of admiralty actions, in conjunction with the admiralty practitioners concerned in the case, viz.:—

(FORM OF ORDER ADDING DEFENDANT *IN REM*.)

[*Heading of Action.*]

"Upon hearing Messrs. , solicitors for the plaintiffs, it is ordered that the owners of the or vessel of , now in the River , be added as defendants in this action to defend proceedings against that vessel *in rem*.

"And it is ordered that the costs, etc."

(FORM OF NOTICE TO PARTIES WHOSE NAMES ARE ADDED AS DEFENDANTS *IN REM*.)

[*Heading of Action.*]

"Take notice that by an order of this court dated the , copy of which order is hereunto attached, together with copy of the summons in the above action, the owners of the or vessel of , were ordered to be added as defendants in this action to defend proceedings against that vessel *in rem*.

"Dated, etc.

"

,

"Registrar.

To the owners of and parties interested in the or vessel ."]

[These forms may be adopted for *personam* actions.]

(2) Either party may, after (but not before) filing his preliminary act, and after the pleadings (if any) are completed, inspect and obtain office copies of the preliminary act filed by the other party.

(3) Where preliminary acts are required, the action shall be tried on such preliminary acts, without pleadings, unless the court orders pleadings to be delivered; but in such case, if the defendant intends to set up a set off or counterclaim, he shall within ten days after appearance, or within such further time as may be allowed by the court, file a concise statement of his set off or counterclaim, and deliver a copy thereof to the plaintiff; and if either party intends to rely on the defence of compulsory pilotage, he shall file

Rule 32.

a notice of such defence, and deliver a copy thereof to the adverse party, in the case of a defendant within the time allowed by this rule for the delivery of a set off or counterclaim, and in the case of a plaintiff within six days from the delivery of the defendant's set off or counterclaim, or within such further time as may be allowed by the court.

[NOTE.—The following is a form of notice of the defence of compulsory pilotage which has been used :—

[*Heading of Action.*]

"Take notice that on the hearing of this action, the only defence the defendants will set up to the plaintiffs' claim will be that at the time of the collision which forms the subject-matter of this action their vessel, the ' ,' was by compulsion of law in charge of a duly licensed pilot, and that the negligence or fault on the part of the ' ' was that of the said pilot alone.

"Dated, etc.

" ,

" Defendants' solicitor.

"To the Registrars of the court and
to the plaintiffs and their solicitor
."]

[*Compulsory Pilotage:* By sect. 15 of the Pilotage Act, 1913, the defence of compulsory pilotage will cease on the 1st Jan. 1918, or earlier by Order of Council.]

Interrogatories.

Interrogatories.

33. Leave shall not be granted to deliver interrogatories seeking information substantially the same as that which would be disclosed by any pleading or preliminary act, unless the court considers such interrogatories necessary either for disposing fairly of the action or for saving costs.

Default of Pleading by Plaintiff.

Default of pleading by plaintiff.

34. If the plaintiff when required to deliver a statement of claim or file a preliminary act does not deliver or file the same within the time allowed for that purpose, any defendant who has entered an appearance may at the expiration of that time apply to the judge to dismiss the action with costs for want of prosecution ; and on the hearing of such application the judge may, if no statement of claim or preliminary act has been delivered or filed, order the action to be dismissed accordingly, or may make such other order and on such terms as he shall think just.

Cf. R. S. C., Order XXVII., r. 1.

Default of Pleading by Defendant.

Default of pleading by defendant.

34A. If the defendant when required under these rules to deliver a statement of defence, set off, or counterclaim, or a notice that he does not intend to file any statement, or to file a preliminary act, does not deliver or file the same within the time allowed for that purpose, the plaintiff, on filing an affidavit of non-delivery of such

statement or notice, or of non-filing of such preliminary act, may apply to have the action set down for hearing, or may sign final or interlocutory judgment, in accordance with Rule 36; and the provisions of that rule shall apply accordingly. Rule 34A.

This is a new rule of April, 1913.

Setting down Action for Hearing.

35. Where an appearance has been entered, and the pleadings and preliminary acts (if any) have been delivered and filed, or the time allowed for delivering and filing a reply has expired without such reply having been delivered and filed, any party may apply to have the action set down for hearing, and it shall be set down accordingly, either on a day appointed for the transaction of the ordinary general business of the court, or on a day appointed by the judge on application made pursuant to Rule 3 of this order; and the registrar shall forthwith give to each party in the action a notice stating the day upon which the action will be heard. Setting down action for hearing and notice thereof.

This is a new rule of April, 1913, in lieu of previous Rule 35, annulled.
For form of notice of hearing, see Form 375.

Procedure in Default of Appearance.

36. Where no appearance has been entered within the time limited by the summons, then— Procedure in default of appearance.

(1) If the claim is for salvage or towage, and is not a claim of a liquidated nature, and is not a claim for damages, the plaintiff may, on filing an affidavit of due service of the summons, apply to have the action set down for hearing, and it shall be set down accordingly, either on a day appointed for the transaction of the ordinary general business of the court, or on a day appointed by the judge on application made by the plaintiff; and the registrar shall forthwith give to the plaintiff a notice stating the day upon which the action will be heard;

For form of notice of hearing, see Form 375.

(2) In any other case, the plaintiff may apply to have the action set down for hearing; or he shall, on filing an affidavit of due service of the summons, be at liberty to sign final judgment for the amount named in the particulars in claims of a liquidated nature, with costs to be taxed, or interlocutory judgment with costs to be taxed in actions for damages, and in the latter event the damages shall be assessed by the registrar under the rules provided for the assessment of damages.

For forms of judgment, see Forms 395—397.

Bail. Release of Property.

Rule 37.

Bail before registrar or commissioner.

37. Bail in admiralty actions may be taken before the registrar, or before a commissioner to administer oaths; but in every case the sureties shall justify, unless the adverse party gives notice in writing dispensing with affidavits of justification.

See Rule 38, below, as to commissioner. For form of bail bond, see Form 377; and of affidavit of justification, see Form 378.

Commissioner in certain cases not to take bail.

38. No commissioner shall take bail on behalf of any person for whom he or any person in partnership with him is acting as solicitor or agent.

Cf. R. S. C., Order XXXVIII., r. 16.

Preparation of bail papers.

39. The bail bond and affidavits of justification shall be prepared by the party giving bail; the affidavits shall be according to the form in the Appendix, with such variations as may be necessary.

For form of affidavit of justification, see Form 378.

Bail before registrar.

40. If bail is to be taken before the registrar, a notice containing the names and addresses of the sureties, and of the time appointed for taking the bail, shall be given or sent by post by the registrar to the party giving bail, and shall be served by such party on the party requiring bail before six o'clock on the day before that which is appointed for taking the bail; and the sureties shall attend at the time appointed for the purpose of executing the bail papers and of being cross-examined as to their means, if required. Where cross-examination is not required, the bail papers may be executed before a clerk to the registrar nominated by the judge under section 83 of the Act to take affidavits.

For form of notice, see Form 376.

Bail before commissioner.

41. If bail is taken before a commissioner, notice of such bail shall be given, and an affidavit of service thereof filed according to the forms in the Appendix, subject to such variations as may be necessary; but the property shall not be released without consent until the expiration of twenty-four hours from the time of service of such notice.

For forms of notice and of affidavit of service, see Forms 379 and 380.

Notice to sureties to attend for cross-examination.

42. On receipt of notice of bail having been taken before a commissioner, the property shall not be released, if before the expiration of such twenty-four hours the party requiring such bail gives notice to the party giving bail, and to the registrar, that he requires such sureties to attend before the registrar for the purpose of being cross-examined as to their means.

For form of notice requiring sureties to attend, see Form 381.

43. On receipt of such notice the registrar shall appoint a time for such cross-examination, and shall give or send by post notice of the time appointed to the parties forty-eight hours at least before the time so appointed; and the sureties shall attend at the time appointed for the purpose of being cross-examined; and on such cross-examination the registrar may either declare the bail given to be sufficient, or order fresh bail to be given. Cross-examination of sureties.

For form of notice of time appointed, see Form 382.

44. If in the opinion of the registrar notice of attendance of the sureties for such cross-examination has been given without sufficient cause, the costs of their attendance for cross-examination, and the expenses of the detention of the property kept under arrest in consequence of such notice, shall be paid by the party requiring such attendance, and the registrar shall make an order accordingly. Costs of examination of sureties required without sufficient cause.

45. Where the amount sued for is paid into court, together with costs, or when the security has been completed, or in any other case if the plaintiff so requires, the registrar shall deliver to the party applying for the same an order directed to the high bailiff of the court, authorising and directing him, upon payment of all costs, charges, and expenses attending the custody of the vessel or property, to release it forthwith. Release on payment into court or completion of bail.

For form of order of release, see Form 384.

46. Notwithstanding the last preceding rule, the property in an action for salvage shall not be released, except with the consent of the plaintiff, until its value has been agreed or an affidavit of value filed on behalf of the party seeking the release, unless the judge otherwise orders. Release in action for salvage.

47.—(1) If the plaintiff is dissatisfied with the value mentioned in the affidavit filed under the preceding rule, he shall be entitled to have the value ascertained by appraisement, and for such purpose shall file a præcipe. Appraisement at request of plaintiff.

For form of præcipe, see Form 383.

(2) Where a præcipe for appraisement has been filed, the plaintiff shall deposit with the registrar a sum sufficient to cover the fees and expenses of the appraisement, such sum to be fixed by the registrar; and thereupon the registrar shall issue a request for appraisement according to the form in the Appendix, directed to the high bailiff of the county court having jurisdiction in admiralty within the district of which the property to be appraised shall be, and shall send the same to the high bailiff. Procedure on request.

For form of request by registrar for appraisement, see Form 383A (see *The Argo*, (1895) P. 33; 64 L. J. Adm. 12).

Rule 47.

Certificate of appraisement.

(3) On receipt of the request the high bailiff shall cause an inventory and valuation of the property to be made by an appraiser, and shall return the request, with a certificate of appraisement signed by the high bailiff and the appraiser, according to the form in the Appendix, to the registrar of the court from which the request issued; and the registrar shall file the same with the proceedings in the action, and shall give notice to the parties of the certificate having been received, and the parties shall be at liberty to inspect and demand copies thereof.

For form of certificate of appraisement, see Form 383B.

Appraisement generally conclusive as to value, *cf. The San Onofre*, (1917) P. D. 96.

Remuneration of appraiser.

(4) The appraiser shall be allowed such remuneration and expenses as may be prescribed by any order as to fees made pursuant to section one hundred and sixty-five of the Act.

See sect. 165 of 51 & 52 Vict. c. 43.

Costs.

(5) The costs of the appraisement shall be in the discretion of the court.

Where appraisement not required.

(6) If the plaintiff does not require an appraisement, he shall not be entitled to dispute at the hearing the value mentioned in the affidavit, unless the judge, in the exercise of his discretion, for good cause otherwise orders.

This rule (sub-ss. 2—6) is as amended in 1912.

Release of cargo.

48. Cargo arrested for freight only may be released by filing an affidavit as to the value of the freight and by paying the amount of the freight into court, or by satisfying the court that it has already been paid.

Cf. R. S. C., Order XXIX., r. 4.

Costs of bail.

48A. Costs properly incurred by any party in respect of instructions for bail, preparation and execution of the bail bond and affidavits of justification, and any notices, perusals, attendances, or other proceedings in relation to bail, may be allowed on taxation, the amounts not to exceed those which may under the scales of costs be allowed in respect of proceedings of a like nature.

This is new Rule 12 of 1905.

Commission recoverable on taxation.

49. A commission or fee paid to a person becoming surety to a bail bond or otherwise giving security may be recovered on taxation. Provided that the amount of such commission or fee shall not in the aggregate exceed 1*l.* per centum on the amount in which bail is given.

Cf. R. S. C., Order XII., r. 21a.

Transfer of Action.

Transfer of action to High Court

50. Where an action is transferred to another county court or to the High Court by order either of the court in which the action was

commenced or of the High Court, the registrar shall transmit the record of the proceedings to the proper officer of the court, in the same manner as is prescribed by Order XXXIII. Rule 7, of these rules, for the transmission of proceedings transferred under section ninety of the Supreme Court of Judicature Act, 1873, and sections sixty-eight and one hundred and twenty-six of the Act. Rule 50. or another county court.

See sect. 90 of 36 & 37 Vict. c. 66, and sects. 68 and 126 of 51 & 52 Vict. c. 43.

For forms of order of transfer, see Forms 385 and 386.

51. Where the proceedings are transferred by an order of the High Court, a copy of the order transferring the proceedings shall be left with the registrar. Order of High Court for transfer to be left with registrar.

Second or Cross Action.

52. Where it appears to the judge that the plaintiff in an admiralty action (hereafter called the second action) was or is the defendant in an action (hereafter called the first action) in another court arising out of the same transaction, and that he did not propose to the plaintiff in the first action that by agreement jurisdiction should be given to the court in which the first action was commenced to hear and determine the second action, the judge may, if he thinks fit, refuse the plaintiff in the second action his costs. When costs in second or cross action may be refused.

53. Where a second or cross action for damage has been commenced by a defendant in an action for damage, and the second action has been commenced, by agreement or otherwise, in the court in which the first action was commenced, or has been transferred to the said court by order of any other court, the court may direct both actions to be tried at the same time and upon the same evidence. Cross actions may be tried together.

Consolidation of Actions.

53A. Admiralty actions pending in the same court and depending on the same facts, or actions of salvage pending in the same court and relating to services rendered to the same ship in relation to the same peril, may be consolidated by order of the court, on application made by any party on notice to all other parties in accordance with the rules in force as to interlocutory applications. On any such application the court may give such directions as to the conduct of the consolidated actions, the delivery of pleadings, and the appearance of the parties at the hearing, and may impose such terms and conditions and make such order in the matter as may be just. Consolidation of actions.

Cf. R. S. C., Order XLIX., r. 8.

Enforcement of Orders.

Rule 54.

Enforcement of judgment *in personam.*

54. Where a judgment or order has been obtained in an action *in personam*, such judgment or order may be enforced against the defendant in the same manner as judgments or orders of the court are enforced in ordinary actions.

For forms of præcipe for issue of warrant of execution and of warrant of execution, see Forms 402 and 403.

Enforcement of judgment *in rem*, where vessel or property released.

55. Where a judgment or order has been obtained in an action *in rem* in which the vessel or property to which the action relates has been released, such judgment or order may be enforced against the parties giving bail and their sureties, or against the amount paid into court, as the case may be.

For forms of præcipe for issue of warrant of execution and of warrant of execution, see Forms 402 and 403.

Enforcement of judgment *in rem*, where vessel or property not released.

56. Where a judgment or order has been obtained in an action *in rem* in which the vessel or property to which the action relates has not been released, the court may, by the judgment or order, or by subsequent order, order the vessel or property to be taken and sold in execution, subject to the provisions hereinafter contained.

Proceedings where owners are known.

57. Where at the time when the judgment or order is obtained the owners of the vessel or property are known, the vessel or property may be arrested and detained under the provisions of section twenty-two of the County Courts Admiralty Jurisdiction Act, 1868, or kept in arrest if already arrested; and the court may, with or without notice to the owners, order such vessel or property to be taken and sold in execution.

Provisions for protection of persons having interest who are not before the court.

Provided that, in the case of a British-owned vessel, before any order for sale is made, the adverse party shall deliver to the registrar a præcipe, with a certified copy of the ship's register: and if the names of any persons who are not before the court appear on the register as having an interest in the vessel, the registrar shall issue to the solicitor, if such præcipe is delivered through a solicitor, or to the bailiff, for service on such persons in accordance with Rule 48 of this Order, a notice of the judgment or order, stating thereon that if such persons do not within seven clear days from the day of service deliver a præcipe to the registrar applying for a re-hearing of the action, the vessel or property to which the action relates will be taken and sold in execution.

See sect. 22 of 31 & 32 Vict. c. 71.

For forms of præcipe and notice, see Forms 404 and 405 (see *The Ruby* (*No.* 1), (1898) P. 52; 67 L. J. P. 25).

58. Where at the time when the judgment or order is obtained the owners of the vessel or property are unknown, the vessel or property shall not be taken and sold in execution in the first instance, but it may be arrested and detained under the provisions of section twenty-two of the County Courts Admiralty Jurisdiction Act, 1868, or kept under arrest if already arrested. **Rule 58.** Proceedings where owners are unknown.

See sect. 22 of 31 & 32 Vict. c. 71.

59. Where the owners of the vessel or property are subsequently ascertained, the adverse party may deliver to the registrar a præcipe stating the names, addresses, and descriptions of such owners, with, if the vessel be a British-owned vessel, a certified copy of the ship's register: and thereupon the registrar shall issue to the solicitor, if such præcipe is delivered through a solicitor, or to the bailiff, for service on the owners, and, in the case of a British-owned vessel, on the other persons, if any, whose names appear on the ship's register as having an interest in the vessel, a notice of the judgment or order, stating thereon that if the owners or other persons, if any, appearing to have an interest in the vessel do not within seven clear days from the day of service deliver a præcipe to the registrar applying for a re-hearing of the action, the vessel or property to which the action relates will be taken and sold in execution. Proceedings on discovery of owners.

For forms of præcipe and notice, see Forms 406 and 407.

60. The notice in the last preceding rule mentioned shall be served personally upon the owners and upon the other persons, if any, whose names appear on the ship's register as having an interest in the vessel, unless the court upon facts duly verified upon affidavit allows of substituted service. Service of notice on owners or persons having interest.

61. Where the owners of the vessel or property cannot be ascertained, the court may, on an affidavit showing grounds, make an order directing notice of the judgment or order to be given, by advertisement or otherwise, to the owners of and all persons claiming to have an interest in the vessel or property to which the action relates, together with a notice informing such owners and persons that if they do not within a time to be limited by the order and specified in the notice (which shall not be less than ten clear days from the date of the publication of the notice) deliver a præcipe to the registrar applying for a re-hearing of the action, the vessel or property to which the action relates will be taken and sold in execution. Proceedings where owners cannot be ascertained.

For forms of order and notice, see Forms 408 and 409.

Rule 62.

Application for re-hearing, and proceedings thereon.

62. Any person served with or receiving notice under any of the five preceding rules, and desiring to apply for a re-hearing of the action as owner of or a person claiming to have an interest in the vessel or property, may within the time limited by the notice apply for a re-hearing by filing a præcipe and entering an appearance in accordance with the provisions of this order as to appearance; and thereupon the action shall proceed in the same manner as an action in which appearance is entered within the time limited by the summons. The costs of the plaintiff incurred prior to the entry of appearance shall be in the discretion of the judge, and shall be dealt with on the re-hearing as the judge shall direct.

Costs before re-hearing.

For forms of præcipe, see Form 410. As to entry of appearance, see Rules 19—26, *supra*.

Order for sale in default of application for re-hearing.

63. If no appearance is entered within the time limited by the notice, the court may order the vessel or property to which the action relates to be taken and sold in execution.

Execution against Vessel or Property.

Issue of warrant for sale of vessel or property.

64. Where pursuant to these rules the court orders any vessel or property to be taken and sold in execution, the registrar shall, on a præcipe being filed by the plaintiff, issue a warrant of execution according to the form in the Appendix.

For forms of præcipe and warrant, see Forms 411 and 412.

Inventory and valuation.

Sale.

65. Where under a warrant of execution a vessel is seized, the high bailiff shall, before selling the same, cause an inventory and valuation thereof to be made by an appraiser, and the vessel shall not be sold for less than the appraised value thereof, except by order of the court. The appraiser shall be allowed such remuneration and expenses as may be prescribed by any order as to fees made pursuant to section 165 of the Act.

This rule is as amended in 1912.
See sect. 165 of 51 & 52 Vict. c. 43.

Proceeds of sale to be paid into court.

66. On the completion of the sale of a vessel or property the high bailiff shall pay the gross proceeds of sale into court, return the warrant, and file an account of the sale and of the fees thereon, signed by him, together with the certificate of appraisement signed by the appraiser.

Objection to account of sale, or to fees.

67. Any person interested in the proceeds of any sale may inspect the high bailiff's account of the sale and of the fees thereon, and may object to such account and fees, and any such objection

shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs. Rule 67.

As to objection and review, see Order LIII. rr. 5, 6, and 47, and sect. 118 of 51 & 52 Vict. c. 43.
Cf. R. S. C., Order LI., r. 16.

68. On the completion of the purchase the high bailiff shall deliver up the property to the purchaser, and if required so to do shall execute a bill of sale to him at the expense of the purchaser. Delivery of property to purchaser.

69. The costs incurred by the plaintiff in obtaining an order directing any vessel or property to be taken and sold in execution, and in suing out execution, to be taxed by the registrar, shall be allowed and be recoverable against the vessel or property taken in execution. Costs of obtaining order for sale, and of execution.

Transfer of Sale.

70. Where a vessel has been arrested or has been seized under a warrant of execution, and the sale of the vessel has been ordered to be transferred to the High Court, the vessel shall be retained by the high bailiff until the marshal shall, by order of the High Court, take possession thereof. Proceedings on transfer of sale.

71. The party desiring that the sale of any vessel or property should be conducted in the High Court may at any time after judgment give security to the amount of 10*l.*, and deliver to the registrar an application for an order for the transfer of the proceedings for sale to the High Court. Application for transfer of proceedings for sale.

For form of application and order, see Form 413.

72. The registrar shall transmit the application in the last preceding rule mentioned to the judge for his order thereon, if the court is not sitting, and shall in any case certify on the application that the security for costs has been given. Application to be transmitted to judge.

For form of application and order, see Form 413.

Tenders.

73. The provisions of Order IX. as to payment into court shall not apply to admiralty actions; but in lieu thereof the following provisions shall apply. Provisions of Order IX. as to payment into court not to apply.

See *The Vulcan*, (1898) P. 222; 67 L. J. P. 101.

74.—(1) A party desiring to make a tender shall give notice to the adverse party of the terms and amount of the tender, and shall deliver a præcipe, with a copy thereof for the adverse party, and pay the amount of the tender into court. Tender.

For form of præcipe, see Form 387.

[NOTE.—Semble, that these rules as to tender are not applicable to an action in which the question of liability is in the first instance only to be

Rule 74 Notes.

determined, as there is no claim put forward in the action until the reference stage is reached, upon which the tender can operate. If these rules do not apply to such an action, then a tender made in the "liability" stage of the action will only commence to operate as to costs after the "reference" claim has been lodged.]

(2) A tender may be made and money paid into court—

(*a*) either in respect of the whole of the claim of the adverse party, or in respect of any part thereof:

(*b*) with or without costs:

(*c*) with or without a denial of liability: and

(*d*) with or without a notice of defence on the ground of tender before action brought.

See note under sect. 74, sub-s. 1, *supra*.

(3) The præcipe shall state whether the tender is made in respect of the whole of the claim or in respect of part only thereof, and if it is made in respect of part only of the claim, such part shall be specified in the præcipe.

(4) If the tender is made with costs, the præcipe shall specify what amount is paid in respect of the claim and what amount in respect of costs.

(5) If the tender is accompanied by a denial of liability, that fact shall be stated in the præcipe.

(6) If the tender is accompanied by notice of defence on the ground of tender before action brought, notice of such defence shall be given in the præcipe.

Notice of payment into court.

75. The registrar shall, within twenty-four hours from the time of any payment made into court pursuant to the preceding rule, send to the adverse party notice thereof, together with a copy of the præcipe accompanying such payment.

For form of notice, see Form 388.

Notice of acceptance or rejection of tender.

76. Within forty-eight hours of the receipt of notice of any such payment into court, the adverse party shall send to the registrar and to the party making the payment, or his solicitor, by post, or leave at the office of the registrar and at the residence or place of business of such party, or the office of such solicitor, a notice stating whether he accepts or rejects the tender; and if he fails to do so, he shall be deemed to have rejected it.

For form of notice, see Form 389.

Acceptance of tender in respect of whole claim.

77. Where a party accepts a tender in respect of the whole of his claim, he shall, unless the tender is accompanied by notice of defence on the ground of tender before action brought, be entitled

to take the amount of such tender out of court, and shall be entitled to his costs of action; and Rule 77.

(*a*) if payment into court was made without costs, he shall be at liberty to tax his costs, and obtain and enforce an order for payment thereof; Costs.

(*b*) if payment into court was made with costs, he may either accept and take out of court the amount paid in respect of costs, or tax his costs and obtain and enforce an order for payment of the amount by which such costs when taxed exceed the amount paid in respect of costs; but if the amount so paid exceeds the amount of such costs when taxed, the balance thereof, after payment of the taxed costs, shall be repaid to the party making the tender.

See *The Skudenaes*, (1901) 70 L. J. P. 64.

78. Where a party accepts a tender in respect of part of his claim only, he shall, unless the tender is accompanied by notice of defence on the ground of tender before action brought, be entitled to his costs in respect of the amount so accepted up to the time of notice of acceptance; but the amount so accepted shall not be paid out of court, nor shall such costs be taxed or payable until the action is disposed of, and the court may order any costs awarded to the party making the tender to be set off against such amount and costs. Acceptance of tender in respect of part of claim. Costs.

79. Where a party accepts a tender accompanied by notice of defence on the ground of tender before action brought, he shall not be entitled to take out of court the amount so accepted, nor to any costs, without the order of the court; and the court may make such order as may be just as to the costs of either party, and as to the set off of any costs awarded to the party making the tender against the amount paid into court. Acceptance of tender when accompanied by defence of tender before action. Costs.

80. Where a tender is accompanied by a denial of liability, and the adverse party does not give notice that he accepts the tender in accordance with Rule 76 of this Order, such party may nevertheless accept the tender (whether he has previously given notice of rejection or not) at any time before the action is called on and the case is opened, subject to the payment of any costs which may have been reasonably incurred by the party making the tender since the date of payment into court, and which may be allowed by the court. In any other case the money shall not be paid out until the action is disposed of; and if the adverse party recovers less than the amount paid into court, the balance of such amount shall be repaid to the party making the tender, unless the court Where tender accompanied by denial of liability is not accepted. Costs.

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otherwise orders, and the court may order any costs awarded to such party to be set off against the amount recovered by the adverse party; and if the party making the tender succeeds, the whole amount paid into court shall be repaid to him, unless the court otherwise orders.

Payment out of Court.

Payment out of court to solicitor.

81. Money ordered in an admiralty action to be paid out of court may be paid to the solicitor on the record, without the production of a power of attorney from the party entitled to receive the money, unless the judge otherwise orders.

Retainer of moneys in court where more than one action.

82. Where more actions than one have been commenced against a vessel or any property, and the same has been sold, the proceeds thereof shall be retained in court, to abide the decision of the court in the various actions, unless the judge otherwise orders.

Appraisement.

Appraisement.

83. The registrar may, on the application of either party, and whether before or after judgment, order any property under arrest to be appraised, and the same allowances shall be made to the appraiser as are directed to be allowed by Rule 65 of this Order.

Records of the Court.

Inspection of records.

84. The parties in an action, their solicitors, or the clerks of the solicitors, may while the action is pending, and for one year after its termination, inspect, free of charge, all the records in the action.

Who entitled to inspection during pendency of action.

85. In a pending action no person other than the parties, their solicitors, or the clerks of the solicitors, shall be entitled to inspect the records in the action without the permission of the registrar.

The like on termination of action.

86. In an action which has been finally disposed of any person may, on delivering to the registrar a præcipe, and on payment of the proper fee, inspect the records in the action.

Copies.

Office copies.

87. Any person entitled to inspect any instrument or document in an action shall, on delivering to the registrar a præcipe, and on payment of the proper charges for the same, be entitled to an office copy thereof.

Assessors.

88. Any party requiring the judge at the trial or the registrar on an assessment of damages to be assisted by assessors, shall deliver a præcipe to that effect, and shall at the time of delivering such præcipe pay to the registrar the sum of one guinea for each assessor if the amount claimed does not exceed 100*l.*, and two guineas if it does exceed that amount, with, in either case, a sum reasonably sufficient to cover the travelling expenses of each assessor to attend the court, the amount to be fixed by the registrar; and such payments shall be considered as costs in the action, unless otherwise ordered by the judge. Rule 88. Payment on application for assessors by party.

This rule is as amended in 1912.

89. Where the judge or the registrar requires the assistance of assessors the fees in the last preceding rule mentioned shall be paid by the plaintiff before the trial, and shall be costs in the action, unless otherwise ordered by the judge. The like on requirement of judge or registrar.

90. Where the trial or reference is adjourned the plaintiff shall pay the assessors' fees for the day of adjournment forthwith after the order of adjournment is made by the judge or registrar, as the case may be. Assessors' fees on adjournment.

91. Upon the delivery of the præcipe in Rule 88 mentioned, or upon the requirement of the judge or registrar as in Rule 89 mentioned, the registrar shall select from the list of assessors the names of two persons whom he may, having reference to the nature of the action to be tried or of the reference to be determined, consider most capable of assisting the judge or registrar in trying and determining it, and shall send to each of such persons by post a summons according to the form in the Appendix. Selection and summoning of assessors.

As to list of assessors, see sect. 14 of 31 & 32 Vict. c. 71, and Form 392. For form of summons to assessor, see Form 393; and for order fining assessor for non-attendance, see Form 394.

Nautical Assessors Advisory only.]—Nautical assessors when summoned, are present merely to advise the judge, and he ought to decide, both on law and merits, in accordance with his own opinion as to the law and merits of the case (see *The Aid*, (1881) 6 P. D. 84; 50 L. J. Adm. 40; *The Fred*, (1895) 72 L. T. 153).

92. The registrar shall pay to every assessor for each day's attendance and service in every action or reference one guinea or two guineas, according as the amount claimed in the action does or does not exceed 100*l.* Payment to assessors.

Admission of Liability.

93. The defendant in an admiralty action may at any time after appearance, and the plaintiff may at any time after the filing Party may admit liability except in salvage.

Rule 93. of a counterclaim, admit liability in any action except for salvage. Such admission shall be by præcipe according to the form in the Appendix, and shall be signed by the solicitor for the party, or if signed by the party in person, shall be attested by a solicitor.

For form of præcipe, see Form 390.

Notice thereof. **94.** The party filing such præcipe shall immediately give notice thereof to the other parties in the action, and after receipt of such notice no costs shall be allowed to any party served therewith in respect of the further prosecution of the action so far as regards the question of liability.

Agreement for assessment of damages by registrar. **95.** The parties may, before trial, agree that the damages recoverable shall be assessed by the registrar with or without assessors.

Assessment of Damages.

Judge may order reference except in salvage. **96.** In all actions except salvage the judge may, instead of giving judgment for any specified amount, give judgment settling the rights of the parties and order a reference to the registrar or to the registrar and assessors as to the amount to be recovered, which amount shall bear interest from such date as the registrar may allow at the rate of four per cent. per annum.

For form of judgment ordering reference, see Form 397.

Claimant to file particulars and vouchers. **97.** After an order has been made under the last preceding rule, or an admission of liability has been filed under Rule 93, the claimant shall within seven days file particulars of his claim, if not already filed, and all original vouchers, and shall serve copies thereof on the adverse party.

See Rule 104A, *post*, as to taking vouchers off the file.

Registrar to appoint time for reference.

Assessors. **98.** Upon the application of either party the registrar shall fix a time and place for proceeding on the reference and shall give at least four days' notice thereof to all parties; and he shall summon an assessor or assessors to be present thereat if so ordered by the judge or required by either party or by himself.

For form of notice, see Form 398.

Registrar may proceed with or adjourn reference. **99.** At the time appointed for the reference, if either party be present, the reference may be proceeded with; but the registrar may adjourn the reference from time to time as he may think fit.

Evidence may be given *viva voce* or by affidavit. **100.** Witnesses may be produced for examination on the reference; or where a witness resides at a distance of not less than ten miles from the registrar's office or in any other case by consent

of the parties, evidence may be given on affidavit, subject to the right of the adverse party to require the deponent to any such affidavit to attend the reference for cross-examination, provided that the registrar may allow the costs of such attendance against the cross-examining party in the event of his considering that it was unnecessarily called for. Rule 100. Cross-examination on affidavit.

101. As soon as possible after the conclusion of the reference the registrar shall report in writing according to the form in the Appendix, with such variations as may be necessary, what amount is found to be due in respect of every claim filed, particularizing in a schedule to such report, each amount claimed and allowed, and what part of the costs of the reference (if any) shall be allowed, and to whom. He shall also immediately give notice to both parties that the report has been made, and may be inspected at his office; and unless within seven days after the service of such notice as last aforesaid either party lodges an objection to the report, the same shall become final and binding on all parties, and judgment shall be entered accordingly. Report by registrar.

For forms of report and notice thereof, see Forms 399 and 400.

102. Any party intending to object to the registrar's report shall within the aforesaid period of seven days file with the registrar and give to the adverse party a notice of such intention. In such notice he may also request the registrar to state in writing the reasons of his decision, either as regards the whole of the same or as regards any particular items to be specified in the notice of objection. If a notice of objection is filed judgment shall not be entered on the report until either the notice has been withdrawn or the matter disposed of by the judge. Objection to report.

For notice of objection, see Form 401.

103. Within seven days from the notice of the filing of a notice of objection to the report the registrar shall himself file a statement of his reasons as required by the notice; and the report shall be brought up before the judge at the next sitting of the court to be held after the expiration of seven days from the filing by the registrar of such reasons. Registrar to file reasons.

104. On the matter coming before the judge a hearing shall take place by way of appeal from the report, and the judge may either vary or confirm such report, or refer the same back to the registrar with any such directions as may appear to him to be just, and make such order as to the costs as he may think fit; and on the matter being finally disposed of judgment shall be entered accordingly. Appeal from registrar's report.

Rule 104A.

Taking vouchers off the file.

104A. Original vouchers filed pursuant to Rule 97 may be taken off the file at any time, on filing a written consent of the adverse party, or without such consent at any time after judgment has been signed or the action has been otherwise disposed of; and in either case the party taking such vouchers off the file shall file a receipt for the same.

This is a new Rule of 1909.

Consent Orders.

Orders by consent.

105. Any consent in writing between the parties to an action or their solicitors may by permission of the court be filed, and shall thereupon become an order of the court, and such order shall be as valid and may be enforced in the same manner as an order made by the court.

For form of consent to order, see Form 391.

Subpœnas.

Subpœnas may be issued in blank.

106. A party shall be entitled to issue subpœnas *ad testificandum* and *duces tecum* under the seal of the court without inserting the names of the witnesses.

Service in England or Wales.

107. Service of a subpœna may be effected by any party to the action or his solicitor or the agent of such solicitor, or by any person employed by either of them, in any part of England or Wales.

Service of Notices and Orders.

Service by post.

108. After an appearance has been entered all necessary notices, orders, and other documents may be served by post when the party appearing or his solicitor resides or carries on business at a distance of more than two miles from the office of the party or solicitor serving the same.

Costs.

Costs of necessary letters.

109. The costs of all necessary correspondence in admiralty actions shall be allowed by the registrar.

Costs of solicitor acting as agent out of the district.

110. When it becomes necessary to employ a solicitor to act as agent out of the district of the court for the purpose of obtaining the evidence of witnesses on the trial of an action, a reference before the registrar, or the taxation of costs, or for any other necessary purpose, the costs of such agent and of instructing him shall be allowed by the registrar.

111. Where any party is allowed at the trial or any adjournment thereof to avail himself of any defence, set off, or counterclaim of which notice should have been given before the trial, the judge in exercising his discretion as to costs shall consider what effect the non-delivery of such notice has had in the action. **Rule 111.** Costs where defence, etc., which should have been pleaded is allowed at trial.

112. In admiralty actions where the amount recovered, or in the case of a defendant the amount claimed, does not exceed 20*l.*, the costs shall be allowed under column B., unless the judge otherwise orders. Costs where less than 20*l.* recovered or claimed.

Costs, Column B.]—See pp. 1181 *et seq.*

113. Subject to the foregoing rules, the costs in admiralty actions shall be allowed and taxed according to the rules and scales of costs for the time being in force in the county courts, and applicable to the subject-matter of such actions. General provisions as to costs in Admiralty actions.

This is a new rule of 1914. See also Order LIII., r. 8, p. 637.

Application of Order.

114. The provisions of this order shall apply to proceedings instituted as admiralty proceedings in any county court having admiralty jurisdiction as to wages or salvage, or any other matter, under the Merchant Shipping Act, 1894, or any other Act under which admiralty proceedings may be taken in the court. Application of order to proceedings in Admiralty under 57 & 58 Vict. c. 60, and other Acts.

In cases where no provision is made by the County Court Admiralty Jurisdiction Acts, or by this Order XXXIX., the general practice of the court shall be followed (see Order L. r. 36).

As regards a *jury*, however, the word "actions" in sect. 101 of the County Courts Act, 1888, does not include admiralty actions; therefore, in an admiralty cause, the defendants are not entitled as of right to a jury; if one party desires a jury, and the other party a trial before the judge with or without assessors, no jury ought to be sworn (*The Tynwald*, (1895) P. 142; 64 L. J. P. 1; *The Theodora*, (1897) P. 279; 66 L. J. P. 50; see also *Metropolitan Asylums Board* v. *Sparrow*, (1913) W. N. 115; 29 T. L. R. 450).

ADMIRALTY FORMS.

368.

Præcipe for Commencement of Admiralty Action.

Admiralty Jurisdiction.

Order XXXIX., Rule 4.

In the county court of holden at .

I, A. B., of [*address and description*], hereby desire to commence an action for [*state the nature of the action*], or I, L. M., solicitor, hereby desire to commence an action on behalf of [*state name, address, and description of plaintiff*], for [*state the nature of the action*] against [*if the action is instituted in rem, state the name and nature of the property proceeded against, and where it then is; if in personam, state name, address, and description of party proceeded against, the name and nature of the property to which the action relates, and where it is*], in the sum of [*state sum in letters*] pounds. And I consent that all instruments and documents in the said action may be left for me at [*state address*], [*add, where so desired*, and I require the summons to be served by the bailiff of the court.]

Dated this day of , 19 .

369.

Præcipe for Permission for Action to be heard at a Special Place.

[*Not to be printed.*]

Admiralty Jurisdiction.

Order XXXIX., Rule 2.

In the county court of holden at .

[*Title of Action.*]

I, A. B., of [*address and description*] or I, L. M., solicitor for A. B., of [*address and description*] apply that permission may be granted for the hearing of this action at [*here state the name of the place at which and description of the building in which it is desired that the sitting should be held, and if the building is not one in which the county court ordinarily sits add*, and I undertake to hire the use of the said building at my expense, and to pay the necessary expenses of the judge and officers of the court attending, to be allowed as costs in the action if the court shall allow the same].

Dated this day of 19 .

370.

Summons in Admiralty Action in Rem.

Admiralty Jurisdiction.

Order XXXIX., Rule 10.

In the county court of holden at .

The " . . . . . "

Between A. B.,
[*address and description*], Plaintiff,
and
The owners of the , Defendants.

Whereas an action for [*state the nature of the action*] has been instituted in this court, on behalf of A. B., of , against the [*state description of vessel*], called the [*name of vessel*], (whereof C. D. is now or lately was master), [*where action is against vessel and freight add*, and the freight

due for the transportation of the cargo now or lately laden therein ; *or where the action is against the vessel, cargo, and freight, add instead thereof,* and the cargo now or lately laden therein, together with the freight due for the transportation thereof], in the sum of [*state sum in letters*] pounds according to the particulars of claim hereunto annexed :

You are hereby summoned to enter an appearance in the said action within four clear days of the service hereof.

[*If the claim is for salvage or towage, and is not of a liquidated nature, and is not for damages, add*

You are also warned that if you do not enter an appearance as aforesaid the judge of this court will proceed to hear and determine the said action, or to make such orders therein as to him shall seem fit.] If claim not liquidated, nor for damages.

[*Or, if the claim is of a liquidated nature, add*

You are also warned that if you do not enter an appearance as aforesaid, the plaintiff will be at liberty, on filing an affidavit of the service of this summons, to sign final judgment for the amount named in the particulars, with costs, to be taxed by the registrar.] If the claim is of a liquidated nature.

[*Or, if the claim is for damages, add*

You are also warned that if you do not enter an appearance as aforesaid, the plaintiff will be at liberty, on filing an affidavit of the service of this summons, to sign interlocutory judgment, with costs to be taxed, in which case the damages will be assessed by the registrar under the rules provided for the assessment of damages.] If the action is for damages.

Dated this day of 19 .

Registrar.

To the owners of and parties interested in the [*state description and name of vessel*], [*or cargo, &c., as the case may be*].

N.B.—The solicitor for the plaintiff, A. B., is , of [*here state the address given in the præcipe*].

371.

Summons in Admiralty Action in Personam.

Admiralty Jurisdiction.

In the county court of holden at

Between A. B., [*address and description*] Plaintiff,

and

C. D., [*address and description*], Defendant. *Order XXXIX., Rule 10.*

Whereas an action for [*state nature of action*] has been instituted in this court on behalf of the plaintiff against you in the sum of [*state sum in letters*] pounds according to the particulars of claim hereunto annexed ;

You are hereby summoned to enter an appearance in the said action, within four clear days of the service hereof.

[*If the claim is for salvage or towage, and is not a claim of a liquidated nature, and is not a claim for damages, add*

You are also warned that if you do not enter an appearance as aforesaid, the judge of this court will proceed to hear and determine the said action, or to make such orders therein as to him shall seem fit.] If claim not liquidated, nor for damages.

[*Or, if the claim is of a liquidated nature, add*

You are also warned that if you do not enter an appearance as aforesaid, the plaintiff will be at liberty, on filing an affidavit of the service of this summons, to sign final judgment for the amount named in the particulars, with costs, to be taxed by the registrar.] If the claim is of a liquidated nature.

[*Or, if the claim is for damages, add*

You are also warned that if you do not enter an appearance as aforesaid, If the action is for damages.

the plaintiff will be at liberty, on filing an affidavit of the service of this summons, to sign interlocutory judgment, with costs to be taxed, in which case the damages will be assessed by the registrar under the rules provided for the assessment of damages.]

Dated this day of 19 .

Registrar.

To the defendant.

N.B.—The solicitor for the plaintiff, A. B., is of [*here state the address given in the præcipe*].

372.

Warrant of Arrest and Detention.

Admiralty Jurisdiction.

Order XXXIX. Rule 13.

In the county court of holden at .

[*Title of Action.*]

Whereas an action has been instituted in this court on behalf of A. B. of against [*state description and name of vessel or property*] in the sum of [*state sum in letters*] pounds:

These are therefore to require and order you to arrest the said and to keep the same under safe arrest until you shall receive further orders from this court.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

373.

Solicitor's acceptance of Service of Summons and undertaking to appear, and to put in or give Bail, &c., to be Indorsed on Summons.

[*Not to be printed.*]

Admiralty Jurisdiction.

Order XXXIX., Rule 6.

I, L. M., of [*address*], solicitor for C. D., of [*address and description*], accept service hereof, and I undertake to appear for the said C. D. according to the exigency of the within summons; and I also undertake within days from the date hereof to put in or give bail herein in a sum not exceeding [*state amount for which undertaking given*] pounds, or to pay such sum into the county court of holden at , [*in an action for salvage, add* and to file an affidavit of the value of the vessel or property to which this action relates, unless such value is agreed]; and I consent that all instruments and other documents in this action may be left for me at .

Dated this day of 19 .

374.

Præcipe to enter an Appearance.

[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]

Order XXXIX., Rules 19, 22.

Enter an appearance in this action for the defendant C. D., of [*address and description*] [*or* for E. F., of [*address and description*] who claims to have an interest in the vessel [*or* property *or* fund in court] the subject of this action].

All instruments and documents in the action may be left for the said C. D. [*or* E. F.] at [*state address*].

Dated this day of 19 .

374A.

Notice of Appearance.

[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]

Order XXXIX., Rule 24.

Take notice, that I have this day entered an appearance in this action for the defendant C. D., of [*address and description*] [*or* for E. F., of [*address and description*] who claims to have an interest in the vessel [*or* property *or* fund in court] the subject of this action].

Dated this day of 19 .

375.

Notice of Hearing.

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]

Order XXXIX., Rules 35, 36.

Take notice, that this action will be heard at a court to be holden on the day of at [*here state where court is to be held*], at the hour of o'clock in the noon.

The hearing fee must be paid before the case is called on.

Dated this day of 19 .

Registrar.

To the plaintiff and defendant [*or* intervener].

376.

Notice of Time Appointed for taking Bail before Registrar.

Admiralty Jurisdiction.

Order XXXIX., Rule 40. In the county court of holden at .

[*Title of Action.*]

Take notice, that , the defendant [*or* intervener] in this action has proposed as his sureties G. H., of , &c., and J. K., of , &c.: And that if you have any valid objection to make to the proposed sureties, or either of them, you must attend at [*here insert place of office of registrar*] on the day of 19 , at the hour of o'clock in the noon, when the bail bond will be submitted for approval, and the proposed sureties will attend for the purpose of executing the bail papers and of being cross-examined as to their means, if required.

Dated this day of 19 .

Registrar.

To , and his [*or* their] solicitor.

377.

Bail Bond.

Admiralty Jurisdiction.

Order XXXIX., Rules 27, 39. In the county court of holden at

[*Title of Action.*]

Whereas an action for has been instituted in this court on behalf of A. B., of , against [and against intervening].

Now, therefore, we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of the said court, and consent that if he [*or* they] the said shall not pay what may be adjudged against him [*or* them] in the said action, with costs, execution may issue forth against us, our heirs, executors, and administrators, our goods and chattels, for a sum not exceeding [*state sum in letters*] pounds.

[*Signatures of sureties.*]

This bail bond was signed by the said and the sureties, the day of 19 .

Before me,

Registrar

[*or* clerk to the registrar nominated to take affidavits].

378.

Affidavit of Justification.

[*Not to be printed.*]

Admiralty Jurisdiction.

Order XXXIX., Rules 27, 39. In the county court of holden at .

[*Title of Action.*]

I, of [*add description*], one of the proposed sureties for make oath and say that I am worth more than the sum of pounds after the payment of all my debts.

Sworn at in the county of , this day of 19 .

Before me,

A commissioner for oaths.

379.

Notice of Bail taken before Commissioner.

[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at

[*Title of Action.*]

Order XXXIX., Rule 41.

Take notice that bail has been given in the sum of £ on behalf of the above-named to answer judgment in this action by and that such bail has been taken before , a commissioner to administer oaths in the Supreme Court of Judicature.

Dated this day of 19 .

Yours, &c.,

Solicitor for the

To , and his [*or* their] solicitor.

380.

Affidavit of Service of Notice of Bail taken before Commissioner.

[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at

[*Title of Action.*]

Order XXXIX., Rule 41.

I, of , in the of , clerk to of the same place, solicitor for the in this action, make oath and say as follows :

That I did on the day of 19 , at of the clock in the noon serve on , the solicitor for the , a notice of bail in the words and figures following, viz. :

[*Copy notice of bail omitting heading.*]

Sworn at in the county of , this day of 19 .

Before me,

A commissioner for oaths.

381.

Notice requiring Sureties to attend for Cross-examination.

[*Not to be printed.*]

[*Title of Action.*]

Order XXXIX., Rule 42.

Take notice that I require the sureties in this action to attend before you for the purpose of being cross-examined as to their means, and I request that a time may be fixed for such cross-examination.

Dated this day of 19 .

To the registrar of the court and to and his [*or* their] solicitor.

382.

Notice of Time appointed for Cross-examination.

[*Title of Action.*]

Order XXXIX., Rule 43. Take notice that I have appointed the day of at the hour of in the noon, for the cross-examination of the sureties in this action, when the said sureties are to attend at for the purpose of such cross-examination.

Dated this day of 19 .

Registrar.

To the and his [*or* their] solicitor,
and to the and his [*or* their] solicitor.

383.

Præcipe for Appraisement.

[*Not to be printed.*]

[*Title of Action.*]

Order XXXIX., Rule 47. Take notice, that the plaintiff hereby requires to have the value of the vessel [*or* property] the subject of this action ascertained by appraisement.

Dated this day of 19 .

To the registrar of the court.

383A.

Request by Registrar to High Bailiff for Appraisement.

Admiralty Jurisdiction.

Order XXXIX., Rule 47 (2). In the county court of holden at .

[*Title of Action.*]

The plaintiff having required the value of the vessel [*or* property] the subject of this action to be ascertained by appraisement,

You are hereby requested to choose an experienced person to make an inventory of and to appraise the (*describe vessel or property*) being the vessel [*or* property] the subject of this action, and to return this request with the inventory and appraisement to the registrar of this court, with an account of the fees and expenses of the appraiser.

Dated this day of .

Registrar.

To the high bailiff of
the county court of
holden
at .

383B.

Certificate of Appraisement.

Admiralty Jurisdiction.

Order XXXIX., Rule 47 (3). In the county court of holden at .

[*Title of Action.*]

I, , high bailiff of the county court of holden at , hereby certify that in pursuance of a request dated the day of ,

and issued in this action, I have chosen of an experienced person to make an inventory of and to appraise at the true value thereof the (*describe vessel or property*) being the vessel [*or* property] the subject of this action :

And I, the said do certify that I have made the inventory of the said vessel [*or* property] hereunto annexed, and that I have lawfully and justly appraised the true value thereof at the sum of £

In witness whereof we have hereunto respectively set our hands this day of

(Signed)

High Bailiff.
Appraiser.

To the registrar of the county court of holden at .

384.

Order of Release.

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]

Order XXXIX., Rule 45.

You are hereby authorised and directed to release the now under arrest of this court by virtue of its warrant, upon the payment of all costs, charges, and expenses attending the custody thereof.

Given under the seal of the court this day of 19 .

By the court,
Registrar.

To the high bailiff of the said court, and others the bailiffs thereof.

385.

Order of Transfer to High Court.

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]

Order XXXIX., Rule 50.

Whereas it appears that the subject-matter of this action exceeds the limit in respect of amount of the admiralty jurisdiction of this court [*or state otherwise as the case may be*] :

It is ordered that this action be transferred to the Probate, Divorce, and Admiralty Division of the High Court of Justice, together with the proceedings that have been had therein in this court.

Given under the seal of the court this day of 19 .

By the court,
Registrar.

386.

Order of Transfer to County Court or High Court.

Admiralty Jurisdiction.

Order XXXIX., Rule 50.

In the county court of holden at .

[*Title of Action.*]

Whereas it hath been made to appear that this action could be more conveniently prosecuted in the county court of holden at , appointed to have admiralty jurisdiction [*or* in the high court of justice]:

It is ordered that this action be transferred to the said court, together with the proceedings that have been had therein in this court.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

387.

Præcipe for paying in money on tender.

[*Not to be printed.*]

Admiralty Jurisdiction.

Order XXXIX., Rule 74.

In the county court of holden at .

[*Title of Action.*]

Take notice that I, C. D., of [*address and description*], [*or* I, L. M., solicitor for C. D., of [*address and description*]] do pay the sum of [*state sum in letters*] into court in this action [*when paid by solicitor, add* at the request and by the authority of the said C. D.] I [*or* he] having agreed to tender and pay the same in settlement of the whole claim of the plaintiff [*or* in settlement of so much of the claim of the plaintiff as relates to [*state the part of the claim in respect of which payment is made*]:]

[And further take notice that I do pay the further sum of [*state sum in letters*] into court in respect of the costs incurred by the plaintiff:]

[And further take notice that notwithstanding such payment I [*or* the said C. D.,] deny [*or* denies] my [*or* his] liability:]

[And further take notice that I [*or* the said C. D.] intend [*or* intends] to rely on the following ground of defence to this action, viz.:—

That before action brought I [*or* the said C. D.], tendered the said sum of [*state sum in letters*] to the plaintiff.

Dated the day of 19 .

To the registrar of the court, and to the plaintiff, and his solicitor.

388.

Notice of payment into Court on tender.

Order XXXIX., Rule 75.

In the county court of holden at .

[*Title of Action.*]

Take notice that C. D., , of [*address and description*] has this day paid into court the sum of £ in settlement of your whole claim in this action [*or* in settlement of so much of your claim in this action as relates to] [and the further sum of £ in respect of the costs incurred by you] in accordance with a præcipe, a copy of which accompanies this notice.

You are hereby required, within forty-eight hours of the receipt of this notice by you, to file a notice stating whether you accept or reject the tender so made by the said C. D.

If you fail to do so, you will be deemed to have rejected it.

Dated this day of 19 .

Registrar.

To the plaintiff and to his solicitor.

389.

Notice of acceptance or rejection of sum paid into Court on tender.

[*Not to be printed.*]

In the county court of holden at .

[*Title of Action.*]

Order XXXIX., Rule 76.

Take notice that the plaintiff accepts [*or* rejects] the sum of £ paid by C. D., of into court in satisfaction of the claim in respect of which it is paid in.

Dated this day of 19 .

To the registrar of the court and to C. D. [*address and description*], and his solicitor.

390.

Admission of Liability.

[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]

Order XXXIX., Rule 93.

We, the undersigned, solicitors for the defendants, hereby admit the liability of the defendants for the collision in question in this action, and consent to a reference to ascertain the amount of damages and interest due to the plaintiff.

Dated this day of 19 .

To Mr. Yours, &c.

Plaintiff's solicitor. Defendants' solicitor.

391.

Consent to Order.

[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]

Order XXXIX., Rule 105.

We, the undersigned, solicitors for the plaintiff and defendant respectively, hereby consent to an order for

Dated this day of , 19 .

Plaintiff's solicitor.
Defendant's solicitor.

392.

List of Assessors.

Admiralty Jurisdiction.

The county court of holden at .

The following list has been framed by the registrar of persons of nautical skill and experience residing or having places of business within the district of this court for admiralty purposes, to act as assessors in the court under the County Courts Admiralty Jurisdiction Acts, 1868 and 1869, viz. :—

No.	Name.	Address.	Description.

I hereby lay the above list before the President of the Admiralty Division of the High Court of Justice for his approval.

Judge.

Approved this day of

President of the Admiralty Division,
High Court of Justice.

393.

Summons to Assessor.

Admiralty Jurisdiction.

Order XXXXI., Rule 91.

In the county court of holden at .

[*Title of Action.*]

You are hereby summoned to appear and serve as an assessor in this court at on the day of 19 , at the hour of in the noon, to assist the judge of this court in the hearing and determining of this action [*or* to assist the registrar in the assessment of damages], and in default of attendance you will be liable to a penalty not exceeding five pounds under section 15 of the County Courts Admiralty Jurisdiction Act, 1868.

Dated this day of 19 .

Registrar.

To
of

394.

Order Fining Assessor for Non-Attendance.

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]

Whereas was duly summoned to appear and serve as an assessor in this court at on the day of 19 ; and whereas he has neglected, without sufficient cause shown, to appear and serve as required : It is hereby ordered that he shall forthwith [*or* on the day of 19] pay to the registrar of this court a fine of £ for such neglect.

Given under the seal of the court this day of 19 .

By the court,
Registrar.

395.

Final Judgment in Action in Personam.

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]

It is this day adjudged that the plaintiff A. B. of do recover against the defendant [*or* defendants] C. D. of the sum of pounds [*in an action for salvage*], for services rendered to [*state description and name of vessel*]; *or in an action for towage*, for services rendered in towing the [*state description and name of vessel*]; *or in an action for necessaries*, for necessaries supplied to the [*state description and name of vessel*]; *or in an action for wages*, for wages in respect of services rendered on board the [*state description and name of vessel*]; *or in an action for damage to cargo*, for damage caused to the cargo carried in the [*state description and name of vessel*]; *or in an action for damage by collision*, for damage caused to the [*state description and name of vessel*] by the defendant's vessel, the [*state description and name of vessel which caused the damage*], together with the costs of this action, to be taxed by the registrar.

And it is ordered that the defendant [*or* defendants] do pay the said sum and costs to the registrar of this court forthwith [*or* within days] after the certificate of the result of such taxation [*or* do pay the said sum of £ to the registrar of this court forthwith [*or* on or before the day of 19] and do pay the amount of the said costs when taxed forthwith [*or* within days after the certificate of the result of such taxation.]

Given under the seal of this court this day 19 .

By the court,

Registrar.

396.

Final Judgment in Action in Rem.

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]

It is this day adjudged that the plaintiff A. B. of do recover the sum of pounds [*in an action for salvage*], for services rendered to [*state description and name of vessel*]; *or in an action for towage*, for services rendered in towing the [*state description and name of vessel*]; *or in an action for necessaries*, for necessaries supplied to the [*state description and name of vessel*]; *or in an action for wages*, for wages in respect of services rendered on board the [*state description and name of vessel*]; *or in an action for damage to cargo*, for damage caused to the cargo carried in the [*state description and name of vessel*]; *or in an action for damage by collision*, for damage caused to the [*state description and name of vessel*] by the defendant's vessel the [*state description and name of vessel which caused the damage*], together with the costs of this action, to be taxed by the registrar.

And it is ordered that [*insert such directions as may be given by the judge*].

Given under the seal of this court this day of 19 .

By the court,

Registrar.

397.

Interlocutory Judgment in Action for Damages.

Admiralty Jurisdiction.

Order XXXIX., Rules 36 (2) 96.

In the county court of holden at .

[*Title of Action.*]

It is this day adjudged that the plaintiff A. B. is entitled to recover [*if the judgment is in personam* against the defendant C. D.] damages for damage caused to the cargo carried in the [*state description and name of vessel*] [*or* for damage caused to the [*state name and description of vessel*] by the defendant's vessel the [*state description and name of vessel which caused the damage*],] together with the costs of this action, to be taxed by the registrar.

And it is ordered that it be referred to the registrar [and an assessor [*or* two assessors]] to assess the said damages under the rules provided for the assessment of damages.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

398.

Notice of Time and Place for Proceeding on Reference.

Admiralty Jurisdiction.

Order XXXIX., Rule 98.

In the county court of holden at .

[*Title of Action.*]

Let all parties concerned attend me at on the day of 19 , at o'clock in the noon, to proceed with the reference directed by the judgment [*or* order] in this action dated the day of 19 .

Dated this day of 19 .

Registrar.

To

399.

Registrar's Report.

Admiralty Jurisdiction.

Order XXXIX., Rule 101.

In the county court of holden at .

[*Title of Action.*]

Whereas by the judgment [*or* order] in this action, dated the day of 19 (*or* by consent of the parties upon an admission of liability, *or as the case may be*), the damages recoverable by the plaintiff (*or* by the defendant on his counterclaim) have been referred to me [and (*if so*) to two assessors] to report the amount thereof.

Now, I hereby report that I have, [with the assistance of Messrs. and the assessors appointed], carefully examined the claim and vouchers filed in this action, and having heard evidence on affidavit and *viva voce* (*or as the case may be*) on behalf of the plaintiff and defendant, I find that the defendant is indebted to the plaintiff (*or vice versâ*) in the sum of £ , as shown by the schedule hereto annexed, which sets forth in separate columns the several amounts claimed and the amounts which I [in conjunction with the said assessors] consider justly due to him in respect to each item.

I am of opinion that interest at the rate of 4*l.* per cent. per annum from the day of 19 , should be allowed on the said sum of £ until the date of payment.

I am further of opinion that the costs of the reference should be paid by the defendant *or* [plaintiff]. (*If for any special reasons, add reasons.*)
Dated this day of 19 .

Registrar.

SCHEDULE TO REPORT.

	Claimed.			*Allowed.*		
	£	*s.*	*d.*	£	*s.*	*d.*
1. Shipwright's bill						
2. Noting protest						
3. Extending protest						
4. Survey fees						
5. Examination before receiver of wreck .						
6. Demurrage or damages for detention of the ship of tons register, from the day of 19 , to the day of 19 , days at £ per diem						
(*Add any other items.*)						

Together with interest.

Registrar.

400.

Notice of Report.

Admiralty Jurisdiction.

In the county court of holden at .

Order XXXIX., Rule 101.

[*Title of Action.*]

Take notice, that my report on the reference ordered by the judgment [*or* order] in this action dated the day of lies in my office, and can be inspected by the parties on : and that unless within seven days from the service of this notice on him either party shall lodge an objection to the report the same will become final and binding on all parties, and judgment may be entered accordingly.

Dated this day of 19 .

To

Registrar.

401.

Notice of Objection to Report.

[*Not to be printed.*]

[*Title of Action.*]

Take notice that I intend at the next sitting of the court to be held after the expiration of twenty-one days from this date to object to the report of the registrar on the reference ordered by the judgment [*or* order] in this action, dated the day of , 19 , as regards the following items [*here state particulars of objection*] :

Order XXXIX. Rule 102.

And I request the registrar to file within seven days from the filing of this notice a statement of the reasons of his decision as regards the items hereinbefore specified.

Dated this day of 19 .

To the registrar of the court, and
to [*the opposite party*].

402.

Præcipe for Warrant of Execution in Action in Personam, or against the parties giving bail and their sureties in Action in Rem.

Admiralty Jurisdiction.

Order XXXIX., Rules 54, 55.

In the county court of holden at .

[*Title of Action.*]

Issue a warrant of execution against the goods of the defendant, C. D., of [*address and description*], who was ordered by this court, on the day of , to pay to the plaintiff the sum of £ [*here insert for what the sum was ordered to be paid*], and who has not paid the said sum as so ordered.

[*or* Issue a warrant of execution against the goods of [*state names, addresses and descriptions of parties to bail bond*] who on the day of , jointly and severally submitted themselves to the jurisdiction of this court, and consented that if should not pay what might be adjudged against him [*or* them] in this action with costs, execution might issue forth against them the said their heirs, executors, and administrators, their goods and chattels, for a sum not exceeding [*state sum in letters*] pounds, the said having been ordered by the court on the day of to pay to the plaintiff the sum of pounds [*here insert for what the sum was ordered to be paid*], and not having paid the said sum as so ordered.]

Dated this day of 19 .

403.

Warrant of Execution against goods of Defendant in Action in Personam, or against goods of parties giving bail and their sureties in Action in Rem

Admiralty Jurisdiction.

Order XXXIX., Rules 54, 55.

In the county court of holden at .

[*Title of Action.*]

Whereas on the day of 19 , the plaintiff obtained a judgment in this court against the defendant C. D., for the sum of £ for and costs to be taxed, and it was thereupon ordered by the court that the defendant C. D. should pay the said sum and costs to the registrar of the court forthwith [*or* within days] after the certificate of the result of such taxation :

And whereas the said costs were duly taxed, and were by the certificate of the registrar, dated the day of , allowed at the sum of £ :

And whereas default has been made in payment according to the said order :

[*Or*, Whereas on the day of 19 , [*state names, addresses, and descriptions of parties to bail bond*] jointly and severally submitted themselves to the jurisdiction of this court, and consented that if should not pay what might be adjudged against him [*or* them] in this action with costs, execution might issue forth against them the said their heirs, executors and administrators, their goods and chattels, for a sum not exceeding [*state sum in letters*] pounds :

And whereas on the day of , 19 , the plaintiff obtained a judgment in this court in this action against the said for the sum of £ for and costs to be taxed, and it was thereupon ordered by the court that the said should pay the said sum and costs to the registrar of the court forthwith [*or* within days] after the certificate of the result of such taxation :

And whereas the said costs were duly taxed, and were by the certificate of the registrar, dated the day of , allowed at the sum of £ :

And whereas default has been made in payment according to the said order :]

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant C. D. [*or* of the said (*parties to bail bond*)] wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him [*or* them] or his family [*or* their families], and the tools and implements of his [*or* their] trade, if any, to the value, as regards each such party, of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order [*or, if the amount remaining due exceeds the sum specified in the bail bond*, being the sum for which in default of payment of the amount adjudged against the said the said (*parties to bail bond*) consented that execution might issue forth against them], together with the costs of this execution; and also to seize and take any money or bank notes (whether the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant C. D. [*or* of the said (*parties to bail bond*)] which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	*s.*	*d.*
Amount for which judgment was obtained . . .			
Costs			
Total			
Amount paid			
Amount remaining due			
[*If this amount exceeds the sum specified in the bail bond, add*			
Amount for which bail bond given			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon].			

Notice.—The goods and chattels are not to be sold until after the expiration of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant [*or parties to bail bond*].

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See Back.

For indorsement of fees for execution of warrant, see Form 163.

Note.—If the amount due under the judgment or order does not exceed the sum specified in the bail bond, execution may issue for that amount; if it exceeds that sum, it must issue only for the sum specified in the bail bond.

404.

Præcipe for issue of Notice of Judgment or Order in Rem, for service on persons appearing by the ship's register to have an interest in the vessel, but who are not before the Court.

[*Not to be printed.*]

Admiralty Jurisdiction.

Order XXXIX. Rule 57.

In the county court of holden at .

[*Title of Action.*]

I, A. B. , of [*address and description*] the above-named plaintiff [*or* I., L. M. , solicitor for (*state name, address and description of plaintiff*)] have annexed hereunto a certified copy of the register of the vessel (*describing such vessel*) to which this action relates.

I request that a notice of the judgment [*or* order] obtained in this action on the day of , may be issued for service on [*state names, addresses and descriptions*] whose names appear on the register as having an interest in the said (*vessel*), but who are not before the court, stating thereof, that if they do not within seven clear days from the day of service of such notice deliver a præcipe to the registrar applying for a rehearing of this action, the vessel to which this action relates will be taken and sold in execution.

Dated this day of 19 .

405.

Notice of Judgment or Order in Rem to persons appearing by the ship's register to have an interest in the vessel, but who are not before the Court.

Admiralty Jurisdiction.

Order XXXIX., Rule 57.

In the county court of holden at .

[*Title of Action.*]

To [*state names, addresses, and description of persons whose names appear on the ship's register as having an interest in the vessel, but who are not before the court.*]

Take notice that on the day of the above named action for (*state the nature of the action*), was commenced in this court on behalf of A. B. of , against the (*state the vessel against which the action was commenced, as in the summons*):

And that on the day of it was adjudged (*state the judgment*):

And that the plaintiff has filed a præcipe in this court, and has annexed thereto a certified copy of the register of the said (*vessel*) on which the names of you the above named appear as having an interest in the said vessel.

And further take notice that if you do not within seven clear days from the day of the service of this notice upon you deliver to me at my office situate at a præcipe applying for a rehearing of this action, the vessel to which this action relates will be taken and sold in execution.

Dated this day of 19 .

By the court,
Registrar.

406.

Præcipe for issue of notice of Judgment or Order in Rem for service on owners of and persons interested in vessel or property, when ascertained.

[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at .

Order XXXIX., Rule 59.

[*Title of Action.*]

I, A. B., of (*address and description*), the above named plaintiff [*or* I, L. M., solicitor for (*state name, address, and description of plaintiff*)] have ascertained that the names, addresses and descriptions of the owners of the vessel [*or* property (*describing such vessel or property*)] to which this action relates are as follows :—

[*If the vessel is a British-owned vessel, add* A certified copy of the register of the said vessel is hereunto annexed].

I request that a notice of the judgment [*or* order] obtained in this action on the day of , may be issued for service on the said (*owners*), . [*If the vessel is a British-owned vessel add* and upon the other persons whose names appear on the register as having an interest in the said (*vessel*)] stating thereon that if they do not within seven clear days from the day of service of such notice deliver a præcipe to the registrar applying for a rehearing of this action, the vessel [*or* property] to which this action relates will be taken and sold in execution.

Dated this day of 19 .

407.

Notice of Judgment or Order in Rem to owners of and persons interested in vessel or property, when ascertained.

Admiralty Jurisdiction.

In the county court of holden at

Order XXXIX., Rule 59.

[*Title of Action.*]

To (*state names, addresses, and descriptions of persons stated in the præcipe to be owners of the vessel or property*) [*and, if the vessel is a British-owned vessel, state also names, addresses, and descriptions of persons whose names appear on the register as having an interest in the vessel*].

Take notice, that on the day of the above named action for (*state the nature of the action*) was commenced in this court on behalf of A. B. of against the (*state the vessel or property against which the action was commenced, as in the summons*) :

And that on the day of , it was adjudged (*state the judgment*) :

And that the plaintiff has filed a præcipe in this court stating that you the above named (*owners*) are the owners of the vessel [*or* property] to which this action relates.

[*If the vessel is a British-owned, add* and has annexed thereto a certified copy of the register of the said (*vessel*) on which the names of you, the above named appear as having an interest in the said vessel.]

And further take notice that if you do not within seven clear days from the day of the service of this notice upon you deliver to me at my office situate at a præcipe applying for a rehearing of this action, the vessel [*or* property] to which this action relates will be taken and sold in execution.

Dated this day of 19

By the court,

Registrar.

408.

Order directing notice of Judgment or Order in Rem to be given to owners of and persons claiming to have an interest in vessel or property, where owners cannot be ascertained.

Admiralty Jurisdiction.

Order XXXIX., Rule 61.

In the county court of holden at .

[*Title of Action.*]

Upon the application of and upon reading an affidavit of of sworn the day of .

It is ordered that notice of the judgment [*or* order] obtained in this action on the day of be given to the owners of and all persons claiming to have an interest in the vessel [*or* property] to which this action relates, by the publication of such notice in (*or as the court may direct*) together with a notice informing such persons that if they do not within [*not less than ten*] clear days from the date of the publication of such notice deliver a præcipe to the registrar applying for a rehearing of this action, the vessel [*or* property] to which this action relates will be taken and sold in execution.

Dated this day of 19 .

By the court,
Registrar.

409.

Notice of Judgment or Order in Rem to owners of and persons claiming to have an interest in vessel or property, where owners cannot be ascertained.

Admiralty Jurisdiction.

Order XXXIX. Rule 61.

In the county court of holden at .

[*Title of Action.*]

To the owners of and all persons claiming to have an interest in the vessel [*or* property] to which the above-mentioned action relates.

Pursuant to an order made by the court in the above-mentioned action on the day of .

Notice is hereby given—

That on the day of the above-named action for (*state the nature of the action*) was commenced in this court on behalf of A. B. of , against the (*state the vessel or property against which the action was commenced, as in the summons*):

And that on the day of it was adjudged (*state the judgment*):

And pursuant to the said order of the day of .

Notice is hereby further given—

That unless the owners of and persons claiming to have an interest in the said vessel [*or* property] shall within [*not less than ten*] clear days from the date of the publication of this notice deliver to me at my office situate at a præcipe applying for a rehearing of this action, the vessel [*or* property] to which this action relates will be taken and sold in execution.

Dated this day of 19 .

By the court,
Registrar.

410.

Præcipe applying for Rehearing.

[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at

[*Title of Action.*]

Order XXXIX., Rule 62.

Enter an appearance for E. F. [*address and description*] who claims to be the owner of [*or* to have an interest in] the vessel [*or* property] to which this action relates, and applies for a rehearing of this action pursuant to the notice in this action dated the day of ,

All instruments and documents in the action may be left for the said E. F. at (*state address*).

Dated this day of 19 .

411.

Præcipe for Warrant of Execution against vessel or property in Action in Rem.

[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at

[*Title of Action.*]

Order XXXIX., Rule 64.

Issue a warrant of execution against (*state description and name of vessel or other property to which the action relates*), the judge [*or* registrar] having ordered the same to be taken and sold in execution.

Dated this day of 19 .

412.

Warrant of Execution against vessel or property in Action in Rem.

Admiralty Jurisdiction.

In the county court of holden at

[*Title of Action.*]

Order XXXIX. Rule 64.

Whereas on the day of , 19 , it was adjudged that the plaintiff in this action should recover the sum of £ for (*follow the terms of the judgment as in Form* 396) together with the costs of this action, which have been taxed and allowed at the sum of £ , and it was ordered that (*insert directions given by the judge as in Form* 396) :

And whereas default has been made in payment according to the said order, and the court has ordered the vessel [*or* property] to which this action relates to be taken and sold in execution, and has allowed to the plaintiff the costs of obtaining such order and suing out execution, which have been taxed and allowed at the sum of £ :

These are therefore to require you forthwith to seize and take in execution

the (*state description and name of vessel or other property to which the action relates*) wheresoever the same may be found within the district of this court, and to reduce into writing an inventory of the said ;

And having chosen one or more experienced person or persons to cause him or them to appraise the same according to the true value thereof, and, upon a certificate of such value having been reduced into writing, to cause the said to be sold by public auction for the highest price, not under the appraised value, that can be obtained for the same.

And you are further required, immediately upon the sale being completed, to pay the proceeds arising therefrom into court, and to return this warrant with an account of the sale and of your fees thereon, and of the costs of the appraisement, signed by you, together with the certificate of appraisement signed by the appraiser.

Given under the seal of the court this . day of . 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	*s.*	*d.*
Amount for which judgment was obtained . . .			
Costs taxed at			
Subsequent costs, allowed and taxed at			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed thereon].			

Application was made to the registrar for this warrant at minutes past the hour of . . in the noon of the day of 19 .

SEE BACK.

[*Indorse on warrant the fees allowed for execution of a warrant of execution against vessel or property in action in rem.*]

413.

Order for transfer of Sale to High Court.

[*Not to be printed.*]

Admiralty Jurisdiction.

Order XXXIX., Rules 71, 72,

In the county court of holden at .

[*Title of Action.*]

Whereas in an action commenced in this court on behalf of A. B., of against [*state name of defendant*] the judge of this court has ordered [*here insert the terms of the order*]:

And whereas the plaintiff [*or* defendant] in the said action is desirous that the sale of the vessel should be conducted in the Probate, Divorce, and

Admiralty Division of the High Court of Justice, and has given security for the sum of ten pounds :

Now I, A. B., the plaintiff [*or* C. D., the defendant, *or* L. M., solicitor for the plaintiff [*or* defendant]], pray that an order to transfer the proceedings for sale to the said division of the High Court of Justice do issue.

Dated this day of 19 .

I hereby certify that the security above mentioned has been duly completed.

Registrar.

I hereby order the transfer to be made as prayed.

Judge.

414.

Admiralty Actions Book.

Pro formâ.

Date.			
Day.	Month.	Year.	
10	Feb.	19 .	Action for damage by collision, instituted on behalf of A.B., of against the schooner named "The Kate," lying at within the district of the court, in the sum of £200.
			Solicitor for plaintiff, Mr. L. M., of
10	Feb.	19 .	Application made for arrest; affidavit filed; warrant issued, the evidence being satisfactory.
11	Feb.	19 .	Application for judge's permission for action to be heard at
13	Feb.	19 .	Permission granted.
15	Feb.	19 .	Appearance entered by R. S., of solicitor for defendant, C. D., of
18	Mar.	19 .	The action having been heard the court adjudged that [*here set forth the judgment.*] *If any further proceedings had, they should be entered in the same manner.*

FEES.

Schedule B. Part III.

FEES IN ADMIRALTY ACTIONS.	Where the amount claimed: Does not exceed 100*l.*			Where the amount claimed: Exceeds 100*l.*		
Registrar's Fees.	£	*s.*	*d.*	£	*s.*	*d.*
1. On every warrant of arrest of a vessel or property	0	5	0	0	7	6
2. ,, order of release	0	5	0	0	7	6
3. ,, bail bond	0	5	0	0	7	6
4. ,, affidavit of justification	0	2	6	0	2	6
5. ,, subpœna or summons to a witness	0	2	0	0	3	0
6. ,, notice of hearing . . . each	0	1	6	0	2	6
7. Summons for the attendance of an assessor at the hearing of any action or reference . each	0	1	6	0	2	6
8. For every order of transfer of action or sale	0	10	0	0	15	0
9. Where a special court is to be held for the trial of the action	1	5	0	1	15	0
10. Where the court is to sit for the hearing or part hearing of an action beyond three miles from registrar's office, then in addition	0	15	0	0	15	0
11. Mileage one way from office to place of sitting, for each mile	0	0	6	0	0	6
12. When the registrar cannot return the same night	1	1	0	1	1	0
13. For drawing final judgment	0	10	0	0	15	0
14. For filing every affidavit or other document, not being a document annexed to an affidavit	0	1	0	0	1	0
15. For every office copy of a document in the English language . . . . . per folio	0	0	4	0	0	4
16. For office copies of papers in a foreign language, or of shorthand writers' or reporters' notes, or of abstracts or translations made in the office, in addition to the above fees, the charges of the copyist, shorthand writer, reporter, or translator		—			—	
17. On a receipt for money or for papers (*only one fee to be taken, however many may be the papers delivered in at one time*)	0	1	0	0	1	0
18. From a person who is not a party in the action nor his solicitor, nor the clerk of the solicitor, on examining the court books in respect of any action	0	1	0	0	1	0
19. For every summons for commitment	0	3	0	0	5	0

SCHEDULE (B.)—*continued.*

PART III.—*continued.*

FEES IN ADMIRALTY ACTIONS.	Where the amount claimed	
	Does not exceed 100*l.*	Exceeds 100*l.*
Registrar's Fees—continued.	£ *s.* *d.*	£ *s.* *d.*
20. For every warrant of execution against goods, order of commitment or order for appraisement or sale of vessel or property, or warrant of execution against vessel or property . . .	0 5 0	0 7 6
21. On examining the documents in any action in which no proceedings are pending, and which has been terminated within the last two years .	0 2 6	0 2 6
22. Ditto ditto, if beyond that period . .	0 3 6	0 3 6
23. For every sitting in which the registrar is employed as an examiner, or on a reference, or for the assessment of damages, where the amount claimed exceeds 20*l.*	0 7 0	0 10 0
24. When the sitting is longer than one hour, then for every additional hour or part of an hour . .	0 5 0	0 7 0
25. Where the registrar shall be required to attend elsewhere than at the court or office (in addition to the above)	0 10 0	1 0 0
26. Mileage one way from the office to the place of sitting, for each mile	0 0 6	0 0 6
27. For report under Order XXXIX. Rule 101 . .	0 10 0	0 15 0
28. For making and transmitting note of judgment or order under Order XXXVI. Rule 2 . . .	0 2 6	0 3 6
29. For every notice under Order XXXIX. Rules 57, 59, and 60	0 3 0	0 5 0
30. For every order for substituting service under Order XXXIX. Rules 15, 18, or 60	0 2 0	0 3 0
31. For every order directing notice of judgment or order to be given under Order XXXIX. Rule 61	0 3 0	0 5 0
32. For drawing advertisements and inserting . .	0 5 0	0 7 0
33. For taxation of costs	0 5 0	0 7 0
High Bailiff's Fees.		
34. For service of every summons, subpœna, or notice And reasonable expenses for travelling and maintenance	0 2 6 —	0 4 0 —
35. Where service is ordered to be personal, then an additional fee of	0 2 6	0 2 6
36. Attendance at special court, if required by judge	0 7 6	0 15 0

SCHEDULE (B.)—*continued.*

PART III.—*continued.*

FEES IN ADMIRALTY ACTIONS.	Where the amount claimed					
	Does not exceed 100*l.*			Exceeds 100*l.*		
High Bailiff's Fees—continued.	£	*s.*	*d.*	£	*s.*	*d.*
37. For execution of warrant of arrest of vessel or property	0	15	0	1	0	0
And reasonable expenses for travelling and maintenance		—			—	
38. For keeping possession of vessel or property under warrant of arrest, to include the cost of a vessel-keeper, if required, per day	0	5	0	0	5	0
39. For service of summons for commitment	0	4	0	0	8	0
40. For execution of order of commitment	1	0	0	1	10	0
41. For execution of warrant of execution against goods in action *in personam*, or against the goods of parties giving bail and their sureties in action *in rem* [Form 403]	1	0	0	1	10	0
42. And for keeping possession, appraisement, advertising, and sale, or for inventory, appraisement, cataloguing, lotting and preparing for sale, and advertising, where no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, the same allowances as under a warrant of execution on a judgment of the court given in the exercise of its ordinary jurisdiction.						
43. For execution of warrant of execution against vessel or property in action *in rem* [Form 412]	1	0	0	1	10	0
[Less, where vessel or property is already under arrest, the fee for execution of warrant of arrest;]						
And reasonable expenses for travelling and maintenance		—			—	
44. For keeping possession of vessel or property under such warrant, to include the cost of a vessel-keeper, if required, per day	0	5	0	0	5	0
45. On sale of vessel or property [in addition to appraiser's and auctioneer's charges] for every 50*l.* or fraction thereof of the gross proceeds of sale	0	10	0	0	10	0
46. Appraiser's and auctioneer's fees in action *in rem*:						
(*a*) For inventory and appraisement only, without sale—						
If the appraised value does not exceed 500*l.*, for every 100*l.* or fraction of 100*l.*	1	0	0	1	0	0
If the appraised value exceeds 500*l.*, for the first 500*l.*, per cent.	1	0	0	1	0	0
For each subsequent 100*l.* or fraction of 100*l.*	0	10	0	0	10	0

SCHEDULE (B.)—*continued.*

PART III.—*continued.*

FEES IN ADMIRALTY ACTIONS.	Where the amount claimed	
	Does not exceed 100*l.*	Exceeds 100*l.*
High Bailiff's Fees—continued.	£ *s.* *d.*	£ *s.* *d.*
(*b*) Where sale takes place—		
For inventory and appraisement, for every 100*l.* of the appraised value or fraction of 100*l.*	0 10 0	0 10 0
For sale, for every 100*l.* or fraction of 100*l.* of the gross proceeds of sale . .	1 0 0	1 0 0
Together with the actual cost of printing, advertising, and hire of sale room.		
And, in either case, a reasonable sum for travelling expenses and maintenance.		
(*c*) Where no sale takes place by reason of an execution being withdrawn, satisfied or stopped, there may be allowed the full fees under (*a*) for inventory and appraisement [if actually made] and all charges actually and necessarily incurred for printing, advertising, and preparing for sale, and for travelling expenses and maintenance as aforesaid.		

N.B.—The fees in Admiralty actions shall be payable in actions under the County Courts Admiralty Jurisdiction Acts, 1868 and 1869, and in proceedings which under the Merchant Shipping Act, 1894, or any other Act of Parliament may be taken as Admiralty proceedings in any court having Admiralty jurisdiction by virtue of the said County Courts Admiralty Jurisdiction Acts, 1868 and 1869.

Where the amount or value of the subject-matter of the action is not disclosed by the plaint it shall be taken not to exceed 100*l.*, and the fees charged accordingly. If, however, the judge shall subsequently certify that the amount or value of the subject-matter does not exceed 100*l.*, the difference between the fees up to that time taken and those that would have been taken had it exceeded 100*l.* may then be taken.

THE MERCHANT SHIPPING ACT. 1894.

[57 & 58 Vict. c. 60.]

An Act to consolidate Enactments relating to Merchant Shipping. (25th August, 1894.)

Be it enacted, etc.

[Note.—Only such sections of the Act are here set forth as relate to matters connected with merchant shipping within the jurisdiction of the county court, or are required for purposes of reference.]

PART I.

Registry.

* * * * *

PART II.

Masters and Seamen.

* * * * *

Engagement of Seamen.

* * * * *

Seaman not to be bound to produce agreement.

123. In any legal or other proceeding a seaman may bring forward evidence to prove the contents of any agreement with the crew or otherwise to support his case, without producing, or giving notice to produce the agreement or any copy thereof.

* * * * *

Advance and Allotment of Wages.

Advance notes restricted.

140.—(1)—(*a*) Where an agreement with the crew is required to be made in a form approved by the Board of Trade, the agreement may contain a stipulation for payment to or on behalf of the seaman, conditionally on his going to sea in pursuance of the agreement, of a sum not exceeding the amount of one month's wages payable to the seaman under the agreement; and

(*b*) Stipulations for the allotment of a seaman's wages may be made in accordance with this Act.

(*c*) Save as aforesaid an agreement by or on behalf of the employer of a seaman for the payment of money to or on behalf of the seaman conditionally on his going to sea from any port in the United Kingdom shall be void, and

any money paid in satisfaction or in respect of any such agreement shall not be deducted from the seaman's wages, and a person shall not have any right of action, suit, or set-off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.

This only applies to engagements to sail from United Kingdom (*Ritchie v. Larsen*, (1899) 1 Q. B. 727; 68 L. J. Q. B. 335; see also *Rowlands* v. *Miller*, (1899) 1 Q. B. 735; 68 L. J. Q. B. 338.

Regulations as to allotment notes.

141.—(1) Any stipulation made by a seaman at the commencement of a voyage for the allotment of any part of his wages during his absence shall be inserted in the agreement with the crew, and shall state the amounts and times of the payments to be made.

(2) Where the agreement is required to be made in a form approved by the Board of Trade, the seaman may require that a stipulation be inserted in the agreement for the allotment by means of an allotment note, of any part (not exceeding one half) of his wages in favour either of a near relative or of a savings bank.

(3) Allotment notes shall be in a form approved by the Board of Trade.

(4) For the purposes of the provisions of this Act with respect to allotment notes—

(*a*) the expression "near relative" means one of the following persons, namely, the wife, father, mother, grandfather, grandmother, child, grandchild, brother, or sister of the seaman.

(*b*) the expression "savings bank" means a seaman's savings bank under this Act, or a trustee savings bank, or a post office savings bank.

This section must be read in conjunction with the Merchant Shipping (Seamen's Allotment) Act, 1911, *post*, p. 1334. See also sect. 62 of the Merchant Shipping Act, 1906, *post*, p. 1330.

Stipulation for Allotment.]—By sect. 61 of the Merchant Shipping Act, 1906 (6 Edw. VII. c. 48), after the seaman has signed the agreement, the superintendent or other officer is under an obligation to inquire of the seaman whether he requires a stipulation for allotment, and if the seaman does require it, then to insert it in the agreement, and any such stipulation is deemed to have been agreed to by the master.

Allotments through savings banks.

142.—(1) An allotment in favour of a savings bank shall be made in favour of such persons, and carried into effect in such manner as may be prescribed by regulations of the Board of Trade.

(2) The sum received by a savings bank in pursuance of an allotment, shall be paid out only on an application made, through a superintendent or the Board of Trade, by the seaman himself,

Section 142.

or, in case of his death, by some person to whom his property, if under one hundred pounds in value, may be paid under this Act.

Right of suing on allotment notes.

143.—(1) The person in whose favour an allotment note under this Act is made may, unless the seaman is shown, in manner in this Act specified, to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, recover the sums allotted, when and as the same are made payable, with costs from the owner of the ship with respect to which the engagement was made, or from any agent of the owner who has authorised the allotment, in the same court and manner in which wages of seamen not exceeding fifty pounds may be recovered under this Act; provided that the wife of a seaman, if she deserts her children, or so misconducts herself as to be undeserving of support from her husband, shall forfeit all right to further payments under any allotment made in her favour.

As to mode of recovering wages, see sects. 164 *et seq.*

(2) In any proceeding for such recovery, it shall be sufficient for the claimant to prove that he is the person mentioned in the note, and that the note was given by the owner or by the master or some authorised agent; and the seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the court, either—

(*a*) by the official statement of the change in the crew caused by his absence, made and signed by the master, as by this Act is required, or

(*b*) by a certified copy of some entry in the official log book to the effect that he has left the ship, or

(*c*) by a credible letter from the master of the ship to the same effect, or

(*d*) by such other evidence as the court in their absolute discretion consider sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

[Note.—Sect. 144, as to time for payment of allotment notes, is repealed by the Merchant Shipping Act, 1906, and sect. 62 of that Act should now be referred to; see *post*, p. 1330.

* * * * *

Rights of Seamen in respect of Wages.

Right to wages, etc., when to begin.

155. A seaman's right to wages and provisions shall be taken to begin either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

Section 156.

Right to recover wages and salvage not to be forfeited.

156.—(1) A seaman shall not, by any agreement, forfeit his
n on the ship, or be deprived of any remedy for the recovery
his wages, to which, in the absence of the agreement, he would
e entitled, and shall not, by any agreement, abandon his right
wages in case of the loss of the ship, or abandon any right that
e may have or obtain in the nature of salvage; and every
ipulation in any agreement inconsistent with any provision of
is Act shall be void.

See *The Leon Blum*, (1915) C. A. 31 T. L. R. 582.

(2) Nothing in this section shall apply to a stipulation made by
e seamen belonging to any ship, which, according to the terms
the agreement, is to be employed on salvage service, with
spect to the remuneration to be paid to them for salvage
rvices to be rendered by that ship to any other ship.

Wages not to depend on freight.

157.—(1) The right to wages shall not depend on the earning
freight; and every seaman and apprentice who would be
titled to demand and recover any wages, if the ship in which
e has served had earned freight, shall, subject to all other rules
law and conditions applicable to the case, be entitled to demand
nd recover the same, notwithstanding that freight has not been
rned; but in all cases of wreck or loss of the ship, proof that
e seaman has not exerted himself to the utmost to save the ship,
rgo, and stores, shall bar his claim to wages.

(2) Where a seaman or apprentice who would, but for death, be
titled by virtue of this section to demand and recover any
ages, dies before the wages are paid, they shall be paid and
plied in manner provided by this Act with respect to the wages
a seaman who dies during a voyage.

Wages on termination of service by wreck or illness.

158. Where the service of a seaman terminates before the date
ntemplated in the agreement, by reason of the wreck or loss
the ship, or of his being left on shore at any place abroad under
certificate granted as provided by this Act of his unfitness or
ability to proceed on the voyage, he shall be entitled to wages
to the time of such termination, but not for any longer period.

"Loss of the Ship."]—See *Austin Friars Co.* v. *Strack*, (1905) 2 K. B. 5; 74 L. J. K. B. 683; *Sivewright* v. *Allen*, (1906) 2 K. B. 81; 75 J. K. B. 476; *The Olympic* (*Wages*) 1913, P. 92; *Beal* v. *Horlock*, (1916) A. C. 486; 114 L. T. 193.

Wages not to accrue during refusal to work or imprisonment.

159. A seaman or apprentice shall not be entitled to wages
r any time during which he unlawfully refuses or neglects to
ork, when required, whether before or after the time fixed by
e agreement for his commencement of such work, nor, unless
e court hearing the case otherwise directs, for any period during
hich he is lawfully imprisoned for any offence committed by him.

Section 160.

Forfeiture of wages, etc., of seaman when illness caused by his own default.

160. Where a seaman is by reason of illness incapable of performing his duty, and it is proved that the illness has been caused by his own wilful act or default, he shall not be entitled to wages for the time during which he is by reason of the illness, incapable of performing his duty.

Costs of procuring punishment may be deducted from wages.

161. Whenever in any proceeding relating to seamen's wages it is shown that a seaman or apprentice has in the course of the voyage been convicted of an offence by a competent tribunal, and rightfully punished for that offence by imprisonment or otherwise, the court hearing the case may direct any part of the wages due to the seaman, not exceeding three pounds, to be applied in reimbursing any costs properly incurred by the master in procuring the conviction and punishment.

Compensation to seaman improperly discharged.

162. If a seaman, having signed an agreement, is discharged otherwise than in accordance with the terms thereof before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying that discharge, and without his consent, he shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage caused to him by the discharge not exceeding one month's wages, and may recover that compensation as if it were wages duly earned.

Restriction on sale of, and charge upon, wages.

163.—(1) As respects wages due or accruing to a seaman or apprentice to the sea service—

(*a*) they shall not be subject to attachment or arrestment from any court;

(*b*) an assignment or sale thereof made prior to the accruing thereof shall not bind the person making the same;

(*c*) a power of attorney or authority for the receipt thereof shall not be irrevocable; and

(*d*) a payment of wages to the seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of those wages, or any attachment, incumbrance, or arrestment thereof.

(2) Nothing in this section shall affect the provisions of this Act with respect to allotment notes.

But as to sub-s. 1 (*b*), see *Rowlands* v. *Miller*, (1899) 1 Q. B. 735; 68 L. J. Q. B. 338.

Mode of recovering Wages.

Summary proceedings for wages.

164. A seaman or apprentice to the sea service or a person duly authorised on his behalf, may as soon as any wages due to him, not exceeding fifty pounds, become payable, sue for the same before a court of summary jurisdiction in or near the place

which his service has terminated, or at which he has been discharged, or at which any person on whom the claim is made or resides, and the order made by the court in the matter shall be final. Section 164.

See notes to sect. 3, sub-s. 2 of the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), *ante*, p. 1200.

"Shall be final."]—Notwithstanding sect. 33, sub-s. 1, of the Summary Jurisdiction Act, 1879, no appeal by special case lies from an order made by a court of summary jurisdiction under this section; *Wills & Sons* v. *McSherry*, (1914) 1 K. B. 616; 83 L. J. (K. B.) 596, following and applying *Westminster Corporation* v. *Gordon Hotels*, (1908) A. C. 142; 77 L. J. K. B. 220.

165. A proceeding for the recovery of wages not exceeding fifty pounds shall not be instituted by or on behalf of any seaman or apprentice to the sea service in any superior court of record in Her Majesty's dominions, nor as an admiralty proceeding in any court having admiralty jurisdiction in those dominions, except: Restrictions on suits for wages.

(i.) where the owner of the ship is adjudged bankrupt; or

(ii.) where the ship is under arrest or is sold by the authority of any such court as aforesaid; or

(iii.) where a court of summary jurisdiction acting under the authority of this Act, refers the claim to any such court; or

(iv.) where neither the owner nor the master of the ship is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

See notes to sect. 3, sub-s 2 of the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), under heads "Limitation of Jurisdiction in Suits for Wages," and "Other Claims Recoverable as Wages," *ante*, pp. 1200, 1201.

[NOTE.—**"As an admiralty proceeding."**—This only excludes admiralty proceedings, and does not prevent common law proceedings in any county court.]

166.—(1) Where a seaman is engaged for a voyage or engagement which is to terminate in the United Kingdom, he shall not be entitled to sue in any court abroad for wages, unless he is discharged with such sanction as is required by this Act, and with the written consent of the master, or proves such ill-usage on the part or by authority of the master, as to warrant reasonable apprehension of danger to his life if he were to remain on board. Wages not recoverable abroad in certain cases.

(2) If a seaman on his return to the United Kingdom proves that the master or owner has been guilty of any conduct or default which but for this section would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover in addition to his wages such compensation not exceeding twenty pounds as the court hearing the case thinks reasonable.

Section 167.

Remedies of master for wages, disbursements, etc.

167.—(1) The master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his wages as a seaman has under this Act, or by any law or custom.

(2) The master of a ship, and every person lawfully acting as master of a ship, by reason of the decease or incapacity from illness of the master of the ship, shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages.

(3) If in any admiralty proceeding in any court having admiralty jurisdiction touching the claim of a master in respect of wages, or of such disbursements, or liabilities as aforesaid, any right of set-off or counterclaim is set up, the court may enter into and adjudicate upon all questions, and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and may direct payment of any balance found to be due.

[NOTE.—For the considerable amount of case law bearing upon this important section reference should be made to a leading text-book upon the Act, as it is beyond the scope of this work.]

Power of Courts to rescind Contracts.

Power of court to rescind contract between owner or master and seaman or apprentice.

168. Where a proceeding is instituted in or before any court in relation to any dispute between an owner or master of a ship and a seaman or apprentice to the sea service arising out of or incidental to their relation as such, or is instituted for the purpose of this section, the court, if, having regard to all the circumstances of the case they think it just to do so, may rescind any contract between the owner or master and the seaman or apprentice, or any contract of apprenticeship, upon such terms as the court may think just, and this power shall be in addition to any other jurisdiction which the court can exercise independently of this section.

Property of Deceased Seamen.

Property of seamen who die during voyage.

169.—(1) If any seaman or apprentice to the sea service belonging to a British ship, the voyage of which is to terminate in the United Kingdom, whether a foreign-going or a home trade ship, dies during that voyage, the master of the ship shall take charge of any money or effects belonging to the seaman or apprentice which are on board the ship.

(2) The master may, if he think fit, cause any of the effects to be sold by auction at the mast or otherwise by public auction.

(3) The master shall enter into the official log book the following particulars :—

(*a*) A statement of the amount of the money and a description of the effects :

(*b*) In case of a sale, a description of each article sold, and the sum received for each :

(*c*) A statement of the sum due to the deceased for wages and of the amount of deductions (if any) to be made from the wages.

(4) The entry shall be signed by the master and attested by a mate and some other member of the crew.

(5) The said money, effects, proceeds of sale of effects, and balance of wages are in this Act referred to as the property of the seaman or apprentice.

Dealing with and account of property of seamen who die during voyage.

170.—(1) Where a seaman or apprentice dies as aforesaid, and the ship before coming to a port in the United Kingdom touches and remains for forty-eight hours at some port elsewhere, the master shall report the case to the British consular officer at such port, or if the port is in a British possession, to the officer of customs there, and shall give to the officer any information he requires as to the destination of the ship and probable length of the voyage.

(2) That officer may, if he thinks it expedient, require the property to be delivered and paid to him, and shall thereupon give to the master a receipt thereof, and endorse under his hand upon the agreement with the crew such particulars with respect thereto as the Board of Trade require.

(3) The receipt shall be produced by the master to a superintendent within forty-eight hours after his arrival at his port of destination in the United Kingdom.

(4) Where a seaman or apprentice dies as aforesaid, and the ship proceeds at once to a port in the United Kingdom without touching and remaining as aforesaid at a port elsewhere, or the consular officer or officer of customs does not require the delivery and payment of the property as aforesaid, the master shall, within forty-eight hours after his arrival at his port of destination in the United Kingdom, deliver and pay the property to the superintendent at that port.

(5) In all cases where a seaman or apprentice dies during the progress of a voyage or engagement, the master shall give to the Board of Trade, or to the superintendent or officer to whom delivery and payment is made as aforesaid, such account in such form as they respectively require of the property of the deceased.

(6) A deduction claimed by the master in such account shall not be allowed unless verified, if an official log book is required to be kept, by an entry in that book made and attested as required by this Act, and also by such other vouchers (if any) as may

Section 170.

reasonably be required by the Board of Trade or by the superintendent or officer to whom the account is given.

(7) A superintendent in the United Kingdom shall grant to a master, upon due compliance with such provisions of this section as relate to acts to be done at the port of destination, a certificate to that effect; and an officer of customs shall not clear inwards a foreign-going ship without the production of that certificate.

Penalty for non-compliance with provisions as to property of deceased seamen.

171.—(1) If the master of the ship fails to comply with the provisions of this Act with respect to taking charge of the property of a deceased seaman or apprentice, or to making in the official log-book the proper entries relating thereto, or to procuring the proper attestation of those entries as required by this Act, or to the payment or delivery of the property, he shall be accountable for the property to the Board of Trade, and shall pay and deliver the same accordingly, and shall in addition for each offence be liable to a fine not exceeding treble the value of the property not accounted for, or if such value is not ascertained not exceeding fifty pounds.

(2) If any such property is not duly paid, delivered, or accounted for by the master, the owner of the ship shall pay, deliver, and account for the same, and such property shall be recoverable from him accordingly, and if he fails to account for and deliver or pay the same, he shall in addition to his liability for the same be liable to a fine not exceeding treble the value of the property not accounted for, delivered, or paid over, or, if such value be not ascertained, not exceeding fifty pounds.

(3) The property may be recovered in the same court and manner in which the wages of seamen may be recovered under this Act.

As to mode of recovering wages, see sects. 164 *et seq.*

See sect. 29 of the Merchant Shipping Act, 1906, *post*, p. 1320, as to voyages terminating out of the United Kingdom.

* * * * *

Recovery of wages, etc., of seamen lost with their ship.

174.—(1) Where a seaman or apprentice is lost with the ship to which he belongs the Board of Trade may recover the wages due to him from the owner of the ship, in the same court and in the same manner in which seamen's wages are recoverable, and shall deal with those wages in the same manner as with the wages of other deceased seamen and apprentices under this Act.

(2) In any proceeding for the recovery of the wages, if it is shown by some official return produced out of the custody of the registrar-general of shipping and seamen, or by other evidence, that the ship has twelve months or upwards before the institution of the proceeding left a port of departure, she shall, unless it is shown that she has been heard of within twelve months after

hat departure, be deemed to have been lost with all hands on oard either immediately after the time she was last heard of, or t such later time as the court hearing the case may think robable.

(3) Any duplicate agreement or list of the crew made out, or tatement of the change of the crew delivered, under this Act, at he time of the last departure of the ship from the United King- om, or a certificate purporting to be a certificate from a consular r other public officer at any port out of the United Kingdom, tating that certain seamen and apprentices were shipped in the hip from the said port, shall, if produced out of the custody of he registrar-general of shipping and seamen, or of the Board of rade, be, in the absence of proof to the contrary, sufficient proof hat the seamen and apprentices therein named as belonging to he ship were on board at the time of the loss.

As to mode of recovering wages, see sects. 164 *et seq.*

[Sects. 186 to 193, dealing with leaving seamen abroad and relief of istressed seamen are repealed by the Act of 1906, and sects. 31 to 43 of hat Act should now be referred to; see *post*, pp. 1320 to 1326.

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Volunteering into the Navy.

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Money and effects of seamen volunteering into navy.

196.—(1) If a seaman, without having previously committed n act amounting to and treated by the master as desertion, eaves his ship in order to enter the naval service of Her Majesty, nd is received into that service, the master shall deliver to him is effects on board the ship, and shall pay, subject to all just eductions, the proportionate amount of his wages down to the me of his entering Her Majesty's service, to the officer autho- sed to receive the seaman into that service, either in money or y bill drawn upon the owner, and payable at sight to the order of he accountant-general of the navy; and the receipt of that fficer shall be a discharge for the money or bill so given; and he bill shall be exempt from stamp duty.

(2) If the master fails so to deliver the seaman's effects, or to ay his wages, as by this section required, he shall, in addition to is liability to deliver and pay the same, be liable for each offence o a fine not exceeding twenty pounds.

(3) If any such bill be not duly paid when presented, the ccountant-general of the navy or the seaman on whose behalf he bill is given, may sue thereon, or may recover the wages due y all or any of the means by which wages due to seamen are ecoverable.

As to mode of recovering wages, see sects. 164 *et seq.*

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Section 199.

Provisions, Health and Accommodation.

Allowance of short or bad provisions.

199. In either of the following cases; (that is to say,)

(i.) if during a voyage the allowance of any of the provisions for which a seaman has by his agreement stipulated is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement with the crew, and also except for any time during which the seaman wilfully and without sufficient cause refuses or neglects to perform his duty, or is lawfully under confinement for misconduct either on board or on shore); or

(ii.) if it is shown that any of those provisions are or have during the voyage been bad in quality and unfit for use;

the seaman shall receive, by way of compensation for that reduction, or bad quality, according to the time of its continuance, the following sums to be paid to him in addition to, and to be recoverable as, wages; (that is to say,)

(*a*) if his allowance is reduced by not more than one third of the quantity specified in the agreement, a sum not exceeding fourpence a day:

(*b*) if his allowance is reduced by more than one third of that quantity, eightpence a day:

(*c*) in respect of bad quality as aforesaid, a sum not exceeding one shilling a day:

But if it is shown to the satisfaction of the court before whom the case is tried that any provisions, the allowance of which has been reduced, could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the court shall take those circumstances into consideration, and shall modify or refuse compensation as the justice of the case requires.

As to mode of recovering wages, see sects. 164 *et seq.*

This section is extended by sect. 25 of the Merchant Shipping Act, 1906, *post*, p. 1319.

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Sects. 207 and 208 are repealed by the Act of 1906, and sects. 34 and 35 of that Act should now be referred to; see *post*, p. 1322.

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Protection of Seamen from Imposition.

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No debt exceeding 5*s.* recoverable till end of voyage.

213.—A debt exceeding in amount five shillings incurred by any seaman after he is engaged to serve shall not be recoverable until the service agreed for is concluded.

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Provisions as to Discipline.

* * * * *

Section 226. Summary remedies not to affect other remedies.

226.—Nothing in the last preceding section or in the sections relating to the offences of desertion or absence without leave shall take away or limit any remedy by action or by summary procedure before justices which an owner or master would but for those provisions have for any breach of contract in respect of the matters constituting an offence under those sections, but an owner or master shall not be compensated more than once in respect of the same damage.

* * * * *

Application of forfeitures.

232.—(1) Where any wages or effects are under this Act forfeited for desertion from a ship, those effects may be converted into money, and those wages and effects, or the money arising from the conversion of the effects, shall be applied towards reimbursing the expenses caused by the desertion to the master or owner of the ship, and subject to that reimbursement shall be paid into the Exchequer, and carried to the Consolidated Fund.

(2) For the purpose of such reimbursement, the master or the owner, or his agent may, if the wages are earned subsequently to the desertion, recover them in the same manner as the deserter could have recovered them if not forfeited; and the court in any legal proceeding relating to such wages may order them to be paid accordingly.

(3) Where wages are forfeited under the foregoing provisions of this Act in any case other than for desertion, the forfeiture shall, in the absence of any specific provision to the contrary, be for the benefit of the master or owner by whom the wages are payable.

As to mode of recovering wages, see sects. 164 *et seq.*

Decision of questions of forfeiture and deductions in suits for wages.

233. Any question concerning the forfeiture of, or deductions from the wages of a seaman or apprentice, may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the offence in respect of which the question arises, though by this Act made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceedings.

Ascertainment of amount of forfeiture out of wages.

234. If a seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be an amount bearing the same proportion to the whole wages or share, as a month or any other period hereinbefore

Section 234.

mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage or run; and if the whole time spent in the voyage or run does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

Sect. 235 is repealed by the Act of 1906, and sect. 44 of that Act should now be referred to; see *post*, p. 1326.

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Official Logs.

Official logs to be kept and to be evidence.

239. * * * * *

(5). Every entry in the official log book shall be signed by the master and by the mate, or some other of the crew, and also

(*a*) if it is an entry of illness, injury, or death, shall be signed by the surgeon, or medical practitioner on board (if any); and

(*b*) if it is an entry of wages due to, or of the sale of the effects of, a seaman or apprentice who dies, shall be signed by the mate and by some member of the crew besides the master; and

(*c*) if it is an entry of wages due to a seaman who enters Her Majesty's naval service, shall be signed by the seaman, or by the officer authorised to receive the seaman into that service.

(6) Every entry made in an official log book in manner provided by this Act shall be admissible in evidence.

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Application of Part II.

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Conflict of laws.

265. Where in any matter relating to a ship or to a person belonging to a ship there appears to be a conflict of laws, then, if there is in this part of this Act any provision on the subject which is hereby expressly made to extend to that ship the case shall be governed by that provision; but if there is no such provision, the case shall be governed by the law of the port at which the ship is registered.

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PART III.

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2. PASSENGER STEAMERS.

Passenger and Emigrant Ships.

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Survey of Passenger Steamers.

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Section 275.

Appeal to court of survey.

275.—(1) If the owner of a steamer feels aggrieved by the declaration of survey of a shipwright or engineer surveyor, or by the refusal of such a surveyor to give such a declaration, he may appeal to the court of survey for the port or district where the steamer for the time being is, in manner directed by the rules of that court.

(2) On any such appeal the judge of the court of survey shall report to the Board of Trade on the question raised by the appeal and the Board, when satisfied that the requirements of the report and of the foregoing provisions of this part of this Act have been complied with, may grant a passenger steamer's certificate.

(3) Subject to any order made by the judge of the court of survey the costs of and incidental to the appeal shall follow the event.

(4) A shipwright or engineer surveyor in making a survey of a steamer for the purpose of a declaration of survey shall, if the owner of the steamer so requires, be accompanied on the survey by some person appointed by the owner, and in that case, if the surveyor and the person so appointed agree, there shall be no appeal under this section to the court of survey.

"**Shipwright Surveyor.**"]—See sect. 75 of the Act of 1906, *post*, p. 1330.
"**Court of Survey.**"]—See sects. 487—489.

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Certificate for Clearance.

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Appeal to court of survey.

318.—(1) If the owner of an emigrant ship is aggrieved by the refusal by an emigration officer of a certificate for clearance, he may appeal to a court of survey for the port or district where the ship for the time being is in manner directed by the rules of that court.

(2) The judge of the court of survey shall report to the Board of Trade on the question raised by the appeal, and the Board, if satisfied that the requirements of the report and of this part of

Section 318.

this Act have been complied with, may grant or direct the emigration officer to grant a certificate for clearance.

(3) Subject to any order made by the judge of the court of survey, the costs of, and incidental to the appeal shall follow the event.

(4) Where a survey of a ship is made for the purpose of a certificate for clearance, the person so appointed to make the survey shall, if so required by the owner, be accompanied on the survey by some person appointed by the owner, and in such case if the said two persons agree there shall be no appeal to the court of survey in pursuance of this section.

As to courts of survey, see sects. 487—489.

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Detention and Wrongful Landing of Passengers.

Return of passage money and compensation to passengers when passage not provided according to contract.

328. Where a contract has been made by or on behalf of any steerage passenger for a passage in a ship proceeding on a voyage from the British Islands to any port out of Europe and not within the Mediterranean Sea, or proceeding on any colonial voyage as defined by this part of this Act, and—

(i.) the steerage passenger is at the place of embarkation before the hour appointed in his contract, or if no hour is appointed in the contract, before any hour fixed for the embarkation of which he has received not less than twenty-four hours' notice; and

(ii.) the stipulated passage money has, if required, been paid,

then if the steerage passenger from any cause whatever (other than his own refusal, neglect, or default, or the prohibition under this Act of an emigration officer, or the requirement of an Order in Council),

(*a*) is not received on board the ship before the said hour; or,

(*b*) having been received on board, does not either obtain a passage in the ship to the port at which he has contracted to land, or together with all the immediate members of his family who are included in the contract, obtain a passage to the same port in some other equally eligible ship to sail within ten days from the expiration of the said day of embarkation, and is not paid subsistence money from the time and at the rate hereinafter provided;

the steerage passenger or any emigration officer on his behalf, may recover summarily all money paid by or on account of the steerage passenger for his passage, together with such further sum not exceeding ten pounds in respect of each such steerage passenger

ss is in the opinion of the court a reasonable compensation for he loss or inconvenience occasioned to the steerage passenger by he loss of his passage, and such money and sum may be recovered, ither from any person to whom or on whose account any money as been paid under the contract, or if the contract has been nade with the owner, charterer, or master of the ship, or with ny person acting on behalf or by the authority of any of them, hen, at the option of the steerage passenger or emigration fficer, from the owner, charterer, or master, or any of them. Section 328.

[NOTE.—Sub-s. 1, above, is as amended by sect. 19 of the Merchant Shipping Act, 1906, which repeals the provision of the Act of 1894, and substitutes the above.]

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PART IV.

FISHING BOATS.

* * * * *

377.—(1) Nothing in the last preceding section shall take away or limit any remedy by action or before a court of summary jurisdiction which an owner or skipper would otherwise have for any breach of contract in respect of the matters constituting an offence under that section, but no owner or skipper shall be compensated more than once in respect of the same damage. Civil right unaffected by criminal provisions.

(2) Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice in the sea-fishing service may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the offence in respect of which the question arises, though by this Act made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

* * * * *

383.—(1) The wages of a skipper, seaman or apprentice of a fishing boat shall accrue from day to day. Calculation of wages.

(2) When wages are contracted for by the voyage or trip or the season or by the share, and not by a stated period of time, the amount accruing from day to day shall be an amount equal to the wages for the whole voyage or trip or season or the whole share (as the case may be), divided by the number of days occupied in the voyage or trip or season, but a skipper, seaman or apprentice shall not be entitled to more than what his share of the profits or catch made during the period he has actually served may or would have amounted to.

Section 383.

(3) Where the whole time spent in the voyage or trip does not exceed the period for which the wages are to be forfeited, the forfeiture shall extend to the whole wages or share.

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Decision of disputes by superintendent.

387.—(1) A superintendent shall inquire into, hear, and determine any dispute, either between the owner of a fishing boat and the skipper or a seaman of the boat, or between the skipper of a fishing boat and any seaman of the boat concerning—

(i.) the skipper's or seaman's wages or his share in the profits of the voyage or trip or a fishing catch, or any deduction therefrom; or

(ii.) the skipper's or seaman's engagement, service, or discharge; or

(iii.) the cost, quantity, or quality, of the provisions supplied to the crew;

if any party to the dispute calls on him to decide it, and his decision thereon shall be final and binding on all persons.

(2) The decision shall, on the request of any party to the dispute, be put into writing, and any such written decision, if purporting to be signed by the superintendent, shall be admissible in evidence in manner provided by this Act.

(3) The decision may be enforced by any justice of the peace, within whose jurisdiction the person or goods of any one against whom the decision is given may be found, in the same manner as if the decision were an order made by a court of summary jurisdiction, and a skipper or seaman may also recover any sum adjudged due to him by any such decision as if it were wages.

(4) A superintendent for the purpose of hearing and determining any such dispute shall have all the powers of a Board of Trade inspector under this Act.

As to the mode of recovering wages, see sects. 164 *et seq.*

"**Superintendent.**"]—A deputy superintendent has power to adjudicate upon disputes under this section: *Mayhew* v. *Tripp*, (1914) 2 K. B. 455; 83 L. J. K. B. 778.

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Enforcement by superintendents of indentures or agreements.

396.—(1) Where an indenture of apprenticeship to the sea-fishing service, or any agreement with a sea-fishing boy, has been made before a superintendent at a port, the superintendent for the time being at that port may, by proper legal proceeding taken in his own name, enforce on behalf of the apprentice or boy against the master any stipulations in that indenture or agreement.

(2) Where an apprentice or boy is taken to sea from any port under an indenture or agreement which is void, the superintendent at that port, or if there is none the superintendent at the

nearest port, may, by proper legal proceedings taken in his own name enforce, to such extent as he thinks just, on behalf of the apprentice or boy against the master any stipulation in the void indenture or agreement which is in favour of the apprentice or boy. Section 396

(3) Any sums recovered by a superintendent under this section may, so far as necessary, be applied by him in payment of the costs of recovering the same.

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Payment of Wages and Discharge of Seamen.

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411.—If a seaman, having signed a fishing boat's agreement, is discharged before the commencement of the voyage, or at any time during the voyage or engagement, without fault on his part justifying the discharge and without his consent, he shall be entitled to recover, in addition to an amount of wages proportionate to the time he has served, sufficient compensation for the damage caused to him by the discharge, and may recover that compensation as wages duly earned. Compensation to seamen improperly discharged.

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PART V.

SAFETY.

Prevention of Collisions.

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420.—(1) A surveyor of ships may inspect any ship, British or foreign, for the purpose of seeing that the ship is properly provided with lights and the means of making fog signals, in conformity with the collision regulations, and if the surveyor finds that the ship is not so provided, he shall give to the master or owner notice in writing, pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same. Inspection as to lights and fog signals.

(2) Every notice so given shall be communicated in the manner directed by the Board of Trade to the chief officer of customs at any port at which the ship may seek to obtain a clearance or transire; and the ship shall be detained, until a certificate under the hand of a surveyor of ships is produced to the effect that the ship is properly provided with lights and with the means of making fog signals, in conformity with the collision regulations.

(3) For the purpose of an inspection under this section a surveyor shall have all the powers of a Board of Trade inspector under this Act.

Section 420.

(4) Where the certificate as to lights and fog signals is refused, an owner may appeal to the court of survey for the port or district where the ship for the time being is in manner directed by the rules of that court.

(5) On any such appeal the judge of the court of survey shall report to the Board of Trade on the question raised by the appeal, and the Board of Trade, when satisfied that the requirements of the report and of this Act as to lights and fog signals have been complied with, may grant, or direct a surveyor of ships or other person appointed by them to grant, the certificate.

(6) Subject to any order made by the judge of court of survey the costs of and incidental to the appeal shall follow the event.

(7) A surveyor in making an inspection under this section shall, if the owner of the ship so require, be accompanied on the inspection by some person appointed by the owner, and, if in that case the surveyor and the person so appointed agree, there shall be no appeal under this section to the court of survey.

(8) Such fees as the Board of Trade may determine shall be paid in respect of an inspection of lights and fog signals under this section not exceeding those specified in the sixteenth schedule to this Act.

As to courts of survey, see sects. 487—489.

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Dangerous Goods.

Restrictions on carriage of dangerous goods.

446.—(1) A person shall not send or attempt to send by any vessel, British or foreign, and a person not being the master or owner of the vessel, shall not carry or attempt to carry in any such vessel, any dangerous goods, without distinctly marking their nature on the outside of the package containing the same, and giving written notice of the nature of those goods and of the name and address of the sender or carrier thereof to the master or owner of the vessel at or before the time of sending the same to be shipped or taking the same on board the vessel.

(2) If any person fails without reasonable cause to comply with this section, he shall for each offence be liable to a fine not exceeding one hundred pounds; or if he shows that he was merely an agent in the shipment of any such goods as aforesaid, and was not aware and did not suspect and had no reason to suspect that the goods shipped by him were of a dangerous nature, then not exceeding ten pounds.

(3) For the purpose of this part of this Act the expression "dangerous goods" means aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine, petroleum, any

explosives within the meaning of the Explosives Act, 1875, and any other goods which are of dangerous nature. Section 446.

447. A person shall not knowingly send or attempt to send by, or carry or attempt to carry in, any vessel, British or foreign, any dangerous goods under a false description, and shall not falsely describe the sender or carrier thereof, and if he acts in contravention of this section he shall for each offence be liable to a fine not exceeding five hundred pounds. Penalty for misdescription of dangerous goods.

448.—(1) The master or owner of any vessel, British or foreign, may refuse to take on board any package or parcel which he suspects to contain any dangerous goods, and may require it to be opened to ascertain the fact. Power to deal with goods suspected of being dangerous.

(2) Where any dangerous goods, or any goods, which, in the judgment of the master or owner of the vessel, are dangerous goods, have been sent or brought aboard any vessel, British or foreign, without being marked as aforesaid, or without such notice having been given as aforesaid, the master or owner of the vessel may cause those goods to be thrown overboard, together with any package or receptacle in which they are contained; and neither the master nor the owner of the vessel shall be subject to any liability, civil or criminal, in any court for so throwing the goods overboard.

449.—(1) Where any dangerous goods have been sent or carried, or attempted to be sent or carried, on board any vessel, British or foreign, without being marked as aforesaid, or without such notice having been given as aforesaid, or under a false description or with a false description of the sender or carrier thereof, any court having Admiralty jurisdiction may declare those goods, and any package or receptacle in which they are contained, to be, and they shall thereupon be, forfeited, and when forfeited shall be disposed of as the court direct. Forfeiture of dangerous goods improperly sent or carried.

(2) The court shall have, and may exercise, the aforesaid powers of forfeiture and disposal notwithstanding that the owner of the goods has not committed any offence under the provisions of this Act relating to dangerous goods, and is not before the court, and has not notice of the proceedings, and notwithstanding that there is no evidence to show to whom the goods belong; nevertheless the court may, in their discretion, require such notice as they may direct to be given to the owner or shipper of the goods before they are forfeited.

450. The provisions of this part of this Act relating to the carriage of dangerous goods shall be deemed to be in addition to and not in substitution for, or in restraint of, any other enact- Saving for other enactments relating to dangerous goods.

Section 450.

ment for the like object, so nevertheless that nothing in the said provisions shall be deemed to authorise any person to be sued or prosecuted twice in the same matter.

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Unseaworthy Ships.

* * * * *

Power to detain unsafe ships, and procedure for detention.

459.—(1) Where a British ship, being in any port in the United Kingdom, is an unsafe ship, that is to say, is by reason of the defective condition of her hull, equipments, or machinery, **or by reason of undermanning,** or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, such ship may be provisionally detained for the purpose of being surveyed, **or for ascertaining the sufficiency of her crew,** and either finally detained or released as follows :—

(*a*) The Board of Trade, if they have reason to believe, on complaint or otherwise, that a British ship is unsafe, may order the ship to be provisionally detained as an unsafe ship for the purpose of being surveyed.

(*b*) When a ship has been provisionally detained there shall be forthwith served on the master of the ship a written statement of the grounds of her detention, and the Board of Trade may, if they think fit, appoint some competent person or persons to survey the ship and report thereon to the Board.

(*c*) The Board of Trade on receiving the report may either order the ship to be released, or, if in their opinion the ship is unsafe, may order her to be finally detained, either absolutely, or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, **or the manning of the ship,** as the Board think necessary for the protection of human life, and the Board may vary or add to any such order.

(*d*) Before the order for final detention is made a copy of the report shall be served upon the master of the ship, and within seven days after that service the owner or master of the ship may appeal to the court of survey for the port or district where the ship is detained in manner directed by the rules of that court.

(*e*) Where a ship has been provisionally detained, the owner or master of the ship, at any time before the person appointed

under this section to survey the ship makes that survey, may require that he shall be accompanied by such person as the owner or master may select out of the list of assessors for the court of survey, and in that case if the surveyor and assessor agree, the Board of Trade shall cause the ship to be detained or released accordingly, but if they differ, the Board of Trade may act as if the requisition had not been made, and the owner and master shall have the like appeal touching the report of the surveyor as is before provided by this section.

(*f*) Where a ship has been provisionally detained, the Board of Trade may at any time, if they think it expedient, refer the matter to the court of survey for the port or district where the ship is detained.

(*g*) The Board of Trade may at any time, if satisfied that a ship detained under this section is not unsafe, order her to be released either upon or without any conditions.

Undermanning.]—This section was extended to undermanning by sect. 1, sub-s. 1, of the Merchant Shipping Act, 1897 (60 & 61 Vict c. 59), *post*, p. 1317. See sect. 8 (2) of the Merchant Shipping (Convention) Act, 1914, *post*, p. 1349.

(2) Any person appointed by the Board of Trade for the purpose (in this Act referred to as a detaining officer) shall have the same power as the Board have under this section of ordering the provisonal detention of a ship for the purpose of being surveyed, and of appointing a person or persons to survey her; and if he thinks that a ship so detained by him is not unsafe may order her to be released.

(3) A detaining officer shall forthwith report to the Board of Trade any order made by him for the detention or release of a ship.

(4) An order for the detention of a ship, provisonal or final, and an order varying the same, shall be served as soon as may be on the master of the ship.

(5) A ship detained under this section shall not be released by reason of her British register being subsequently closed.

(6) The Board of Trade may with the consent of the Treasury appoint fit persons to act as detaining officers under this section and may remove any such officer; and a detaining officer shall be paid such salary or remuneration (if any) out of money provided by Parliament as the Treasury direct, and shall for the purpose of his duties have all the powers of a Board of Trade inspector under this Act.

(7) A detaining officer and a person authorised to survey a ship under this section shall for that purpose have the same power as a person appointed by a court of survey to survey a

Section 459. ship, and the provisions of this Act with respect to the person so appointed shall apply accordingly

As to courts of survey, see sects. 487–489.

Mustering of Crew.]—By virtue of sub-s. 1 of sect. 1 of the Merchant Shipping Act, 1897, the powers exerciseable under this sect. 459 are to include power to muster the crew.

Liability for costs and damages.

460.—(1) If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of the ship under this Part of this Act as an unsafe ship, the Board of Trade shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

(2) If a ship is finally detained under this Act, or if it appears that a ship provisionally detained was, at the time of that detention, an unsafe ship within the meaning of this Part of this Act, the owner of the ship shall be liable to pay to the Board of Trade their costs of and incidental to the detention and survey of the ship, and those costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

(3) For the purpose of this section the costs of and incidental to any proceeding before a court of survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Board of Trade, shall be part of the costs of the detention and survey of the ship, and any dispute as to the amount of those costs may be referred to one of the officers following, namely in England or Ireland to one of the masters or registrars of the High Court, and in Scotland to the auditor of the Court of Session, and the officer shall, on request of the Board of Trade, ascertain and certify the proper amount of those costs.

(4) An action for any costs or compensation payable by the Board of Trade under this section may be brought against the Secretary of that Board by his official title as if he were a corporation sole, and if the cause of action arises in Ireland, and the action is brought in the High Court, that court may order that the summons or writ may be served on the Crown and Treasury Solicitor for Ireland in such manner and on such terms respecting extension of time and otherwise as the court thinks fit, and that service shall be sufficient service of the summons or writ upon the Secretary of the Board of Trade.

As to mode of recovering salvage, see sects. 547 *et seq.*
As to courts of survey, see sects. 487 *et seq.*
See sect. 8 (2) of the Merchant Shipping (Convention) Act, 1914, *post*, p. 1349.

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Section 462.

Application to foreign ships of provisions as to detention.

462. Where a foreign ship [*has taken on board all or any part of her cargo*] at a port in the United Kingdom, [*and*] is [*whilst at that port*] unsafe **by reason of the defective condition of her hull, equipments, or machinery,** or by reason of overloading or improper loading, **or by reason of undermanning,** the provisions of this Part of this Act with respect to the detention of ships shall apply to that foreign ship as if she were a British ship, with the following modifications :

(i.) a copy of the order for the provisional detention of the ship shall be forthwith served on the consular officer for the country to which the ship belongs at or nearest to the said port ;

(ii.) where a ship has been provisionally detained, the consular officer, on the request of the owner or master of the ship, may require that the person appointed by the Board of Trade to survey the ship shall be accompanied by such person as the consular officer may select, and in that case, if the surveyor and that person agree, the Board of Trade shall cause the ship to be detained or released accordingly, but if they differ, the Board of Trade may act as if the requisition had not been made and the owner and master shall have the like appeal to a court of survey, touching the report of the surveyor as is hereinbefore provided in the case of a British ship ; and

(iii.) where the owner or master of the ship appeals to the court of survey, the consular officer, on his request, may appoint a competent person to be assessor in the case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Board of Trade.

Undermanning.]—This section was extended to undermanning by sect 1, sub-s. 2, of the Merchant Shipping Act, 1897 (60 & 61 Vict. c. 59), *post*, p. 1318.

Loading Cargo.]—The words in brackets in this section, *supra*, were repealed by the Merchant Shipping Act, 1906 (6 Edw. VII. c. 48), Schedule II., *post*, p. 1331, to give effect to sect. 2, sub-s. 2, of that Act.

Defective Condition.]—This section was extended to a vessel unsafe by reason of defective condition of her hull, equipments or machinery, by sect. 2, sub-s. 1, of the Merchant Shipping Act, 1906, *post*, p. 1318.

As to courts of survey, see sects. 487 *et seq.*

Survey of ships alleged by seamen to be unseaworthy.

463.—(1) Whenever in any proceeding against any seaman or apprentice belonging to any ship for the offence of desertion, or absence without leave or for otherwise being absent from his ship without leave, it is alleged by one fourth, or if their number exceeds twenty by not less than five, of the seamen belonging to

Section 463.

the ship, that the ship is by reason of unseaworthiness, overloading, improper loading, defective equipment, or for any other reason, not in a fit condition to proceed to sea, or that the accommodation in the ship is insufficient, the court having cognizance of the case shall take such means as may be in their power to satisfy themselves concerning the truth or untruth of the allegation, and shall for that purpose receive the evidence of the persons making the same, and may summon any other witnesses whose evidence they may think it desirable to hear, and shall, if satisfied that the allegation is groundless, adjudicate in the case, but if not so satisfied shall before adjudication, cause the ship to be surveyed.

(2) A seaman or apprentice charged with desertion, or with quitting his ship without leave, shall not have any right to apply for a survey under this section unless he has before quitting his ship complained to the master of the circumstances so alleged in justification.

(3) For the purposes of this section the court shall require any surveyor of ships appointed under this Act, or any person appointed for the purpose by the Board of Trade, or, if such a surveyor or person cannot be obtained without unreasonable expense or delay, or is not, in the opinion of the court, competent to deal with the special circumstances of the case, then any other impartial surveyor appointed by the court, and having no interest in the ship, her freight, or cargo, to survey the ship, and to answer any question concerning her which the court think fit to put.

(4) Such surveyor or other person shall survey the ship, and make his written report to the court, including an answer to every question put to him by the court, and the court shall cause the report to be communicated to the parties, and, unless the opinions expressed in the report are proved to the satisfaction of the court to be erroneous shall determine the questions before them in accordance with those opinions.

(5) Any person making a survey under this section shall for the purposes thereof have all the powers of a Board of Trade inspector under this Act.

(6) The costs (if any) of the survey shall be determined by the Board of Trade according to a scale of fees to be fixed by them, and shall be paid in the first instance out of the Mercantile Marine Fund.

(7) If it is proved that the ship is in a fit condition to proceed to sea, or that the accommodation is sufficient, as the case may be, the costs of the survey shall be paid by the person upon whose demand, or in consequence of whose allegation the survey was made, and may be deducted by the master or owner out of the

wages due or to become due to that person, and shall be paid over to the Board of Trade. Section 463.

(8) If it is proved that the ship is not in a fit condition to proceed to sea, or that the accommodation is insufficient, as the case may be, the master or owner of the ship shall pay the costs of the survey to the Board of Trade, and shall be liable to pay to the seaman or apprentice, who has been detained in consequence of the said proceeding before the court under this section, such compensation for his detention as the court may award.

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PART VI.

Special Shipping Inquiries and Courts.

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Courts of Survey.

487.—(1) A court of survey for a port or district shall consist of a judge sitting with two assessors. Constitution of court of survey.

(2) The judge shall be such person as may be summoned for the case in accordance with the rules made under this Act with respect to that court, out of a list approved for the port or district by a Secretary of State, of wreck commissioners appointed under this Act, stipendiary or metropolitan police magistrates, judges of county courts, and other fit persons; but in any special case in which the Board of Trade think it expedient to appoint a wreck commissioner, the judge shall be such wreck commissioner.

(3) The assessors shall be persons of nautical, engineering, or other special skill and experience; subject to the provisions of the Fifth Part of this Act as regards foreign ships, one of them shall be appointed by the Board of Trade, either generally or in each case, and the other shall be summoned, in accordance with the rules made as aforesaid, by the registrar of the court, out of a list of persons periodically nominated for the purpose by the local marine board of the port, or if there is no such board, by a body of local shipowners or merchants approved for the purpose by a Secretary of State, or, if there is no such list, shall be appointed by the judge: If a Secretary of State thinks fit at any time, on the recommendation of the government of any British possession or any foreign country, to add any persons to any such list, those persons shall, until otherwise directed by the Secretary of State, be added to the list, and if there is no such list shall form the list.

Section 487.

(4) The county court registrar or such other fit person as a Secretary of State may from time to time appoint shall be the registrar of the court, and shall, on receiving notice of an appeal or a reference from the Board of Trade, immediately summon the court to meet forthwith in manner directed by the rules.

(5) The name of the registrar, and his office, together with the rules, made as aforesaid, relating to the court of survey, shall be published in the manner directed in the rules.

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For rules of courts of survey, see sect. 489.
For list of courts of survey, see *post*, pp. 1310—1314.

Power and procedure of court of survey.

488.—(1) The court of survey shall hear every case in open court.

(2) The judge and each assessor of the court may survey the ship, and shall have for the purposes of this Act all the powers of a Board of Trade inspector under this Act.

(3) The judge of the court may appoint any competent person or persons to survey the ship and report thereon to the court.

(4) The judge of the court, any assessor of the court, and any person appointed by the judge of the court to survey a ship, may go on board the ship and inspect the same and every part thereof, and the machinery, equipments, and cargo, and may require the unloading or removal of any cargo, ballast, or tackle, and any person who wilfully impedes such judge, assessor, or person in the execution of the survey, or fails to comply with any requisition made by him, shall for each offence be liable to a fine not exceeding ten pounds.

(5) The judge of the court shall have the same power as the Board of Trade have to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

(6) The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Board of Trade, may attend at any inspection or survey made in pursuance of this section.

(7) The judge of the court shall send to the Board of Trade such report as may be directed by the rules, and each assessor shall either sign the report or report to the Board of Trade the reasons for his dissent.

For rules of courts of survey, see sect. 489.

Passenger Ships.]—The owner of a passenger steamer aggrieved by the declaration of survey of a ship or engineer surveyor, or by the refusal of such a surveyor to give such a declaration, may appeal to the court of survey of the port or district where the steamer for the time being is, in manner directed by the rules of that court (see sect. 275, *supra*).

Section 488 Notes.

Emigrant Ships.]—The owner of an emigrant ship aggrieved by the refusal of an emigration officer of a certificate of clearance, may also appeal to a court of survey (see sect. 318, *supra*).

Lights and Fog Signals.]—So may also the owner of a ship where the certificate as to lights and fog signals is refused (see sect. 420, sub-s. 4, *supra*).

Provisional Detention.]—In the case of the provisional detention of a British or foreign ship by reason of defective condition, undermanning, overloading, or improper loading, the matter may be brought before a court of survey (see sect. 459, sub-s. 1, and sect. 462, *supra*).

Scientific Referees.]—If the Board of Trade are of opinion that an appeal to a court of survey involves a question of construction or design or of scientific difficulty or important principle, they may refer the matter to a scientific referee or referees who shall have the same powers as a judge of the court of survey. The Board of Trade shall also so refer any appeal if the appellant so requires and gives security (see sect. 490, *post*).

Rules for procedure of court of survey, etc.

489. The Lord Chancellor may (with the consent of the Treasury so far as relates to fees) make general rules to carry into effect the provisions of this Act with respect to a court of survey, and in particular with respect to the summoning of, and procedure before, the court, the requiring on an appeal security for costs and damages, the amount and application of fees, and the publication of the rules, and those rules shall have effect as if enacted in this Act.

Rules for Court of Survey.]—No rules have in fact been made under this Act, but by sect. 745 (*a*) of this Act, the rules made under the Merchant Shipping Act, 1876 (repealed by this Act), continue in force as if made under this Act. For the general rules for courts of survey in the United Kingdom, see *post*, pp. 1305—1310. These rules include in appendices lists of the courts of survey, and the special forms and the fees applicable thereto.

* * * * *

Scientific Referees.

Reference in difficult cases to scientific persons

490.—(1) If the Board of Trade are of opinion that an appeal to a court of survey involves a question of construction or design or of scientific difficulty or important principle, they may refer the matter to such one or more out of a list of scientific referees from time to time approved by a Secretary of State, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Board of Trade and the appellant, or in default of any such agreement by a Secretary of State, and thereupon the appeal shall be determined by the referee or referees, instead of by the court of survey.

(2) The Board of Trade, if the appellant in any appeal so requires and give security to the satisfaction of the Board to pay the costs of and incidental to the reference, shall refer that appeal to a referee or referees so selected as aforesaid.

(3) The referee or referees shall have the same powers as a judge of the court of survey.

Payments to Officers of Courts.

Section 491. Payments to officers of courts.

491. There may be paid out of money provided by Parliament to any wreck commissioner, judge of a court of survey, assessor in any court of survey or investigation under this Part of this Act, registrar of a court of survey, scientific referee, or any other officer or person appointed for the purpose of any court of survey or investigation under this part of this Act, such salary or remuneration (if any) as the Treasury may direct.

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PART IX.

Wreck and Salvage.

Vessels in Distress.

* * * * *

Power to pass over adjoining lands.

513.—(1) Whenever a vessel is wrecked, stranded, or in distress as aforesaid, all persons may, for the purpose of rendering assistance to the vessel, or of saving the lives of the shipwrecked persons, or of saving the cargo or apparel of the vessel, unless there is some public road equally convenient, pass and repass, either with or without carriages or horses, over any adjoining lands without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on those lands any cargo or other article recovered from the vessel.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by this section shall be a charge on the vessel, cargo, or articles in respect of or by which the damage is occasioned and the amount payable in respect of the damage shall, in case of dispute, be determined, and shall, in default of payment, be recoverable in the same manner as the amount of salvage is under this Part of this Act determined or recoverable.

As to mode of recovering salvage, see sects. 547 *et seq.*

See notes to sect. 3, sub-s. 1, of the County Courts Admiralty Jurisdiction Act, 1868, *ante*, p. 1199.

(3) If the owner or occupier of any land—

(*a*) impedes or hinders any person in the exercise of the rights given by this section by locking his gates, or refusing, upon request, to open the same, or otherwise; or

(*b*) impedes or hinders the deposit of any cargo or other article recovered from the vessel as aforesaid on the land; or

(*c*) prevents or endeavours to prevent any such cargo or other article from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit;

he shall for each offence be liable to a fine not exceeding one hundred pounds.

* * * * *

Disputed title to unclaimed wreck.

526.—(1) Where any dispute arises between any such admiral, vice-admiral, lord of a manor, heritable proprietor, or other person as aforesaid and the receiver respecting title to wreck found at any place, or where more persons than one claim title to that wreck and a dispute arises between them as to that title, that dispute may be referred and determined in the same manner as if it were a dispute as to salvage to be determined summarily under this Part of this Act.

(2) If any party to the dispute is unwilling to have the same so referred and determined, or is dissatisfied with the decision on that determination, he may within three months after the expiration of a year from the time when the wreck has come into the receiver's hands, or from the date of the decision, as the case may be, take proceedings in any court having jurisdiction in the matter for establishing his title.

* * * * *

Salvage.

Salvage payable for saving life.

544.—(1) Where services are rendered wholly or in part within British waters in saving life from any British or foreign vessel, or elsewhere in saving life from any British vessel, there shall be payable to the salvor by the owner of the vessel, cargo, or apparel saved, a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned.

(2) Salvage in respect of the preservation of life when payable by the owners of the vessel shall be payable in priority to all other claims for salvage.

(3) Where the vessel, cargo, and apparel are destroyed, or the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life the Board of Trade may, in their discretion, award to the salvor, out of the Mercantile Marine Fund, such sum as they think fit in whole or part satisfaction of any amount of salvage so left unpaid.

[NOTE.—Sub-s. 3 indicates the only source from which remuneration for life salvage is obtainable where no property is also salved.]

Section 545.

Salvage of life from foreign vessels.

545. When it is made to appear to Her Majesty that the government of any foreign country is willing that salvage should be awarded by British courts for services rendered in saving life from ships belonging to that country, when the ship is beyond the limits of British jurisdiction, Her Majesty may, by Order in Council, direct that the provisions of this Part of this Act with reference to salvage of life shall, subject to any conditions and qualifications contained in the Order, apply, and those provisions shall accordingly apply to those services as if they were rendered in saving life from ships within British jurisdiction.

Salvage of cargo or wreck.

546. Where any vessel is wrecked, stranded, or in distress at any place on or near the coasts of the United Kingdom or any tidal water within the limits of the United Kingdom, and services are rendered by any person in assisting that vessel or saving the cargo or apparel of that vessel or any part thereof, and where services are rendered by any person other than a receiver in saving any wreck, there shall be payable to the salvor by the owner of the vessel, cargo, apparel, or wreck, a reasonable amount of salvage to be determined in case of dispute in manner hereinafter mentioned.

Procedure in Salvage.

Determination of salvage disputes.

547.—(1) Disputes as to the amount of salvage whether of life or property, and whether rendered within or without the United Kingdom arising between the salvor and the owners of any vessel, cargo, apparel, or wreck, shall, if not settled by agreement, arbitration, or otherwise, be determined summarily in manner provided by this Act, in the following cases, namely :—

(*a*) In any case where the parties to the dispute consent :

(*b*) In any case where the value of the property saved does not exceed one thousand pounds :

(*c*) In any case where the amount claimed does not exceed in Great Britain three hundred pounds, and in Ireland two hundred pounds :

(2) Subject as aforesaid, disputes as to salvage shall be determined by the High Court in England or Ireland, or in Scotland the Court of Session, but if the claimant does not recover in any such court in Great Britain more than three hundred pounds, and in any such court in Ireland more than two hundred pounds, he shall not be entitled to recover any costs, charges, or expenses incurred by him in the prosecution of his claim, unless the court before which the case is tried certify that the case is a fit one to be tried otherwise than summarily in manner provided by this Act.

(3) Disputes relating to salvage may be determined on the

application either of the salvor or of the owner of the property saved, or of their respective agents. Section 547.

(4) Where a dispute as to salvage is to be determined summarily under this section it shall be referred and determined as follows :—

(*a*) In England it shall be referred to and determined by a county court having Admiralty jurisdiction by virtue of the County Courts Admiralty Jurisdiction Act, 1868, or any Act amending the same.

* * * * *

(5) Nothing in this Act relating to the procedure in salvage cases shall affect the jurisdiction or procedure in salvage cases of a county court having Admiralty jurisdiction by virtue of the County Courts Admiralty Jurisdiction Act, 1868, or the Court of Admiralty (Ireland) Act, 1867, or any Act amending either of those Acts.

See notes to sect. 3, sub-s. 1, of the Act of 1868, *ante*, p. 1199.

548.—(1) Disputes as to salvage which are to be determined summarily in manner provided by this Act shall— Determination of disputes as to salvage summarily.

(*a*) where the dispute relates to the salvage of wreck be referred to a court or arbitrators having jurisdiction at or near the place where the wreck is found :

(*b*) where the dispute relates to salvage in the case of services rendered to any vessel or to the cargo or apparel thereof or in saving life therefrom be referred to a court or arbitrators having jurisdiction at or near the place where the vessel is lying, or at or near the port in the United Kingdom into which the vessel is first brought after the occurrence by reason whereof the claim of salvage arises.

(2) Any court or arbitrators to whom a dispute as to salvage is referred for summary determination may, for the purpose of determining any such dispute, call in to their assistance any person conversant with maritime affairs as assessor, and there shall be paid as part of the costs of the proceedings to every such assessor in respect of his services such sum not exceeding five pounds as the Board of Trade may direct.

549.—(1) Where a dispute relating to salvage has been determined summarily in manner provided by this Act, any party aggrieved by the decision may appeal therefrom— Appeal in case of salvage disputes.

(*a*) in Great Britain, in like manner as in the case of any other judgment in an Admiralty or maritime cause of the county court or sheriff's court, as the case may be.

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Section 551.

Valuation of property by receiver.

551.—(1) Where any dispute as to salvage arises, the receiver of the district where the property is in respect of which the salvage claim is made may, on the application of either party, appoint a valuer to value that property, and shall give copies of the valuation to both parties.

(2) Any copy of the valuation purporting to be signed by the valuer, and to be certified as a true copy by the receiver, shall be admissible as evidence in any subsequent proceeding.

(3) There shall be paid in respect of the valuation by the person applying for the same such fee as the Board of Trade may direct.

Detention of property liable for salvage by receiver.

552.—(1) Where salvage is due to any person under this Act, the receiver shall—

(*a*) if the salvage is due in respect of services rendered in assisting any vessel, or in saving life therefrom, or in saving the cargo or apparel thereof, detain the vessel and cargo or apparel; and

(*b*) if the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under the Act, detain the wreck.

(2) Subject as hereinafter mentioned, the receiver shall detain the vessel and the cargo and apparel, or the wreck (hereinafter referred to as detained property) until payment is made for salvage, or process is issued for the arrest or detention thereof by some competent court.

(3) A receiver may release any detained property if security is given to his satisfaction or, if the claim for salvage exceeds two hundred pounds and any question is raised as to the sufficiency of the security, to the satisfaction in England or Ireland of the High Court, and in Scotland of the Court of Session, including any division of that court, or the Lord Ordinary officiating on the bills during vacation.

(4) Any security given for salvage in pursuance of this section to an amount exceeding two hundred pounds may be enforced by such court as aforesaid in the same manner as if bail had been given in that court.

Sale of detained property by receiver.

553.—(1) The receiver may sell any detained property if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention, in the following cases, namely—

(*a*) where the amount is not disputed, and payment of the amount due is not made within twenty days after the amount is due, or

(*b*) where the amount is disputed, but no appeal lies from the

first court to which the dispute is referred, and payment is not made within twenty days after the decision of the first court, or

(c) where the amount is disputed and an appeal lies from the decision of the first court to some other court, and within twenty days of the decision of the first court neither payment of the sum due is made, nor proceedings are commenced for the purpose of appeal.

(2) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the receiver in payment of the expenses, fees, and salvage, and, so far as not required for that purpose, shall be paid to the owners of the property, or any other persons entitled to receive the same.

Agreement as to salvage.

554.—(1) Where services for which salvage is claimed are rendered either by the commander or crew or part of the crew of any of Her Majesty's ships or of any other ship, and the salvor voluntarily agrees to abandon his lien upon the ship, cargo, and property alleged to be salved, then, upon the master entering into a written agreement attested by two witnesses to abide the decision of the High Court in England, or of a Vice-Admiralty Court or Colonial Court of Admiralty, and thereby giving security in that behalf to an amount agreed on by the parties to the agreement, that agreement shall bind the ship, and the cargo, and freight respectively, and the respective owners of the ship, cargo, and freight, and their respective heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the ship, cargo, and freight respectively to the extent of the security given.

(2) Any agreement made under this section may be adjudicated on and enforced in the same manner as a bond executed under the provisions of this Part of this Act relating to salvage by Her Majesty's ships and on any such agreement being made, the salvor and the master shall respectively make the statements required by this Part of this Act to be made in the case of the bond, but their statements need not be made on oath.

(3) The salvor shall transmit the statements made, as soon as practicable to the court in which the agreement is to be adjudicated upon.

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Apportionment of salvage by admiralty courts.

556. Whenever the aggregate amount of salvage payable in respect of salvage service rendered in the United Kingdom has been finally ascertained, and exceeds two hundred pounds, and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained,

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whatever that amount may be, then, if any delay or dispute arises as to the apportionment thereof, any court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just, and may for that purpose, if it thinks fit, appoint any person to carry that apportionment into effect, and may compel any person in whose hands or under whose control the amount may be to distribute the same, or to bring the same into court to be there dealt with as the court may direct, and may for the purposes aforesaid issue such processes as it thinks fit.

Salvage by Her Majesty's Ships.

Salvage by Her Majesty's ships.

557.—(1) Where salvage services are rendered by any ship belonging to Her Majesty or by the commander or crew thereof, no claim shall be allowed for any loss, damage, or risk caused to the ship or her stores, tackle, or furniture, or for the use of any stores or other articles belonging to Her Majesty, supplied in order to effect those services, or for any other expense or loss sustained by Her Majesty by reason of that service and no claim for salvage services by the commander or crew, or part of the crew of any of Her Majesty's ships, shall be finally adjudicated upon unless the consent of the Admiralty to the prosecution of that claim is proved.

(2) Any document purporting to give the consent of the Admiralty for the purpose of this section, and to be signed by the Secretary to the Admiralty or on his behalf, shall be evidence of that consent.

(3) If a claim is prosecuted and the consent is not proved, the claim shall stand dismissed with costs.

(See *The Sarpen*, C. A. 114 L. T. 1011; also the Merchant Shipping (Salvage) Act, 1916, *post*, p. 1354.)

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Fees of Receivers of Wreck.

Receiver's fees.

567.—(1) There shall be paid to every receiver the expenses properly incurred by him in the performance of his duties, and also, in respect of the several matters specified in the Twentieth Schedule to this Act, such fees not exceeding the amounts therein mentioned as may be directed by the Board of Trade, but a receiver shall not be entitled to any remuneration other than those payments.

(2) The receiver shall, in addition to all other rights and remedies for the recovery of those expenses or fees, have the same rights and remedies in respect thereof as a salvor has in respect of salvage due to him.

(3) Whenever any dispute arises in any part of the United Kingdom as to the amount payable to any receiver in respect of expenses or fees, that dispute shall be determined by the Board of Trade, and the decision of that Board shall be final. Section 567.

(4) All fees received by a receiver in respect of any services performed by him as receiver shall be carried to and form part of the Mercantile Marine Fund, but a separate account shall be kept of those fees, and the moneys arising from them shall be applied in defraying any expenses duly incurred in carrying into effect this Act in such manner as the Board of Trade direct.

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PART X.

Pilotage.

[**Note.**—Sects. 572 to 632 inclusive, and the twenty-first schedule have been repealed by the Pilotage Act, 1913, *post*, p. 1339.]

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633. An owner or master of a ship shall not be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of that ship within any district where the employment of a qualified pilot is compulsory by law. Limitation of liability of owner or master where pilotage is compulsory.

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PART XIII.

Legal Proceedings.

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Damage occasioned by Foreign Ship.

688.—(1) Whenever any injury has in any part of the world been caused to any property belonging to Her Majesty or to any of Her Majesty's subjects by any foreign ship, and at any time thereafter that ship is found in any port or river of the United Kingdom or within three miles of the coast thereof, a judge of any court of record in the United Kingdom (and in Scotland the Court of Session and also the sheriff of the county within whose jurisdiction the ship may be) may, upon its being shown to him by any person applying summarily that the injury was probably caused by the misconduct or want of skill of the master or mariners of the ship, issue an order directed to any officer of customs or other officer named by the judge, court, or sheriff, requiring him to Power to arrest foreign ship that has occasioned damage.

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detain the ship until such time as the owner, master or consignee thereof has made satisfaction in respect of the injury, or has given security, to be approved by the judge, court, or sheriff, to abide the event of any action, suit, or other legal proceedings that may be instituted in respect of the injury, and to pay all costs and damages that may be awarded thereon ; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) Where it appears that, before an application can be made under this section, the ship in respect of which the application is to be made will have departed from the limits of the United Kingdom or three miles from the coast thereof, the ship may be detained for such time as will allow the application to be made, and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.

(3) In any legal proceeding in relation to any such injury aforesaid, the person giving security shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned the damage ; and the production of the order of the judge, court, or sheriff made in relation to the security shall be conclusive evidence of the liability of the defendant or defender to the proceeding.

See note to Order XXXIX. r. 13 ; *ante*, p. 1215. In the case of personal injuries, including fatal injuries, see sect. 1 of the Shipowners' Negligence (Remedies) Act, 1905 (5 Edw. VII. c. 10), *post*, p. 1332, and in connection with sub-s. 3 above, cf. sect. 1, sub-s. 2, of that Act.

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Enforcing detention of ship.

692.—(1) Where under this Act a ship is to be or may be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any officer of the Board of Trade, or any officer of Customs, or any British consular officer may detain the ship, and if the ship after detention or after service on the master of any notice of order for detention proceeds to sea before it is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if that owner or person is party or privy to the offence, shall be liable for each offence to a fine not exceeding one hundred pounds.

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(3) Where under this Act a ship is to be detained an officer of Customs shall, and where under this Act a ship may be detained,

an officer of Customs may, refuse to clear that ship outwards or to grant a transire to that ship. Section 692.

(4) Where any provision of this Act provides that a ship may be detained until any document is produced to the proper officer of Customs, the proper officer shall mean, unless the context otherwise requires, the officer able to grant a clearance or transire to such ship.

The powers under this section are adopted by sect. 1, sub-s. 3, of the Shipowners' Negligence (Remedies) Act, 1905, *post*, p. 1333, and also by sect. 1, sub-s. 5, of the Merchant Shipping (Stevedores and Trimmers) Act, 1911, *post*, p. 1335.

Sums ordered to be paid leviable by distress on ship.

693. Where any court, justice of the peace, or other magistrate, has power to make an order directing payment to be made of any seaman's wages, fines, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the court, justice of the peace, or magistrate who made the order may, in addition to any other powers they may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or poinding and sale of the ship, her tackle, furniture, and apparel.

Evidence, Service of Documents, and Declarations.

Proof of attestation not required.

694. Where any document is required by this Act to be executed in the presence of or to be attested by any witness or witnesses, that document may be proved by the evidence of any person who is able to bear witness to the requisite facts without calling the attesting witness or the attesting witnesses or any of them.

Admissibility of documents in evidence.

695.—(1) Where a document is by this Act declared to be admissible in evidence, such document shall, on its production from the proper custody, be admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence, and, subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Act or by any officer in pursuance of his duties as such officer.

(2) A copy of any such document or extract therefrom shall also be so admissible in evidence if proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted, and that officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the

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same, not exceeding fourpence for every folio of ninety words, but a person shall be entitled to have—

(*a*) a certified copy of the particulars entered by the registrar in the register book on the registry of the ship, together with a certified statement showing the ownership of the ship at the time being; and

(*b*) a certified copy of any declaration, or document, a copy of which is made evidence by this Act,

on payment of one shilling for each copy.

(3) If any such officer wilfully certifies any document as being a true copy or extract knowing the same not to be a true copy or extract, he shall for each offence be guilty of a misdemeanour, and be liable on conviction to imprisonment for any term not exceeding eighteen months.

(4) If any person forges the seal, stamp, or signature of any document to which this section applies, or tenders in evidence any such document with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit, he shall for each offence be guilty of felony, and be liable to penal servitude for a term not exceeding seven years, or to imprisonment for a term not exceeding two years, with or without hard labour, and whenever any such document has been admitted in evidence, the court or the person who admitted the same may on request direct that the same shall be impounded, and be kept in the custody of some officer of the court or other proper person for such period or subject to such conditions as the court or person thinks fit.

Service of documents.

696.—(1) Where for the purposes of this Act any document is to be served on any person, that document may be served—

(*a*) in any case by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode; and

(*b*) if the document is to be served on the master of a ship, where there is one, or on a person belonging to a ship, by leaving the same for him on board that ship with the person being, or appearing to be, in command or charge of the ship; and

(*c*) if the document is to be served on the master of a ship, where there is no master, and the ship is in the United Kingdom, on the managing owner of the ship, or, if there is no managing owner, on some agent of the owner residing in the United Kingdom, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

(2) If any person obstructs the service on the master of a ship

of any document under the provisions of this Act relating to the detention of ships as unseaworthy, that person shall for each offence be liable to a fine not exceeding ten pounds, and, if the owner or master of the ship is party or privy to the obstruction, he shall in respect of each offence be guilty of a misdemeanour. Section 696.

697. Any exception, exemption, proviso, excuse or qualification, in relation to any offence under this Act, whether it does or does not accompany in the same section the description of the offence, may be proved by the defendant, but need not be specified or negatived in any information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant. Proof, etc., of exemption.

698. Any declaration required by this Act to be taken before a justice of the peace, or any particular officer may be taken before a commissioner for oaths. Declarations.

* * * * *

PART XIV.

SUPPLEMENTAL.

Surveyors of Ships.

724.—(1) The Board of Trade may, at such ports as they think fit, appoint either generally or for special purposes, and on special occasion, any person they think fit to be a surveyor of ships for the purposes of this Act, and a person so appointed (in this Act referred to as a surveyor of ships) may be appointed either as a shipwright surveyor or as an engineer surveyor or as both. Appointment of surveyors.

For "shipwright surveyor" now read "ship surveyor." See s. 75 of the Merchant Shipping Act, 1906, *post*, p. 1330.

* * * * *

Definitions and Provisions as to Application of Act.

742. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say— Definitions.

"Vessel" includes any ship or boat, or any other description of vessel used in navigation;

"Ship" includes every description of vessel used in navigation not propelled by oars;

* * * * *

"Master" includes every person (except a pilot) having command or charge of any ship;

Section 742.

"Seaman" includes every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship;

"Wages" includes emoluments;

"Effects" includes clothes and documents;

"Salvor" means, in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, the person in command of that ship;

"Pilot" means any person not belonging to a ship who has the conduct thereof;

"Court" in relation to any proceeding includes any magistrate or justice having jurisdiction in the matter to which the proceeding relates;

* * * * *

"Bankruptcy" includes insolvency;

"Representation" means probate, administration, confirmation, or other instrument constituting a person the executor, administrator, or other representative of a deceased person;

"Legal personal representative" means the person so constituted executor, administrator, or other representative, of a deceased person.

* * * * *

Any reference to failure to do any act or thing shall include a reference to refusal to do that act or thing.

* * * * *

Repeal and Savings.

Repeal.

745.—(1) The Acts mentioned in the twenty-second schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

Provided that—

(*a*) Any order in council, licence, certificate, byelaw, rule, or regulation made or granted under any enactment hereby repealed shall continue in force as if it had been made or granted under this Act;

(*b*) Any officer appointed, any body elected or constituted, and any savings bank or office established, under any enactment hereby repealed shall continue and be deemed to have been appointed, elected, constituted, or established, as the case may be, under this Act;

(*c*) Any document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment of this Act;

* * * * *

(*e*) Ships registered under the Merchant Shipping Act, 1854, and the Acts amending the same, or duly registered before the passing of the Merchant Shipping Act, 1854, shall be deemed to have been registered under this Act. Section 745.

* * * * *

Short Title and Commencement.

747. This Act may be cited as the Merchant Shipping Act, 1894. Short title.

748. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-five. Commencement.

* * * * *

THE MERCHANT SHIPPING ACT, 1876.

GENERAL RULES FOR COURTS OF SURVEY IN THE UNITED KINGDOM, 1876.

Whereas by the Merchant Shipping Act, 1876, it is provided that the owner or master of a ship, that has been provisionally detained, may appeal to the court of survey for the port or district, where the ship is detained:

And whereas it is further provided that every court of survey shall consist of a judge sitting with two assessors; and that the judge of the court shall be summoned from a list of persons from time to time approved for the port or district by one of Her Majesty's principal Secretaries of State:

And whereas it is provided that the Lord Chancellor of Great Britain may from time to time (with the consent of the Treasury so far as relates to fees) make general rules to carry into effect the provisions of the said Act with respect to courts of survey:

Now, therefore, I, the Right Honourable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, with the consent so far as may be necessary of one of Her Majesty's principal Secretaries of State and of the Treasury so far as relates to fees, do order as follows:

Short Title.

1. These rules may be cited as "The Rules of the Court of Survey, 1876."

Commencement.

2. These rules shall come into operation on the 1st day of October, 1876.

Interpretation.

3. In the construction of these rules, words importing the

Rule 3.

singular number shall include the plural, and words importing the plural number shall include the singular number.

COURTS OF SURVEY, THEIR DISTRICTS AND OFFICERS.

4. The courts of survey, with the districts assigned to each, and the persons authorised to act as judges and registrars thereof, and which have been approved by one of Her Majesty's principal Secretaries of State, as set forth in Appendix A, shall be the courts of survey, and the districts, judges, and registrars of such courts, for the purposes of the Merchant Shipping Acts, 1854 to 1876.

PUBLICATION OF RULES.

5. These rules shall be published by Her Majesty's Stationery Office through its agents, and a copy shall be kept at the office of the registrar of every court of survey and at every custom house and mercantile marine office in the United Kingdom, and may be perused thereat by the master or owner of any ship which may be provisionally detained under the Merchant Shipping Act, 1876, and by any one deputed by him.

PUBLICATION OF THE NAME OF REGISTRAR AND OF HIS OFFICE.

6. A notice shall be put up in some conspicuous place in every custom house and mercantile marine office in the United Kingdom, containing the name of the registrar of the court of survey for that district, and the name of the street or place in which such registrar's office is situated.

NOTICE OF APPEAL.

7. Where the owner or master of a ship, hereinafter called the appellant, desires to appeal to a court of survey, he shall file at the office of the registrar of the court of survey for the London district, or for the district in which the ship is, hereinafter called the court, a notice in the form No. 1 in Appendix B.

SUMMONING OF COURT.

8. Immediately upon the filing of the notice of appeal, the registrar shall communicate the fact, by telegraph and letter, to the Board of Trade, who shall thereupon inform him whether they intend to have the appeal heard by a wreck commissioner, and, if so, on what day.

9. If the Board of Trade inform him that they do not intend to have the appeal heard by a wreck commissioner, the registrar shall forthwith ascertain which of the other judges of the court will hear the appeal, and on what day.

10. On ascertaining when the hearing will take place, the

Rule 10.

egistrar shall, if there is a list of assessors for the court, select herefrom the person who is, in his opinion, the best qualified to ct as assessor on the appeal; or if there is no such list, he will ake the instructions of the judge as to the assessor to be appointed.

11. The Board of Trade shall appoint the other assessor, and hall forthwith send the name and address of such assessor to he registrar.

12. If the ship is a foreign ship, the registrar shall give notice o the consular officer for the state to which the ship belongs, esiding at or nearest to the place where the ship is detained, hat, at the request of the appellant, some competent person will e selected by the consular officer to act as assessor.

13. As soon as the registrar has ascertained by whom the ppeal will be heard, he shall summon the court in the form No. 2 Appendix B. He shall at the same time send notice thereof o the Board of Trade and to the appellant, in the form No. 3 in ppendix B.

14. If the survey has been made on the complaint of any erson, hereinafter called the complainant, the Board of Trade hall send to him notice of the time and place appointed for the earing.

15. Previous to the hearing the Board of Trade shall forward o the registrar to be produced as evidence at the hearing, an fficial copy of the report of the surveyor.

16. The court shall, if practicable, be summoned to hear the ppeal on a day not later than fourteen days from the filing of the otice of appeal.

Parties.

17. The Board of Trade and the appellant shall be parties to he proceedings.

18. Any other person, on entering an appearance, may, by ermission of the judge, be made a party to the proceedings.

Notice to produce.

19. Either party may give to the other a notice in writing to roduce such documents (saving all just exceptions) as relate to ny matters in difference, and which are in the possession or ontrol of such other party; and if such notice be not complied ith, secondary evidence of the contents of the said documents ay be given by or on behalf of the party who gave such notice.

NOTICE TO ADMIT.

Rule 20.

20. Either party may give to the other party a notice in writing to admit any documents (saving all just exceptions); and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving such documents, whatever the result may be, unless the court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the officer by whom the costs are taxed, a saving of expense.

WITNESSES.

21. The wreck commissioners shall have power to issue subpœnas as nearly as may be in the form used in the High Court of Justice, and such subpœnas shall have effect, and may be served in any part of the United Kingdom.

AFFIDAVITS.

22. Affidavits may, by permission of the judge, be used at the hearing, when sworn to in any of the following ways; viz.,

In the United Kingdom, before any judge or registrar of a court of survey, or before a person authorised to administer oaths in the Supreme Court of Judicature, or before a commissioner empowered to take or receive affidavits, or before a justice of the peace for the county or place where it is sworn or made.

In any place in the British dominions out of the United Kingdom, before any court, judge, or justice of the peace, or any person authorised to administer oaths there in any court.

In any place out of the British dominions, before a British minister, consul, vice-consul, or notary public, or before a judge or magistrate, his signature being authenticated by the official seal of the court to which such judge or magistrate is attached.

PROCEEDINGS IN COURT.

23. At the hearing, the Board of Trade shall first call their witnesses and having done so shall state in writing what order they require the court to make.

24. The complainant, if he has appeared, shall then call his witnesses, and having done so shall state in writing what order he requires the court to make.

25. The appellant shall then call his witnesses, and having done so, shall state in writing what order he requires the court to make.

26. After the appellant has examined all his witnesses, the Board of Trade and the complainant may, on cause shown to the satisfaction of the judge, call further witnesses in reply. Rule 26.

27. After all the witnesses have been examined, the court shall first hear the appellant, then the complainant (if any), and afterwards the Board of Trade.

28. The judge may adjourn the court from time to time and from place to place, as may be most convenient.

29. The judge may deliver the decision of the court either *viva voce* or in writing, and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a court merely for the purpose of giving the decision.

30. As soon as possible after the court has come to its decision, the judge shall issue an order for the release or detention (either finally or on condition) of the vessel in the form No. 4 in Appendix B.

31. The judge shall report to the Board of Trade in the form No. 5 in Appendix B.

Costs and Damages.

32. The court may, if the parties consent thereto in writing, decide, whether costs or costs and damages are due, and to and from whom, and may assess the amount thereof; or the parties may, by consent in writing, refer the question to the wreck commissioner.

33. The order for the payment of costs, or of costs and damages, shall be in the form No. 6 in Appendix B.

Computation of Time.

34. In computing the number of days within which any act is to be done, the same shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also.

35. The days between Thursday next before and the Wednesday next after Easter Day and Christmas Day, and the three following days shall not be reckoned or included in the computation.

Service of Notices, etc.

36. The notice, summons, or other document issuing out of the court may be served by post.

Rule 37.

37. The service of any notice, summons, or other document may be proved by the oath or affidavit of the person by whom it was served.

TABLE OF FEES.

38. The fees, a table whereof is in Appendix C., shall be demanded and taken in any proceedings before a court of survey.

Dated this 29th day of September, 1876.

CAIRNS, C.

APPENDIX A.

LISTS OF THE COURTS OF SURVEY, WITH THE DISTRICTS ASSIGNED TO EACH, AND THE PERSONS AUTHORISED TO ACT AS JUDGES AND REGISTRARS THEREOF, APPROVED BY ONE OF HER MAJESTY'S PRINCIPAL SECRETARIES OF STATE.

In the following lists column No. 1 contains the names of all the courts of survey in the United Kingdom.

Districts.

The district of the court of survey for London shall include the City of London and the districts of all the metropolitan county courts, the districts of the county court of Kent holden at Gravesend, Dartford, Greenwich, and Woolwich, the districts of the county court of Essex holden at Brentwood and Romford, and the district of the county court of Surrey holden at Wandsworth.

The district of any other court of survey in England shall be the district of the county court of the place, at which the court of survey is held.

The district of a court of survey in Scotland and in Ireland shall be the district of the port of customs of the place at which the court is held.

The courts shall be held at the places whose names they bear, or at any place within their respective districts, and may, by the permission of the judge, be adjourned to any place out of such districts.

Judges.

The wreck commissioner shall be a judge of every court of survey in the United Kingdom.

The persons whose official titles are set out in column No. 2 shall be the other judges of the courts of survey at the places opposite to which their names occur.

Registrars.

The registrar of the court of survey for London shall be Mr. William Edward Stanley Thomson, and his office shall be at Somerset House, Strand, in the county of Middlesex.

The registrar of any other court of survey in England shall be the registrar of the county court of the place at which the court of survey is held, and his office shall be the office of the registrar of the said county court.

The registrar of a court of survey in Scotland shall be the sheriff clerk of the county in which the court is held, and his office shall be the office of the said sheriff clerk.

The registrar of a court of survey in Ireland shall be the clerk of the peace, or registrar or other person discharging the duties of registrar of the court of the chairman of the county in which the court is held, and his office shall be the office of the clerk of the peace, registrar or other person aforesaid.

LIST No. 1.

Courts of Survey in England.

Column No. 1. Court of Survey for	Column No. 2. Judges of the Courts of Survey at the places opposite to which their names occur.
Berwick Belford Alnwick Morpeth	The judges of the county courts in Circuits 1 and 2. The recorder of Berwick.
North Shields Newcastle Gateshead South Shields Sunderland Seaham Harbour	The judges of the county courts in Circuits 1 and 2. The stipendiary magistrate at South Shields. The recorders of Durham and Newcastle.
Hartlepool Stockton	The judges of the county courts in Circuits 2 and 15. The stipendiary magistrate at Middlesbrough. The recorder of Hartlepool.
Stokesley Whitby Scarborough Bridlington Beverley Hedon Hull	The judge of the county court in Circuit 16. The stipendiary magistrate at Hull. The recorders of Hull and Scarborough.
Hoole	The judges of the county courts in Circuits 16 and 18.
Barton-on-Humber Great Grimsby Louth Spilsby Boston	The judge of the county courts in Circuit 17.
Spalding Holbeach Wisbech	The judge of the county courts in Circuits 17, 32 and 35.
King's Lynn Little Walsingham Holt North Walsham	The judge of the county courts in Circuit 32. The recorder of King's Lynn.
Yarmouth Lowestoft	The judge of the county courts in Circuits 32 and 33. The recorders of Orford, Norwich and Yarmouth.
Halesworth Framlingham Woodbridge	The judge of the county courts in Circuit 33. The recorders of Aldborough and Orford.

Column No. 1. Court of Survey for	Column No. 2. Judges of the Courts of Survey at the places opposite to which their names occur.
Ipswich Harwich	The judge of the county courts in Circuits 33 and 38. The recorder of Ipswich.
Colchester Maldon Rochford	The judge of the county courts in Circuit 38. The recorders of Colchester and Maldon.
London	The magistrates of the metropolitan police courts.
Rochester Sheerness Sittingbourne Faversham	The judge of the county courts in Circuit 48. The stipendiary magistrate at Sheerness. The recorders of Faversham and Rochester.
Canterbury Margate Ramsgate Sandwich Deal Dover Folkestone Hythe Romney	The judges of the county courts in Circuits 48 and 49. The judge of Admiralty Court of the Cinque Ports. The recorders of Canterbury, Deal, Dover, Folkestone, Hythe, Margate, Sandwich, and Tenterden.
Rye Hastings	The judge of the county courts in Circuit 50. The judge of Admiralty Court of the Cinque Ports. The recorder of Rye.
Lewes Brighton Worthing	The judges of the county courts in Circuits 50 and 51. The stipendiary magistrate at Brighton. The recorders of Brighton and Seaford.
Arundel Chichester Portsmouth	The judge of the county courts in Circuits 50 and 51. The recorders of Chichester, Portsmouth and Winchester.
Southampton Newport, Isle of Wight Christchurch Poole Wareham	The judges of the county courts in Circuits 51 and 55. The recorders of Poole, Southampton, Wareham, and Winchester.
Weymouth Bridport	The judge of the county courts in Circuit 55.
Axminster Honiton Exeter Newton Abbot	The judge of the county courts in Circuits 57 and 58. The recorder of Exeter.

Column No. 1. Court of Survey for	Column No. 2. Judges of the Courts of Survey at the places opposite to which their names occur.
Totnes Kingsbridge	The judge of the county courts in Circuit 58. The recorder of Dartmouth.
East Stonehouse Liskeard	The judges of the county courts in Circuits 58 and 59. The recorders of Devonport, Plymouth and Tiverton.
Saint Austell Truro Falmouth Helston Penzance Redruth Bodmin Camelford Holsworthy	The judge of the county courts in Circuit 59. The recorders of Falmouth, Helston, and Penzance.
Bideford Barnstaple Williton	The judge of the county courts in Circuit 57. The recorders of Barnstaple and Bideford.
Bridgewater Weston-super-Mare Wells Bristol	The judges of the county courts in Circuits 54 and 57. The recorders of Bristol and Wells.
Thornbury Dursley	The judges of the county courts in Circuits 53 and 54.
Gloucester Newnham Chepstow	The judges of the county courts in Circuits 24 and 54. The recorder of Gloucester.
Newport (Monmouth) Cardiff Bridgend Neath Swansea	The judges of the county courts in Circuits 24, 30 and 31. The stipendiary magistrates at Cardiff and Swansea.
Llanelly Carmarthen Narberth Pembroke Haverfordwest Cardigan Aberayron	The judge of the county courts in Circuit 31. The recorder of Carmarthen.
Aberystwith Machynlleth Dolgelly Portmadoc Pwllheli	The judge of the county courts in Circuit 28.

Column No. 1. Court of Survey for	Column No. 2. Judges of the Courts of Survey at the places opposite to which their names occur.
Carnarvon Llangefni Bangor Conway St. Asaph Holywell Chester	The judge of the county courts in Circuit 29. The recorder of Chester.
Runcorn Birkenhead Liverpool	The judges of the county courts in Circuits 6 and 7. The stipendiary magistrate at Liverpool. The stipendiary magistrate at Birkenhead. Judge of Court of Passage. The recorder of Liverpool.
Ormskirk	The judges of the county court in Circuit 6.
Preston Kirkham Paulton-le-Fylde Lancaster.	The judge of the county courts in Circuit 4. The recorder of Preston.
Ulverston Whitehaven Cockermouth Wigton Carlisle	The judge of the county courts in Circuit 3. The recorder of Carlisle.

* * * * *

APPENDIX B.

The following forms shall be employed, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the judge shall be of opinion that the deviation was material.

No. 1. *Notice of Appeal.*

The Merchant Shipping Acts, 1854 to 1876.

In the matter of the ship "Marian."

To the registrar of the court of survey for .

Take notice that I [*name and address*] the master [*or* managing owner *or* owner of shares] of the ship of the port of do appeal

(1) from the report of L. M., the surveyor appointed by the Board of Trade to survey the said ship.

or (2) from a declaration given by a shipwright surveyor *or* engineer, (*or* from the refusal of a shipwright surveyor or engineer to give a declaration,) under the provisions of section 309 of the Merchant Shipping Act, 1854.

or (3) from the refusal of an emigration officer (*or as the case*

may be) to give a certificate of clearance under sections 11 and 50 of the Passengers Act, 1855.

or (4) from the refusal of appointed by the Board of Trade under the provisions of section 30 of the Merchant Shipping Act Amendment Act, 1862, to give a certificate that the said ship is properly provided with lights and with the means of making fog signals.

The address at which all notices and documents may be served by post or otherwise on me is

Dated this day of .

(*To be signed by the appellant.*)

No. 2. Summons to Court.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an appeal by from the report of L. M., the surveyor appointed by the board to survey the "Marian" [*or as the case may be.*]

In pursuance of the Merchant Shipping Act, 1876, I hereby summon you to attend as judge [*or* assessor] on this appeal, at , on the day of at the hour of in the noon.

Dated this day of , 19 .

, Registrar.

I will attend as summoned.

Signature of person summoned.

No. 3. Notice of sitting of Court of Survey.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an appeal by from the report of L. M., the surveyor appointed by the Board of Trade to survey the "Marian" [*or as the case may be*].

To A. B., the master [*or* managing owner, *or* owner of shares] of the ship , the appellant [*or* the Board of Trade].

Take notice that the Court of Survey will meet at on the day of , 19 , at o'clock in the noon, to hear the appeal in the above matter.

Dated this day of , 19 .

, Registrar.

No. 4. Order of Court for Release or Detention of Ship.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an appeal by from the report of L. M., the surveyor appointed by the Board of Trade to survey the "Marian" [*or as the case may be*].

I, , do, with the concurrence of , order the said ship to be released *or* detained [finally *or* conditionally upon].

Given under my hand this day of , 19 .

, Judge.

We [*or* I] concur in the above report.

, Assessor.

, Assessor.

No. 5. Report of Judge of Court of Survey.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an appeal by from the report of L. M., the surveyor appointed by the Board of Trade to survey the "Marian" [*or as the case may be*].

I, , do report that, having heard this appeal, I did, with the concurrence of , order the said ship to be released *or* detained [finally *or* conditionally upon] for the reasons set forth in the annexed statement.

I am also of opinion that the costs of this appeal should be paid by A. B. to the solicitor of the Board of Trade [*or* by the solicitor to the Board of Trade to A. B.; *or* that all parties shall pay their own costs].

Dated this day of , 19 .

, Judge.

We [*or* I] concur in the above report,

, Assessor.

, Assessor.

No. 6. Order for Payment of Costs, or of Costs and Damages.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an appeal by from .

[The parties to this appeal having, by agreement in writing, consented to refer the question whether any costs or costs and damages are due, and to and from whom, to me *or* us, with liberty to assess the amount thereof], I order

(1) that the Board of Trade do pay to the appellant the sum of for the costs [*or* the costs and damages] incurred by reason of such detention and survey.

or (2) that the appellant do pay to the solicitor of the Board of Trade the sum of for the costs incurred by reason of the detention and survey of the said ship.

or (3) that each party pays his own costs.

Given under my hand this day of 19 .

, Judge.

We [*or* I] concur in the above order.

, Assessor.

, Assessor.

APPENDIX C.

	£	*s.*	*d.*
On filing notice of appeal, for every 50 tons of the gross registered tonnage of the ship	0	10	0
On filing every affidavit	0	2	6
On entering appearance	0	10	0
On every subpœna	0	2	6
On every statement of the order required to be made by the court	0	10	0
On the production and swearing of every witness	0	2	6
On every consent by the parties to refer the question of costs, or of costs and damages, to the court or judge, to be paid by each party	0	10	0
On every hearing, for each day, to be paid by each party, the amount thereof to be at the discretion of the judge — from	1	0	0
— to	5	0	0

	£	s.	d.
On every order whether for the release or detention of the ship, or for payment of costs, or costs and damages, to be paid by the party taking out the order	1	0	0
On every office copy of the judge's judgment or report, of the shorthand writer's notes of the evidence, or of any of the proceedings in the appeal, per folio of 72 words	0	0	6

DISEASES OF ANIMALS ACT, 1894.

[57 & 58 Vict. c. 57. August 25, 1894.]

* * * * *

46.—(1) Where a carcase washed ashore is buried or destroyed under the direction of a receiver of wreck with authority from the Board of Trade, the expenses thereof shall be expenses of the local authority, and shall be paid by the local authority to the receiver on demand, and in default of payment shall be recoverable with costs by the receiver from the local authority. Expenses of burial of carcases washed ashore.

This includes carcases shipped as frozen meat as well as carcases of animals shipped alive (*The Suevic*, (1908) 24 T. L. R. 699).

(2) Where a local authority has incurred any expenses under this section on account of the burial or destruction of the carcase of any animal which, or the carcase of which, was thrown or washed from any vessel, the owner of the vessel shall be liable to repay such expenses to the local authority, and the local authority may recover such expenses with costs in the same manner as salvage is recoverable.

As to mode of recovering salvage, see sects. 547 *et seq.* of the Merchant Shipping Act, 1894.

* * * * *

THE MERCHANT SHIPPING ACT, 1897.

[60 & 61 Vict. c. 59.]

An Act to amend the Merchant Shipping Act, 1894, with respect to the Power of Detention for Undermanning. (6th August, 1897.)

Be it enacted, etc.:

1.—(1) Section four hundred and fifty-nine of the Merchant Shipping Act, 1894 (which gives power to detain unsafe ships), shall apply in the case of undermanning, and accordingly that section shall be construed as if the words " or by reason of undermanning " were inserted therein after the word " machinery," Extension of powers of detention for unsafety to undermanning.

Section 1.

and as if the words " or for ascertaining the sufficiency of her crew " were inserted after the word " surveyed," and as if the words " or the manning of the ship " were inserted therein after the words " reloading of cargo," and the powers exerciseable under or for the purposes of that section shall include power to muster the crew.

(2) Section four hundred and sixty-two of the Merchant Shipping Act, 1894 (which relates to foreign ships), shall also apply in the case of undermanning, and accordingly that section shall be construed as if the words " or by reason of undermanning " were inserted therein after the words " improper loading."

Short title.

2. This Act may be cited as the Merchant Shipping Act, 1897.

THE MERCHANT SHIPPING ACT, 1906.

[6 Edw. VII. c. 48.]

An Act to amend the Merchant Shipping Acts, 1894 to 1900. (21st December, 1906.)

Be it enacted, etc.

[Note.—Only such sections of the Act are here set forth as relate to matters connected with merchant shipping within the jurisdiction of the county court, or are required for purposes of reference.]

PART I.

Safety.

* * * * *

Detention of foreign ships when unsafe owing to defective equipment, etc.

2. Section four hundred and sixty-two of the principal Act (which relates to the detention of foreign ships)—

(1) shall apply in the case of a ship which is unsafe by reason of the defective condition of her hull, equipments, or machinery, and accordingly that section shall be construed as if the words " by reason of the defective condition of her hull, equipments, or machinery, or " were inserted before the words " by reason of overloading or improper loading "; and

(2) shall apply with respect to any foreign ships being at any port in the United Kingdom, whether those ships take on board any cargo at that port or not.

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Section 5.

Appointed day.

5. For the purposes of this Part of this Act the appointed day shall be the first day of January nineteen hundred and nine, or such other day not being more than twelve months later, as the Board of Trade may appoint; and different days may be appointed for different provisions of this Part of this Act, and for different foreign countries.

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PART II.

Passenger and Emigrant Ships.

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Provision as to the time at which a steerage passenger to be ready to embark.

19. For the purpose of adapting section three hundred and twenty-eight of the principal Act to any hour of sailing, the following paragraph shall be substituted for paragraph (i.) of that section :—

"(i.) The steerage passenger is at the place of embarkation before the hour appointed in his contract, or if no hour is appointed in the contract, before any hour fixed for the embarkation of which he has received not less than twenty-four hours' notice; and"

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PART III.

Seamen's Food.

Statutory scale of provisions for crew.

25.—(1) The master of every ship for which an agreement with the crew is required under the Merchant Shipping Acts shall, if the agreement is made after the first day of June nineteen hundred and seven, furnish provisions to every member of the crew (who does not furnish his own provisions) in accordance with the scale set out in the First Schedule to this Act, and for the purposes of section one hundred and ninety-nine of the principal Act (which provides for compensation in the case of short or bad provisions) every such member of the crew of the ship shall be deemed to have stipulated by his agreement for provisions in accordance with that scale.

(2) The power of the court to modify or refuse compensation under section one hundred and ninety-nine of the principal Act shall be extended to cases where a member of the crew claiming compensation, although he has not been supplied with the provisions actually required by the scale, has been supplied with provisions containing on the whole the same or a greater amount of wholesome nutriment in their place.

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PART IV.

Provisions as to Relief and Repatriation of Distressed Seamen, and Seamen left behind Abroad.

* * * * *

Section 29.

Property of seaman dying on a ship the voyage of which does not terminate in the United Kingdom.

29. The provisions of Part II. of the principal Act, relating to the property of deceased seamen shall be extended so as to apply to seamen belonging to a British ship registered in the United Kingdom, the voyage of which is to terminate out of the United Kingdom, and in that case the British consular officer at the port at which the voyage terminates, or, if the port is in a British possession, the officer of customs there, shall exercise the same powers as he may exercise under those provisions when a ship the voyage of which is to terminate in the United Kingdom touches and remains for forty-eight hours at a port elsewhere than in the United Kingdom, and those provisions shall apply accordingly.

Sanction required for discharge of seamen out of the United Kingdom.

30.—(1) The master of a British ship shall not discharge a seaman at any place out of the United Kingdom (except at a port in the country in which he was shipped), unless he previously obtains, endorsed on the agreement with the crew, the sanction of the proper authority as defined for the purpose in this Part of this Act, but that sanction shall not be refused where the seaman is discharged on the termination of his service.

(2) The authority to whom an application is made for sanction under this section may, and, if not a merchant, shall, examine into the grounds on which a seaman is to be discharged at a place out of the United Kingdom, and for that purpose may, if he thinks fit, administer oaths and may grant or refuse the sanction as he thinks just, but such sanction shall not be unreasonably withheld.

(3) If the master of a ship fails to comply with this section, he shall, in respect of each offence, be guilty of a misdemeanour, and in any legal proceeding for the offence it shall lie on the master to prove that the sanction was obtained or could not be obtained or was unreasonably withheld.

Certificate of discharge abroad.

31. Where the master of a British ship discharges a seaman at any place out of the United Kingdom, he shall give to that seaman a certificate of discharge in a form approved by the Board of Trade, and, in the case of any certificated officer whose certificate he has retained, shall return that certificate to him.

Repatriation of seamen on termination of service at foreign port.

32.—(1) Where the service of a seaman belonging to a British ship terminates at a port out of His Majesty's dominions otherwise than by the consent of the seaman to be discharged during the

currency of the agreement, the master of the ship shall, besides giving the certificate of discharge required under this Part of this Act, and besides paying the wages to which the seaman is entitled, make adequate provision in accordance with this Act for his maintenance and for his return to a proper return port, and the proper authority as defined for the purpose in this Part of this Act shall endorse upon the agreement with the crew of the ship which the seaman is leaving the particulars of any provision so made.

(2) If the master fails, without reasonable cause, to comply with this section, the expenses of maintenance and of the journey to the proper return port,—

(*a*) if defrayed by the seaman, shall be recoverable as wages due to him ; and

(*b*) if defrayed by the proper authority or by any other person, shall (unless the seaman has been guilty of barratry) be a charge upon the ship to which the seaman belonged, and may also be recovered against the person who is the owner of the ship for the time being, or, where the ship has been lost, against the person who was the owner of the ship at the time of the loss, or, where the ship has been transferred to some person not being a British subject, either against the owner for the time being or against the person who was the owner of the ship at the time of the transfer, at the suit of the proper authority or other person defraying the expenses, or, in case they have been allowed to the authority or person out of public money, as a debt to the Crown, either by ordinary process of law or in the court and in the manner in which wages may be recovered by seamen.

(3) This section shall not apply in the case of a foreign seaman who has been shipped at a port out of the United Kingdom and discharged at a port out of the United Kingdom.

As to mode of recovering wages, see sects. 164 *et seq.* of the Merchant Shipping Act, 1894.

Discharge, etc., of seamen on change of ownership of ship at a foreign port.

33.—(1) Where a British ship is transferred or disposed of at any port out of His Majesty's dominions, any seaman belonging to that ship shall be discharged unless the seaman consents in writing in the presence of the proper authority as defined for the purpose in this part of this Act to complete the voyage of the ship if continued.

(2) Where a seaman is so discharged the provisions of this Part of this Act as to the certificate of discharge, and the return of the seaman to a proper return port, shall apply as if the service of the

Section 33.

seaman had terminated otherwise than by the consent of the seaman to be discharged during the currency of the agreement, and shall apply to foreign seamen whether they have been shipped at a port in the United Kingdom or not.

Expenses of medical attendance in case of injury or illness.

34.—(1) If the master of, or a seaman belonging to, a ship receives any hurt or injury in the service of the ship, or suffers from any illness (not being venereal disease, or an illness due to his own wilful act or default or to his own misbehaviour), the expense of providing the necessary surgical and medical advice and attendance and medicine, and also the expenses of the maintenance of the master or seaman until he is cured, or dies, or is returned to a proper return port, and of his conveyance to the port, and in the case of death the expense (if any) of his burial, shall be defrayed by the owner of the ship, without any deduction on that account from his wages.

(2) If the master or a seaman is on account of any illness temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of the removal and of providing the necessary advice and attendance and medicine, and of his maintenance while away from the ship shall be defrayed in like manner.

(3) The expense of all medicines, surgical and medical advice, and attendance, given to a master or seaman whilst on board his ship shall be defrayed in like manner.

(4) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman who dies whilst on service, shall, if duly proved, be deducted from the wages of the seaman.

Recovery of expenses from owner.

35.—(1) If any of the expenses attendant on the illness, hurt, or injury of a seaman, which are to be paid under the Merchant Shipping Acts by the master or owner, are paid by any authority on behalf of the Crown, or if any other expenses in respect of the illness, hurt, or injury of any seaman whose wages are not accounted for under the Merchant Shipping Acts to that authority, are so paid, those expenses shall be repaid to the authority by the master or owner of the ship.

(2) If the expenses are not so repaid, the amount thereof shall with costs be a charge upon the ship, and be recoverable from the master or from the owner of the ship for the time being, or where the ship has been lost from the person who was the owner of the ship at the time of the loss, or, where the ship has been transferred

to some person not being a British subject, either from the owner for the time being or from the person who was the owner of the ship at the time of the transfer, as a debt to the Crown, either by ordinary process of law or in the court and in the manner in which wages may be recovered by seamen.

(3) In any proceeding for such recovery, a certificate of the facts, signed by the said authority, together with such vouchers (if any) as the case requires, shall be sufficient proof that the said expenses were duly paid by that authority.

As to mode of recovering wages, see sects. 164 *et seq.* of the Merchant Shipping Act, 1894.

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Account of wages in case of seaman left behind on ground of unfitness or inability to proceed to sea.

37.—(1) Where a master of a British ship leaves a seaman behind on shore in any place out of the United Kingdom on the ground of his unfitness or inability to proceed to sea, he shall deliver to the person signing the required certificate of the proper authority a full and true account of the wages due to the seaman, and if that person is a consular officer shall deliver the account in duplicate.

(2) If a master fails without reasonable cause to deliver the account, he shall for each offence be liable on summary conviction to a fine not exceeding ten pounds, and, if he knowingly delivers a false account, he shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds, in addition in each case to the payment of the wages.

Payment of wages of seamen left behind on ground of unfitness or inability to proceed to sea.

38.—(1) The master shall pay the amount of wages due to a seaman left behind on the ground of his unfitness or inability to proceed to sea, if he is left in a British possession to the seaman himself, and if he is left elsewhere to the British consular officer.

(2) Where payment is made to a British consular officer, that officer shall retain one duplicate of the account delivered to him, and, if satisfied with the account, endorse on the other duplicate a receipt for the payment, and return it to the master, and the master shall deliver the duplicate within forty-eight hours of his return to his port of destination, if that port is in the United Kingdom, to the superintendent at that port, and, if that port is not in the United Kingdom, to the proper authority as defined for the purpose of this Part of this Act.

(3) The payment shall be made, whenever it is practicable, in money, and, when not so practicable, by bills drawn on the owner of the ship, but if payment is made by bill—

(*a*) the person signing the required certificate of the proper authority shall certify by endorsement on the bill that the bill is drawn for seamen's wages, and shall also endorse on

Section 38.

the agreement with the crew the amount for which the bill is drawn, and such further particulars as the Board of Trade require;

(*b*) if the bill is drawn by the master, the owner of the ship shall be liable to pay the amount to the holder or endorsee thereof; and it shall not be necessary in any proceeding against the owner upon the bill to prove that the master had authority to draw it;

(*c*) a bill purporting to be drawn and endorsed under this section shall, if produced out of the custody of the Board of Trade or of the Registrar-General of Shipping and Seamen, or of any superintendent, be admissible in evidence; and any endorsement on any such bill purporting to be made in pursuance of this section shall also be admissible as evidence of the facts stated in the endorsement.

(4) If a master fails, without reasonable cause, to make such payment of wages as provided by this section, he shall for each offence be liable on summary conviction, in addition to the payment of the wages, to a fine not exceeding ten pounds.

Application by British consular officer of payments on account of wages of seamen left behind.

39. Where the amount of wages due to a seaman left behind on the ground of his unfitness or inability to proceed to sea is so paid to a British consular officer, that officer shall deal with the sum so paid to him in the following manner, namely:—

(1) If the seaman subsequently obtains employment at or quits the port at which the payment has been made, he shall deduct out of the sum any expenses incurred by him in respect of the maintenance of the seaman under the Merchant Shipping Acts, except such as the owner or master is by the Merchant Shipping Acts required to defray, and shall pay the remainder to the seaman, and deliver to him an account of the sums so received and expended on his behalf;

(2) If the seaman dies before his ship quits the port, he shall deal with the sum as part of the property of a deceased seaman; and

(3) If the seaman is sent to a proper return port at the public expense under the Merchant Shipping Acts, he shall account for the sum to the Board of Trade; and the sum, after deducting any expenses duly incurred in respect of the seaman, except such expenses as the master or owner of the ship is required by the Merchant Shipping Acts to pay, shall be dealt with as wages of the seaman.

Section 40.

Regulations as to relief and maintenance of distressed seamen.

40. The Board of Trade shall make regulations with respect to the relief, maintenance, and return to a proper return port of shipwrecked seamen and of seamen found otherwise in distress in any place out of the United Kingdom, and may, by those regulations (in this Act referred to as the distressed seamen regulations), make such conditions as they think fit with regard to that relief, maintenance, and sending to a proper return port, and a seaman shall not have any right to be relieved, maintained, or sent to a proper return port, except in the cases and to the extent and on the conditions provided by those regulations.

Provisions for relief and maintenance of distressed seamen.

41.—(1) Where either—

(*a*) any seamen, whether subjects of His Majesty or not, are found in any place out of the United Kingdom, and have been shipwrecked from any British ship or any of His Majesty's ships, or by reason of having been discharged or left behind from any such ship in any place out of the United Kingdom, are in distress in that place, or

(*b*) any seamen, being subjects of His Majesty, who have been engaged by any person acting either as principal or agent to serve in a ship belonging to the government or to a subject or citizen of a foreign country, are in distress in any place out of the United Kingdom,

the proper authority as defined for the purpose in this Part of this Act may, and, if not a merchant, shall, in accordance with and on the conditions prescribed by the distressed seamen regulations, provide in accordance with this Act for the return of those seamen (who are in this Act included in the term distressed seamen) to a proper return port, and also provide for their necessary clothing and their maintenance until their departure for such a port, and, in addition, in the case of shipwrecked seamen for the repayment of any expenses incurred in their conveyance to port after their shipwreck, and their maintenance while being so conveyed.

(2) The authority shall be paid in respect of the expenses incurred under this section on behalf of distressed seamen such sums as the Board of Trade may allow, and those sums shall, on the production of the bills of disbursements, with the proper vouchers, be paid as provided by this Part of this Act.

Recovery of expenses of relief of distressed seamen.

42.—(1) Where any expenses (other than excepted expenses as defined by this section) are incurred by or on behalf of the Crown, or are incurred by the government of a foreign country, and repaid to that government by or on behalf of the Crown, on account of a distressed seaman, either for his maintenance, necessary clothing, conveyance to a proper return port, or in case

Section 42.

of death for his burial, or otherwise in accordance with this Act those expenses (together with the wages, if any, due to the seaman) shall be a charge upon the ship, whether British or foreign, to which the distressed seaman belonged, and shall be a debt to the Crown from the master of the ship, or from the owner of the ship for the time being, or, where the ship has been lost, from the person who was owner of the ship at the time of the loss, or, where the ship has been transferred to some person not being a British subject, either from the owner for the time being or from the person who was the owner of the ship at the time of the transfer, and also, if the ship be a foreign ship, from the person, whether principal or agent, who engaged the seaman for service in the ship.

(2) The debt, in addition to any fines which may have been incurred, may be recovered by the Board of Trade, on behalf of the Crown, either by ordinary process of law or in the court and manner in which wages may be recovered by seamen.

(3) In any proceeding for such recovery the production of the account (if any) of the expenses furnished in accordance with this Act or the distressed seamen regulations, and proof of payment of the expenses by or on behalf of the Board of Trade, shall be *primâ facie* evidence that the expenses were incurred or repaid under this Act by or on behalf of the Crown.

(4) For the purpose of this section, excepted expenses are expenses incurred in cases where the certificate of the proper authority obtained on leaving a seaman behind states, or the Board of Trade are otherwise satisfied, that the cause of the seaman being left behind is desertion, or disappearance, or imprisonment for misconduct, or discharge from his ship by a naval court on the ground of misconduct, and expenses incurred on account of the return to a proper return port of a distressed seaman who has been discharged at the port at which he was shipped, or at some neighbouring port.

As to mode of recovering wages, see sects. 164 *et seq.* of the Merchant Shipping Act, 1894.

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Deduction from wages and payment to superintendents, &c., of fines.

44.—(1) Every fine imposed on a seaman for any act of misconduct for which his agreement imposes a fine shall be deducted as follows (that is to say) :—

(*a*) if the offender is discharged in the United Kingdom, and the offence, and the entry in the log book required by the Merchant Shipping Acts in respect thereof, are proved to the satisfaction, in the case of a foreign-going ship of the superintendent before whom the offender is discharged,

and in the case of a home-trade ship of the superintendent at or nearest the port at which the crew are discharged, the master or owner shall deduct the fine from the wages of the offender;

(*b*) if the offender enters His Majesty's naval service or is discharged abroad, and the offence and the entry as aforesaid are proved to the satisfaction of the officer in command of the ship he so enters, or of the proper authority by whose sanction he is discharged, as the case may be, the fine shall be deducted as aforesaid and an entry made in the official log book of the ship and signed by the officer or authority to whose satisfaction the offence is proved.

(2) Every fine so deducted shall be paid—

(*a*) if the offender is discharged in the United Kingdom, to the superintendent;

(*b*) if the offender enters His Majesty's naval service, on the return of the ship to its port of destination, if that port is in the United Kingdom, to the superintendent before whom the crew is discharged, or in the case of a home-trade ship, to the superintendent at or nearest to the port at which the crew is discharged, and, if the port of destination is not in the United Kingdom, to the proper authority as defined for the purpose of this part of this Act;

(*c*) if the offender is discharged at any place out of the United Kingdom, to the proper authority.

(3) A proper authority shall remit any amounts received by them under this section at such times and in such manner, and render such accounts in respect thereof, as the Board of Trade require.

(4) If a master or owner fails without reasonable cause to pay any fine as required by this section, he shall for each offence be liable on summary conviction to a fine not exceeding six times the amount of the fine not so paid.

(5) An act of misconduct for which any fine has been inflicted and paid by, or deducted from the wages of, the seaman, shall not be otherwise punished under the Merchant Shipping Acts.

Proper return port.

45. For the purpose of this Part of this Act, either the port at which the seaman was shipped or a port in the country to which he belongs, or some other port agreed to by the seaman, in the case of a discharged seaman, at the time of his discharge, shall be deemed to be a proper return port:

Provided that in the case of a seaman belonging to a British Possession who has been shipped and discharged out of the

Section 45.

United Kingdom the proper officer may treat a port in the United Kingdom as a proper return port.

Mode of providing for return.

46.—(1) A seaman may be sent to a proper return port by any reasonable route, either by sea or land, or partly by sea and partly by land.

(2) Provision shall be made for the return of the seaman as to the whole of the route if it is by sea, or as to any part of the route which is by sea, by placing the seaman on board a British ship which is in want of men to make up its complement, or, if that is not practicable, by providing the seaman with a passage in any ship, British or foreign, or with the money for his passage, and, as to any part of the route which is by land, by paying the expenses of his journey and of his maintenance during the journey, or providing him with means to pay those expenses.

(3) Where the master of a ship is required under this Part of this Act to provide for the return of a discharged seaman to a proper return port, the master may, instead of providing the seaman's passage, or the expenses of his journey, or of providing the seaman with means to pay his passage or those expenses, deposit with the proper authority such sum as that authority consider sufficient to defray the expenses of the return of the seaman to a proper return port.

(4) The Board of Trade may, by the distressed seamen regulations, make such provision as may be necessary for enabling the proper authority, and in the case of expenses required to be incurred in the United Kingdom any officer named for the purpose by the Board, to defray on behalf of the authority originally making arrangements for the return of a distressed seaman to a proper return port any expenses on account of that seaman which the authority originally acting in respect of him could defray, and any expenses so incurred shall for the purposes of this Part of this Act relating to distressed seamen be deemed to be expenses incurred on behalf of the distressed seaman.

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Provisions as to taking distressed seamen on ships.

48.—(3) On the production of a certificate, signed by the authority by whose directions any such distressed seaman was received on board, specifying the number and names of the distressed seamen and the time when each of them was received on board, and on a declaration made by the master before a justice of the peace, or any officer authorised to administer an oath, stating the number of days during which each distressed seaman has received maintenance, and stating the full complement of his crew and the actual number of seamen employed on board his

ship, and every variation in that number, whilst the distressed seamen received maintenance, the master shall be entitled to be paid, in respect to the maintenance and passage of every seaman so conveyed, maintained, and provided for by him, exceeding the number (if any) wanted to make up the complement of his crew, such sum per diem as the Board of Trade allow.

(4) If any master of a British ship fails without reasonable cause to comply with this section in the case of any distressed seaman, he shall for each offence be liable on summary conviction to a fine not exceeding one hundred pounds.

Definitions of "proper authority" and "seamen."

49. For the purposes of this Part of this Act, unless the context otherwise requires,—

(1) The expression "proper authority" means—

(*a*) as respects a place out of His Majesty's dominions, the British consular officer, or if there is no such officer in the place, any two British merchants resident at or near the place, or if there is only one British merchant so resident, that British merchant; and

(*b*) as respects a place in a British possession—

(i.) in relation to the discharge or leaving behind of seamen, or the payment of fines, a superintendent, or, in the absence of any such superintendent, the chief officer of customs at or near the place; and

(ii.) in relation to distressed seamen the governor of the possession, or any person acting under his authority; and

(2) The expression "seamen" includes not only seamen as defined by the principal Act, but also apprentices to the sea service.

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PART V.

Miscellaneous.

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Obligation to offer allotment notes.

61. In order to give effect to the provisions of section one hundred and forty-one of the principal Act enabling a seaman to require a stipulation for the allotment of his wages by means of an allotment note every superintendent or other officer before whom the seaman is engaged shall, after the seaman has signed the agreement, inquire of the seaman whether he requires such a stipulation for the allotment of his wages by means of an allotment note, and if the seaman requires such a stipulation shall insert the stipulation in the agreement with the crew, and any such stipulation shall be deemed to have been agreed to by the master.

Section 62.

Time for payment of allotment note.

62. A payment under an allotment note shall begin at the expiration of one month from the date of the agreement with the crew and shall be paid at the expiration of every subsequent month after the first month, and shall be paid only in respect of wages earned before the date of payment.

This section must be read in conjunction with the Merchant Shipping (Seamen's Allotment) Act, 1911, *post*, p. 1334.

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[NOTE.—Sect. 73 has been repealed by the Pilotage Act, 1913.]

75.—(1) Any person appointed to be a surveyor of ships under section seven hundred and twenty-four of the principal Act may be appointed either as a ship surveyor or as an engineer surveyor, or as both, and any reference in that section or in any other section of the principal Act to a shipwright surveyor shall be construed as a reference to a ship surveyor.

See sect. 724 of the Merchant Shipping Act, 1894, *ante*, p. 1303.

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PART VI.

SUPPLEMENTAL.

Construction of references to Merchant Shipping Acts.

84.—(1) In this Act the expression "principal Act" means the Merchant Shipping Act, 1894, and the expression "Merchant Shipping Acts" means the Merchant Shipping Acts, 1894 to 1900, and this Act.

(2) Any reference in this Act to any provision of the Merchant Shipping Acts, 1894 to 1900, which has been amended by any subsequent Act, or is amended by this Act, shall be construed as a reference to the provision as so amended.

Repeal.

85. The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

Short title and commencement.

86.—(1) This Act may be cited as the Merchant Shipping Act, 1906, and shall be construed as one with the principal Act, and the Merchant Shipping Acts, 1894 to 1900, and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1906.

(2) This Act shall, save as otherwise expressly provided, come into operation on the first day of June nineteen hundred and seven.

SCHEDULES.

FIRST SCHEDULE.

SCALE OF PROVISIONS.

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SECOND SCHEDULE.

ENACTMENTS REPEALED.

Sect. 85.

Session and Chapter.	Short Title.	Extent of Repeal.
57 & 58 Vict. c. 60.	The Merchant Shipping Act, 1894.	Sub-section (2) of section forty-eight, paragraph (*b*) of sub-section (1) of section ninety-two, section one hundred and forty-four. Sections one hundred and eighty-six to one hundred and ninety-three; sections two hundred and seven, two hundred and eight, and two hundred and thirty-five. In sub-section (2) of section two hundred and forty-six the words "and appoint and remove the superintendents, deputies, clerks, and servants," and in paragraph (*a*) of that sub-section the words "the number of persons to be so appointed and the amount of their salaries and wages, and" and the word "other"; and paragraph (*c*) of that sub-section; and in paragraph (*d*) of that sub-section the words "and all persons and offices so appointed shall be subject to the immediate control of the Board of Trade and not of the local marine board of the port"; and in sub-section (3) of the same section the words "and appoint and remove all the requisite superintendents, deputies, clerks, and servants." In section two hundred and sixty-seven the words "and every foreign steamship carrying passengers between places in the United Kingdom." Paragraph (3) of section two hundred and sixty-eight. Section two hundred and ninety-one. Section two hundred and ninety-nine. Paragraph (i) of section three hundred and twenty-eight; section three hundred and fifty-three; in sub-section (1) of section four hundred and thirteen the words "of England or Ireland."

SECOND SCHEDULE—*continued.*

Session and Chapter.	Short Title.	Extent of Repeal.
57 & 58 Vict. c. 60—*contd.*	The Merchant Shipping Act, 1894—*continued.*	Section four hundred and fifty-one as from the passing of this Act. In section four hundred and sixty-two, the words "has taken on board all or any part of her cargo," and the word "and" where it next occurs, and the words "whilst at that port"; in paragraph (*a*) of sub-section (2) of section five hundred and three the words "gross tonnage without deduction on account of engine room." The tenth, eleventh, twelfth, thirteenth, and fourteenth schedules as from the dates on which regulations, scales, conditions, and forms are prescribed by the Board of Trade in substitution for those schedules respectively.
61 & 62 Vict. c. 14.	The Merchant Shipping (Liability of Shipowners) Act, 1898.	Section one, from "provided," to the end of the section.
61 & 62 Vict. c. 44.	The Merchant Shipping (Mercantile Marine Fund) Act, 1898.	Section four.

SHIPOWNERS' NEGLIGENCE (REMEDIES) ACT, 1905.

[5 EDW. VII. c. 10. AUGUST 4, 1905.]

Be it enacted, etc., as follows:

Enlargement of remedy by action for injuries caused by negligence of a shipowner.

1.—(1) If it is alleged that the owners of any ship are liable to pay damages in respect of personal injuries including fatal injuries caused by the ship, or sustained on, in, or about the ship in any port or harbour in the United Kingdom in consequence of the wrongful act, neglect, or default of the owners of the ship, or the masters or officers or crew thereof, or any other person in the employment of the owners of the ship, or of any defect in the ship or its apparel or equipment, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying

Section 1.

in accordance with rules of court that the owners are probably liable to pay damages in respect of such injuries, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have made satisfaction in respect of the injuries, or have given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the injuries, and to pay all costs and damages that may be awarded thereon ; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

For powers of detention in the case of damage done by a foreign ship, see sect. 688 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).

"**Person Applying.**"]—See sub-s. 4, below.

(2) In any legal proceeding in relation to such injuries as aforesaid, the person giving security shall be made defendant, and shall be stated to be the owner of the ship which has caused the injuries, or on, in, or about which the injuries were sustained, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

Cf. sect. 688, sub-s. 3, of the Merchant Shipping Act, 1894.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and the expressions " port " and " harbour " have the same meaning as in that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this Act be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

(4) The words " person applying " in this section shall include an employer who has paid compensation or against whom a claim for compensation has been made under the Workmen's Compensation Act, 1897, as amended by any subsequent enactment, if he shows the judge that he probably is or will become entitled to be indemnified under that Act, and in such case this section shall apply as if the employer were a person claiming damages in respect of personal injuries.

Cf. the Merchant Shipping (Stevedores and Trimmers) Act, 1911, *post*, p. 1334.

Commencement and short title.

2. This Act shall come into operation on the first day of January, nineteen hundred and six, and may be cited as the Shipowners' Negligence (Remedies) Act, 1905.

MERCHANT SHIPPING (SEAMEN'S ALLOTMENT) ACT, 1911.

[1 & 2 Geo. V. c. 8. August 18, 1911.]

Whereas doubts have arisen as to the true interpretation of section one hundred and forty-one of the Merchant Shipping Act, 1894, and section sixty-two of the Merchant Shipping Act, 1906 :

Be it therefore enacted, etc. :

Regulations as to allotment note.

1. By agreement with the master an allotment note may be granted to a seaman providing for—

(*a*) payment of a greater sum than one half of the wages.

(*b*) payment at a period earlier than one month from the date of the agreement with the crew and at intervals more frequent than one month.

Short title.

2. This Act may be cited as the Merchant Shipping (Seamen's Allotment) Act, 1911.

MERCHANT SHIPPING (STEVEDORES AND TRIMMERS) ACT, 1911.

[1 & 2 Geo. V. c. 41. December 16, 1911.]

Be it enacted, etc. :

Power to arrest ship on claim for work done in stowing cargo, etc.

1.—(1) If it is claimed that any sum is due to any person from the owners of a ship for work done at any place in the United Kingdom by that person in connection with the stowing or discharging of cargoes on board or from that ship, or the trimming of coal on board that ship, and that ship is at any time found in any place in England or Ireland or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with rules of court that *primâ facie* the claim against the owners is a good claim and that none of the owners reside in the United Kingdom, issue an order for the arrest of the ship.

(2) An order under this Act shall be directed to some officer of customs and excise, or some other officer named in the order, and shall require him to detain the ship until such time as satisfaction has been made by the owners, agent, master, or consignee thereof in respect of the claim, or until security, to be approved by the judge, has been given by them or him, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the claim, and to pay all costs and damages that may be awarded thereon, and where any such order is made, the officer to whom the order is directed shall detain the ship accordingly.

(3) In any legal proceedings in relation to any such claim as aforesaid, the person giving security shall be made defendant, and shall be stated to be the owner of the ship, in respect of which the work giving rise to the claim was done, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceedings.

(4) Where a complaint is made to the Board of Trade that, before an application can be made under this section, the ship in respect of which the application is to be made will have departed from the limits of England or Ireland or three miles from the coast thereof, the ship shall, if the Board so direct, be detained for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention if made in accordance with the directions of the Board.

(5) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act.

(6) If the owner of a ship is a corporation the owner shall, for the purposes of this Act, be deemed to reside in the United Kingdom if the corporation has an office in the United Kingdom at which service of writs can be effected.

Application of Act where a ship is demised to charterers.

2. Where a ship has been demised to charterers, the provisions of this Act shall apply to claims against the charterers of the ship as they apply to claims against the owners of a ship, with the substitution of charterers for owners :

Provided that no ship shall be detained on a claim against the charterers of the ship after the expiration of the term for which the ship was demised to them.

[NOTE.—Under this section it is possible to arrest a foreign ship for claims, within the Act, against time charterers.]

Proceedings in Admiralty.

3. Any person having a claim to which this Act applies may, if he so desires, instead of proceeding under the foregoing provisions of this Act institute proceedings in Admiralty for enforcing the claim, and all courts having jurisdiction in Admiralty shall, if proceedings are so instituted, have the same jurisdiction for the purpose of enforcing the claim as if the claim were a claim for necessaries supplied to the ship.

[NECESSARIES.—See sect. 3, sub-s. 2, of the County Courts Admiralty Jurisdiction Act, 1868, *ante*, p. 1200.]

Saving.

4. Nothing in this Act shall affect the power of any person to enforce any claim to which this Act applies otherwise than in accordance with the provisions of this Act.

Section 5. Short title.

5. This Act may be cited as the Merchant Shipping (Stevedores and Trimmers) Act, 1911.

MARITIME CONVENTIONS ACT, 1911.

[1 & 2 Geo. V. c. 57.]

Provisions as to Collisions, &c.

Rule as to division of loss.

1.—(1) Where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault:

Provided that—

(*a*) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and

(*b*) nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed; and

(*c*) nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2) For the purposes of this Act, the expression "freight" includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

[Note.—This section alters the old Admiralty rule in the case of both vessels being to blame for a collision.]

Damages for personal injuries.

2. Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several:

Provided that nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

Section 3.

Right of contribution.

3.—(1) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the persons entitled to any such contribution as aforesaid shall, for the purpose of recovering the same, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Abolition of statutory presumptions of fault.

57 & 58 Vict. c. 60.

4.—(1) Sub-section (4) of section four hundred and nineteen of the Merchant Shipping Act, 1894 (which provides that a ship shall be deemed in fault in a case of collision where any of the collision regulations have been infringed by that ship), is hereby repealed.

(2) The failure of the master or person in charge of a vessel to comply with the provisions of section four hundred and twenty-two of the Merchant Shipping Act, 1894, (which imposes a duty upon masters and persons in charge of vessels after a collision to stand by and assist the other vessel) shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default, and accordingly sub-section (2) of that section shall be repealed.

Jurisdiction in cases of loss of life or personal injury.

5. Any enactment which confers on any court Admiralty jurisdiction in respect of damage shall have effect as though references to such damage included references to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought *in rem* or *in personam*.

[Note.—This is an important alteration in the existing law.]

Provisions as to Salvage.

General duty to render assistance to persons in danger at sea.

6.—(1) The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, her crew and passengers (if any), render assistance to every person, even if such person be a subject of a foreign State at war with His

Section 6.

Majesty, who is found at sea in danger of being lost, and, if he fails to do so, he shall be guilty of a misdemeanour.

(2) Compliance by the master or person in charge of a vessel with the provisions of this section shall not affect his right or the right of any other person to salvage.

Apportionment of salvage amongst owners, &c., of foreign ship.

7. Where any dispute arises as to the apportionment of any amount of salvage among the owners, master, pilot, crew, and other persons in the service of any foreign vessel, the amount shall be apportioned by the court or person making the apportionment in accordance with the law of the country to which the vessel belongs.

General Provisions.

Limitation of actions.

8. No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered, and an action shall not be maintainable under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment:

Provided that any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

"Within two years."—As to loss of life or personal injury see *The Caliph*, (1912) P. 213.

Application of Act.

9.—(1) This Act shall extend throughout His Majesty's dominions and to any territories under his protection, and to Cyprus:

Provided that it shall not extend to the Dominion of Canada the Commonwealth of Australia, the Dominion of New Zealand the Union of South Africa, and Newfoundland.

(2) This Act shall not apply in any case in which proceedings have been taken before the passing thereof and all such cases shall be determined as though this Act had not been passed. Section 9.

(3) The provisions of this Act shall be applied in all cases heard and determined in any court having jurisdiction to deal with the case and in whatever waters the damage or loss in question was caused or the salvage services in question were rendered, and sub-section (9) of section twenty-five of the Supreme Court of Judicature Act, 1873, shall cease to have effect. 36 & 37 Vict. c. 66.

(4) This Act shall apply to any persons other than the owners responsible for the fault of the vessel as though the expression "owners" included such persons, and in any case where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the vessel, this Act shall be read as though for references to the owners there were substituted references to the charterers or other persons for the time being so responsible.

10. This Act may be cited as the Maritime Conventions Act, 1911, and shall be construed as one with the Merchant Shipping Acts, 1894 to 1907. Short title and construction.

PILOTAGE ACT, 1913.

[2 & 3 Geo. V. c. 31. March 7, 1913.]

Be it enacted, etc. :

* * * * *

PART II.

* * * * *

Supplementary Provisions as to Licences and Certificates.

26. A pilotage authority may suspend or revoke any pilot's licence or any pilotage certificate granted by them if it appears to them, after giving the holder thereof an opportunity of being heard, that he has been guilty of an offence under this Act or of any breach of any byelaw made by the authority, or of any other misconduct affecting his capability as a pilot, or that he has failed in or neglected his duty as a pilot, or that he has become incompetent to act as pilot; and a licence or certificate, if so revoked shall cease to have effect, and, if so suspended, shall cease to have effect for the period for which it is suspended : Suspension or revocation of a pilot's licence or a pilotage certificate.

Provided that in any case where pilots are directly represented on a committee of a pilotage authority, that committee may

Section 26.

until a Pilotage Order is made regulating the relations between the authority and the committee, exercise the powers conferred on a pilotage authority by this section with respect to pilots' licences as though they were the pilotage authority.

Appeal by pilot, master, or mate, against action of pilotage authority with respect to pilot's licence or pilotage certificate.

27.—(1) If a complaint is made to the Board of Trade that a pilotage authority have—

(*a*) without reasonable cause refused or failed to examine any candidate for a pilot's licence, or a master or mate for a pilotage certificate, or to grant such a licence or certificate after examination; or

(*b*) conducted any examination for a pilot's licence or a pilotage certificate improperly or unfairly; or

(*c*) imposed conditions on the granting of a pilot's licence or a pilotage certificate which they have no power to impose or which are unreasonable; or

(*d*) without reasonable cause refused or failed to renew a pilotage certificate, or, having obtained possession of any such certificate, refused or failed to return it; or

(*e*) without reasonable cause suspended or revoked a pilotage certificate, or

(*f*) in any other manner failed properly to perform their duties under this Act with respect to the matters above-mentioned in this section, or improperly exercised any of their powers under this Act with respect to those matters:

the Board of Trade shall consider the complaint, and, if they are of opinion that the complaint is in any respect well founded, shall make such order as they think fit for the purpose of redressing the matter complained of, and the pilotage authority shall give effect to any order so made by the Board of Trade.

(2) If a pilotage authority refuse or fail to give effect to any such order of the Board of Trade, the Board of Trade may, for the purpose of giving effect to the order, exercise any powers of the pilotage authority, and anything done by the Board of Trade in the exercise of those powers shall have the same effect as if it had been done by the pilotage authority.

Appeal by pilot against action of pilotage authority in suspending, &c., pilot's licence.

28.—(1) If a pilot is aggrieved by the suspension or revocation by the pilotage authority of his licence, or by the refusal or failure of the pilotage authority to renew his licence, or by the refusal or failure by the pilotage authority who have obtained possession of his licence to return it to him, or by the imposition upon him by the pilotage authority of a fine exceeding two pounds, he may either appeal to a judge of county courts having jurisdiction within the port for which the pilot is licensed or to

a metropolitan police magistrate or stipendiary magistrate having jurisdiction within that port. Section 28.

(2) For the purpose of hearing the appeal, the judge or magistrate shall sit with an assessor of nautical and pilotage experience selected and summoned by the judge or magistrate.

(3) Objection may be taken to any person proposed to be summoned as an assessor, either personally or in respect of his qualification, and by either party to the appeal.

(4) The judge or magistrate may confirm or reverse the suspension or revocation of the licence, or make such order in the case as may seem just, and his decision shall be final, unless special leave to appeal from the same to the High Court on a question of law or a question of mixed law and fact is given by the judge or magistrate, or by the High Court, and in such case the decision of the High Court shall be final.

(5) The costs incurred by a pilotage authority under this section shall be payable out of any fund applicable to the general expenses of the pilotage authority.

(6) Rules with respect to the procedure under this section (including costs and the remuneration of assessors) may be made, as respects county court judges, by the authority having power to make rules of practice under the County Courts Act, 1888, and as respects metropolitan police and stipendiary magistrates by a Secretary of State, but in either case with the concurrence of the Treasury as to fees.

See Order L., rr. 22—29, and Forms 446—448, *post*, pp. 1346—1349.

* * * * *

29. Such fees shall be payable on the examination for a pilot's licence, or for a pilotage certificate, and on the grant, renewal, or alteration of any such licence or certificate, as may be fixed by byelaw made under this Act. Fees in respect of pilots' licences and pilotage certificates.

* * * * *

59. This Act shall (except as expressly provided) come into operation on the first day of April nineteen hundred and thirteen: Provided that any enactment, order, charter, custom, byelaw, regulation or provision with reference to pilotage affecting any pilotage district in particular, and in force at the time of the passing of this Act, including any exemptions from compulsory pilotage taking effect thereunder, shall remain in force notwithstanding anything in this Act or any repeal effected by this Act, until provision is made by Pilotage Order, or in the case of a byelaw, by byelaw made under this Act superseding any such enactment, order, charter, custom, byelaw, regulation or provision. Commencement of Act.

See *The Port Hunter*, (1915) W. N. 61; 31 T. L. R. 181.

Section 60. Repeal.

60.—(1) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule :

Provided that—

(*a*) Any Order in Council, licence, certificate, byelaw, rule, or regulation made or granted under any enactment hereby repealed or in pursuance of any power which ceases in consequence of this Act, shall, subject to the provisions of this Act, continue in force as if it had been made or granted under this Act ; and

(*b*) Any officer appointed, any body elected or constituted, and any office established under any enactment hereby repealed shall continue and be deemed to have been appointed, elected, constituted, or established, as the case may be, under this Act ;

(*c*) Any document referring to any Act or enactment hereby repealed shall be construed to refer to this Act or to the corresponding enactment of this Act.

(2) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section thirty-eight of the Interpretation Act, 1889, as regards the effect of repeals.

Extent of Act.

61. This Act extends to the United Kingdom and the Isle of Man, and applies to all ships, British and foreign.

Short title.

62. This Act may be cited as the Pilotage Act, 1913, and shall be construed as one with the Merchant Shipping Act, 1894, and the Acts amending the same ; and the Merchant Shipping Acts, 1894 to 1907 and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1913.

SCHEDULES.

FIRST SCHEDULE.

* * * * *

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
57 & 58 Vict. c. 60.	The Merchant Shipping Act, 1894.	Sections five hundred and seventy-two to six hundred and thirty-two inclusive, and the twenty-first schedule.
* *	* * * *	* * * * *
6 Edw. VII. c. 48.	The Merchant Shipping Act, 1906.	Section seventy-three.

ORDER L., RULES 22 TO 29.

THE PILOTAGE ACT, 1913, SECTION 28 (2 & 3 GEO. 5, C. 31).

Appeals under 2 & 3 Geo. 5, c. 31, s. 28, to be by petition.

22. A pilot who is aggrieved by any such action of a pilotage authority as in section 28 of the Pilotage Act, 1913, mentioned, and who desires to appeal to a judge of county courts under the said section, shall proceed by filing in the court having jurisdiction in Admiralty within the port for where he is licensed a petition setting forth concisely the matter in respect of which he is aggrieved and the grounds of appeal, and stating an address at which documents may be served on him.

Time for appealing.

23. Subject to the provisions of these rules, a petition of appeal must be filed within one month from the date of the action of the pilotage authority which forms the subject-matter of the appeal.

Title of petition.

24.—(1) The petition shall be intituled "In the matter of the Pilotage Act, 1913, and in the matter of an appeal by under section 28 of the said Act."

Copies.

(2) On the filing of the petition the appellant shall deliver to the registrar a copy thereof to be served on the pilotage authority, and a further copy for the use of the judge.

Date of hearing.

(3) On the filing of the petition the registrar shall fix a day and hour on and at which the petition will be heard, the day to be so fixed as to allow the copy of the petition to be served on the pilotage authority at least fifteen clear days before the date so fixed, unless the pilotage authority or their solicitors on their behalf agree to accept shorter service.

Notice to parties.

(4) On the day for the hearing being fixed the registrar shall give or send by post notice in writing to the appellant, stating the day and hour on and at which the petition will he heard, and shall issue a copy of the petition under the seal of the court for service on the pilotage authority, together with a notice signed by the registrar himself, and under the seal of the court, stating the place at which and the day and hour on and at which the petition will be heard, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

See Forms 446 and 446A, *post*, p. 1346.

Service on respondents.

(5) The copy and notice mentioned in the last preceding rule shall be served on the pilotage authority ten clear days at least before the day so fixed for the hearing, unless the authority or their solicitors on their behalf agree to accept shorter service.

Rules.

(6) The copy and notice may be served upon either the secretary or clerk of the pilotage authority, if such there be, and if not, then upon some member of the authority.

Mode of service. Where service effected otherwise than by bailiff.

(7) Service may be effected in accordance with Order VII. Rule 33, and if it is effected otherwise than by a bailiff the provisions of Order VII. Rule 34, shall apply.

Statement by pilotage authority.

25.—(1) The pilotage authority shall, five clear days at least before the day fixed for the hearing of the petition, or, where, short service is accepted, within such reasonable time before the day fixed for the hearing as such short service will allow, file with the registrar a statement showing the exact particulars of their action in the matter which forms the subject matter of the appeal and the grounds thereof; and they shall file a copy of the statement for the use of the judge and deliver a copy to the appellant.

Where pilot has been charged in criminal court.

(2) If the action of the pilotage authority was in respect of an offence with which the appellant has been charged in any court of criminal jurisdiction, the pilotage authority shall add to the statement full particulars of the hearing of such charge or (if the charge is not already disposed of) of the proceedings taken thereon.

Where statement not filed.

(3) In the case of non-compliance with the last two preceding paragraphs, and of the appellant not consenting at the hearing to dispense therewith, the judge may, on such terms as he may think fit, adjourn the hearing to enable the pilotage authority to file and deliver such statement.

Selection of assessor.

26.—(1) The assessor shall be selected from the court list of Admiralty assessors, or from any list which may be framed by or on the requirement of the Secretary of State of persons willing to act as assessors on appeals under the said section to a metropolitan police magistrate or stipendiary magistrate having jurisdiction within the port for which the pilot is licensed; or the judge may, if he thinks fit, select as assessor any other person of nautical and pilotage experience.

Notice of selection.

(2) The registrar shall send to each party to the appeal a notice stating the name and address of the assessor selected, and each party shall as soon as may be after the receipt of the notice inform the registrar in writing whether or not he accepts the assessor so selected.

See Form 447, *post*, p. 1347.

Objections, and hearing thereof.

(3) If any party does not accept the assessor so selected, he shall as soon as may be after the receipt of the notice inform the registrar in writing of his non-acceptance and of the reason

thereof, and he may give the names and addresses of any persons from whom he is willing that an assessor should be selected. The judge on receipt from the registrar of notice of non-acceptance shall fix a time and place for hearing the objection and selecting an assessor. The objection may be heard before the judge acting under the powers conferred on him by section nine of the County Courts Act, 1888, and notice of the time and place for hearing the objection shall be given to all parties interested. On the hearing such order shall be made as the judge shall think just, and any costs occasioned by the objection or consequent thereon may be ordered to be paid by the party objecting. Rules. Costs.

See Forms 447A and 447B, *post*, pp. 1347, 1348.

(4) When the assessor is selected the registrar shall send to him by post a summons according to the form in the Appendix. Summoning of assessor.

See Form 447C, *post*, p. 1348.

(5) The remuneration of the assessor shall be at the rate of two guineas for each day's attendance, together with any allowance for expenses which the judge may order; and such remuneration shall be considered as costs of the appeal. Remuneration of the assessor.

27.—(1) Unless by consent or otherwise ordered, only oral evidence shall be admitted at the hearing of the appeal. Evidence.

(2) Provided that in the case referred to in Rule 25, paragraph 2, depositions taken before a court of summary jurisdiction in respect of an offence with which the appellant has been charged shall be admissible as evidence at the hearing of an appeal against a decision arising from the same offence. Depositions taken before court of summary jurisdiction.

(3) Either party may by *subpœna duces tecum* compel the production of all the proceedings (including the evidence) taken before the pilotage authority. Production of proceedings before pilotage authority.

28.—(1) The judge may extend the time for filing a petition of appeal or for serving any notice under these rules upon such terms (if any) as the justice of the case may require, and any such extension may be ordered although the application for the same is not made until after the expiration of the time allowed under these rules. Extension of time for appealing and for serving documents.

(2) The judge may at any stage of the proceedings allow the amendment of the petition or of any statement under these rules, upon such terms as the judge may think right. Amendment of petition or statement.

29.—(1) Subject to the special provisions of these rules the procedure on an appeal shall be the same as the procedure in an action commenced in the court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force General provisions as to procedure on appeal.

Rules.

relating to such actions shall with the necessary modification apply accordingly; and in the application of such provisions and rules the petition of appeal shall be deemed to be a summons with particulars annexed, the day fixed for the hearing shall be deemed to be the return day, and the appellant and respondents shall be deemed to be plaintiff and defendants respectively.

Order on appeal.

(2) The order of the judge on any appeal shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and copies thereof shall be served on all parties affected thereby in accordance with Order XXIII. Rule 7: and such order shall be enforceable in the same manner as a judgment or order of the court.

See Form 448, *post*, p. 1348.

Costs.

(3) The costs of and incidental to an appeal shall be borne in such manner and taxed on such scale as the judge shall direct; and in default of such direction they shall be taxed under column B of the higher scale of costs in use in the county courts.

FORMS.

446.

Notice to Appellant under the Pilotage Act, 1913, Section 28, of day on which Appeal will be heard.

[*Not to be printed.*]

Order L., Rule 24 (4). *Conf.* Form 419.]

In the county court of , holden at .

No. of Plaint.

In the matter of the Pilotage Act, 1913,

and

In the matter of an appeal by , under section 28 of the said Act.

Take notice, that the judge of this court will hear the petition of appeal in this matter at [*state place of hearing*] on the day of , 19 , at the hour of in the noon.

Dated this day of , 19 .

Registrar.

To

of

446A.

Notice to the Respondents under the Pilotage Act, 1913, Section 28, of day on which Appeal will be heard.

[*Not to be printed.*]

[*Heading as in Form* 446.]

Order L., Rule 24 (4). [*Conf.* Form 420.]

Take notice, that the judge of this court will hear the petition of appeal in this matter, a sealed copy of which is served herewith at [*state place of hearing*] on the day of , 19 , at the hour of in the noon: and that if you do not attend either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

And further take notice that you are hereby required, five clear days at least before the day fixed for the hearing of the said petition, to file with me at my office situate at a statement in duplicate showing the exact particulars of your action in the matter which forms the subject-matter of the appeal, and the grounds thereof, and to deliver a copy of such statement to the appellant.

[*If the action of the pilotage authority was in respect of an offence with which the Appellant has been charged in any Court of criminal jurisdiction, add*

And you are hereby required to add to the statement and copies full particulars of the hearing of the charge preferred against the Appellant before [*state the court before which the charge was preferred*] in respect of the matter which forms the subject-matter of the appeal, or (if the charge is not already disposed of) of the proceedings taken thereon.]

Dated this day of , 19 .

Registrar.

To [*the Respondents*].

447.

Notice to Parties of Name of Assessor selected by Judge.

[*Not to be printed.*]

[*Heading as in Form* 446.]

Take notice, that His Honour the judge has selected Mr. of as an assessor to assist him in trying this appeal. *Order L., Rule* 26 (2).

Should you have any objection to the assessor so selected, you must forthwith send me in writing your reasons for your objection and you may mention the name of any other assessor whom you are willing should be summoned.

Should you have no objection to the assessor named being summoned, you must forthwith sign this notice and return it to me.

Dated this day of , 19 . Registrar.

To [*the appellant*]
and [*the respondents*].

The appellant [*or* respondents] has [*or* have] no objection to make to the above assessor being summoned.

[*Signature.*]

447A.

Notice of Sitting to hear Objections to proposed Assessor.

[*Not to be printed.*]

[*Heading as in Form* 446.]

Take notice, that His Honour the judge will on the day 19 , at the hour of in the noon, sit at [*state where*] to hear the objections made by the appellant [*or* respondents] to Mr. being summoned to act as assessor on the hearing of the appeal. *Order L., Rule* 26 (3).

Dated this day of , 19 .

Registrar.

To the [*appellant and respondents*].

447B.

Order upon hearing Objections to proposed Assessor.

[*Not to be printed.*]

[*Heading as in Form* 446.]

Order L., Rule 26 (3)

Upon the hearing of the objections made by the appellant [*or* respondents] to Mr. being summoned to act as an assessor on the hearing of this appeal.

It is ordered [*here insert order*]

Dated this day of , 19 .

Registrar.

447C.

Summons to Assessor.

[*Not to be printed.*]

[*Heading as in Form* 446.]

Order L., Rule 26 (4).

You are hereby summoned to attend and act as an assessor in this court on the day of , 19 , at the hour of in the noon, to assist the judge of this court on the hearing of an appeal by under the Pilotage Act, 1913, section 28.

Dated this day of , 19 .

Registrar.

To

of

448.

Order on Hearing of Appeal.

[*Not to be printed.*]

[*Heading as in Form* 446.]

Order L., Rule 29 (2).

Upon the hearing of the appeal of in this matter .

It is this day ordered that the action of the [*here set forth the title of the pilotage authority*] in [*here set forth the action of the authority in the matter which is the subject-matter of the appeal*] shall be confirmed [*or as the case may be*] [*here set forth the order made by the judge*].

And it is further ordered, that the appellant [*or* respondent] do pay the costs of the respondents [*or* appellant] of this appeal, such costs to be taxed by the registrar under column of the scales of costs in force in the county courts, and to be paid by the appellant [*or* respondents] to the registrar of this court within fourteen days from the date of the certificate of taxation.

Dated this day of , 19 .

Registrar.

To [*the appellant*]
and [*the respondents*].

[NOTE.—These are new rules and forms of 1914 made under the Pilotage Act, 1913, and replace the previous rules under the repealed sect. 610 of the Merchant Shipping Act, 1894.]

THE MERCHANT SHIPPING (CONVENTION) ACT, 1914.

[4 & 5 Geo. V. c. 50.]

An Act to make such Amendments of the Law relating to Merchant Shipping as are necessary or expedient to give effect to an International Convention for the Safety of Life at Sea, signed in London on January the Twentieth, Nineteen Hundred and Fourteen, and for Purposes Incidental thereto. (10th August, 1914).

Be it enacted, etc.

[Note.—Only such sections of the Act are here set forth as relate to matters connected with merchant shipping within the jurisdiction of the county court, or are required for purposes of reference.]

PART I.

Ice and Derelicts; Navigation of North Atlantic.

* * * * *

PART II.

Manning, Construction, and Equipment of Passenger Steamers.

Manning of passenger steamers.

8.—(1) Every passenger steamer which is registered in the United Kingdom shall be manned with a crew sufficient and efficient from the point of view of safety of life at sea for the purpose of her intended voyage, and shall during her voyage be kept so manned.

(2) If any of the provisions of this section are not complied with in the case of any steamer, sections four hundred and fifty-nine and four hundred and sixty of the principal Act shall apply to the steamer as it applies to ships which are, by reason of undermanning, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which they were intended, and the owner of the ship (if in fault) shall be liable in respect of each offence to a fine not exceeding one hundred pounds, and the master of the ship (if in fault) shall be liable in respect of each offence to a fine not exceeding fifty pounds.

(3) The Board of Trade shall make rules with respect to the manning of passenger steamers for the purposes of this section

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from the point of view of safety of life at sea, and where those rules apply to a ship the ship shall for the purposes of this section be deemed to be manned with a sufficient and efficient crew if she is manned in accordance with those rules, and not to be manned with a sufficient and efficient crew if she is not manned in accordance with those rules.

See sects. 459 and 460 of the Merchant Shipping Act, 1894, *ante*, p. 1284.

* * * * *

Power of Board of Trade to exempt passenger steamers going on short voyages.

13. Any passenger steamer proceeding on a voyage within the home trade limits shall be exempt from the provisions of this part of this Act, and the Board of Trade may by order exempt any passenger steamers proceeding on any other voyage specified in the order from all or any of the provisions of this part of this Act according to the voyage on which they are proceeding, if the Board are of opinion that, having regard to the nature of the voyage, it is unnecessary or unreasonable that the provisions from which the steamers are exempted should be applied to the steamers during the voyage; but no such exemption shall be given in relation to any voyage in the course of which the steamer goes more than two hundred sea miles from the nearest coast.

Definition of passenger steamer for the purpose of Part II.

14. For the purposes of this part of this Act—

A passenger steamer means a steamer which carries more than twelve passengers.

Persons who are on board a steamer by reason of *force majeure* or as the result of any obligation on the part of a master to carry shipwrecked persons or persons in like circumstances, shall not be deemed to be passengers and shall not be counted when reckoning the number of persons on board a ship.

PART III.

Wireless Telegraphy.

* * * * *

PART IV.

Safety Certificate.

Certificate of safety.

18.—(1) Where any provisions of Parts II. and III. of this Act are applicable to a British ship registered in the United Kingdom, that ship shall not proceed to sea from a port in the United Kingdom unless a certificate (in this Act referred to as a safety certificate) has been granted in respect of the ship, and is for the time being in force, and shall be provided with a safety certificate when coming into such a port.

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(2) If the provisions of this section are not complied with in the case of any ship, the master of the ship shall be liable to a fine not exceeding one hundred pounds.

(3) The master of any ship to which this section applies shall produce the safety certificate on being required by any officer authorised by the Board of Trade to require the production of the certificate; and if the certificate is not produced the ship may be detained.

(4) The safety certificate shall certify, in the form set out in the fourth schedule to this Act, that the provisions of the Convention therein referred to have been complied with, and shall be a certificate granted by or under the authority of the Board of Trade under this part of this Act.

Granting of safety certificates for British ships.

19.—(1) The Board of Trade shall not grant a safety certificate or allow a safety certificate to be granted unless they are satisfied, on the report of a wireless telegraphy inspector, as respects provisions relating to wireless telegraphy, and on the report of a surveyor of ships appointed under section seven hundred and twenty-four of the principal Act as respects other matters, that the certificate can be properly granted, and if they are so satisfied, shall grant the certificate.

(2) A copy of any report of a wireless telegraphy inspector or surveyor of ships for the purposes of this section shall be sent to the owner of the ship, and if the owner feels aggrieved by the report he may appeal to the court of survey for the port or the district where the ship for the time being is, in manner provided by the rules of that court.

On any such appeal the judge of the court of survey shall report to the Board of Trade on the question raised by the appeal, and for the purposes of deciding the question whether the certificate of safety is to be granted or not, the report from the judge of the court of survey shall be substituted by the Board of Trade for the report which has been the subject of appeal.

(3) A safety certificate shall not be in force for more than one year from the date of its issue, nor after notice is given by the Board of Trade to the owner, agent, or master of the ship in respect of which it has been granted, that the Board of Trade have cancelled the certificate.

(4) If a ship in respect which a safety certificate has been granted is absent from the United Kingdom at the time when the certificate expires, the Board of Trade, or any person authorised by them for the purpose, may, if it appears proper and reasonable so to do, grant such an extension of the certificate as will allow the ship to complete the return voyage to the United Kingdom,

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but no such extension shall have effect for a period exceeding five months from the date of the expiration of the certificate.

(5) Sections two hundred and seventy-six, two hundred and seventy-seven, two hundred and seventy-nine, two hundred and eighty, two hundred and eighty-one, and two hundred and eighty-two o the principal Act (which in connection with passenger steamer certificates relate to the transmission of a certificate, fees for certificate, the cancellation, delivery up, posting up, and penalties for the forgery of, a certificate) shall apply with respect to a safety certificate as they apply with respect to a passenger steamer's certificate, with the substitution of the report of the surveyor or inspector under this section for the declaration of survey.

As to courts of survey, see sects. 487—489 of the Merchant Shipping Act, 1894, *ante*, p. 1289.

* * * * *

Effect of safety certificate.

21. Where a safety certificate has been granted in respect of a ship and is in force, any of the provisions of this Act or the rules made thereunder relating to the manning, construction or equipment of the ship, or the provision of wireless telegraphy and wireless telegraphy operators and watchers on the ship, which are applicable to the ship, shall be deemed to have been complied with unless it appears that the ship cannot proceed to sea without danger to the passengers or crew, owing to the fact that the actual condition of the ship does not correspond in substantial particulars with the certificate.

* * * * *

PART V.

Application of Act to Foreign Ships and to British Ships not Registered in the United Kingdom.

Application of Act to foreign ships and ships not registered in the United Kingdom.

23.—(1) Compliance with the provisions of Parts II. and III. relating to the manning, construction, or equipment of passenger steamers or relating to the provision of wireless telegraphy and wireless telegraph operators and watchers on a ship, and representing provisions of the Convention of this Act, shall be required in the case of a foreign ship or a British ship not registered in the United Kingdom which comes into or proceeds to sea from a port in the United Kingdom, in the same manner as compliance with those provisions would be required it the ship were registered in the United Kingdom, and the provisions of this Act shall apply to such a ship accordingly.

(2) A safety certificate granted by or under the authority of the Government of the country to which a foreign ship or a British

ship not registered in the United Kingdom belongs and recognised by the Board of Trade as granted in accordance with and for the purposes of the Convention, shall have the same effect as regards that ship as a safety certificate granted under this Act has as respects a ship registered in the United Kingdom. Section 23.

(3) A foreign ship, and a British ship not registered in the United Kingdom, coming into or proceeding to sea from a port in the United Kingdom—

(*a*) shall, if entitled to a total or partial exemption from the provisions of the Convention under a certificate of exemption recognised by the Board of Trade as granted in accordance with and for the purposes of the Convention, be exempted to the same extent from the corresponding provisions of this Act; and

(*b*) shall, if on a voyage on which a British ship registered in the United Kingdom would be entitled to a total or partial exemption from the provisions of Parts II., III., or IV. of this Act, be exempted to the same extent as a British ship registered in the United Kingdom would be exempted.

* * * * *

PART VI.

General.

26. Nothing in this Act shall subject any ship which, not being bound to a port in the United Kingdom, has been compelled to take refuge in such a port by stress of weather or *force majeure* to any provisions of this Act from which the ship would have been exempt in the ordinary course of the ship's voyage. Exception for ships compelled to take refuge by stress of weather, &c.

* * * * *

29.—(1) Any provision of this Act shall, unless the context otherwise requires, be in addition to, and not in derogation of, any provision of the Merchant Shipping Acts or any other enactment relating to the same or similar matters. Construction, short title, and commencement.

(2) Any reference in this Act to any provision of the Merchant Shipping Acts, 1894 to 1913, which has been amended by any subsequent Act, or is amended by this Act, shall be construed as a reference to the provision as so amended.

(3) In this Act the expression "the principal Act" means the Merchant Shipping Act, 1894, and the expression "the Merchant Shipping Acts" means the Merchant Shipping Acts, 1894 to 1913, and this Act.

(4) This Act may be cited as the Merchant Shipping (Con-

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vention) Act, 1914, and shall be construed as one with the principal Act, and the Merchant Shipping Acts, 1894 to 1913, and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1914.

(5) This Act shall come into operation on the first day of July nineteen hundred and fifteen:

Provided that His Majesty may by Order in Council from time to time postpone the coming into operation of this Act for such period not exceeding on any occasion of postponement one year as may be specified in the Order.

SCHEDULES.

FIRST SCHEDULE.

INTERNATIONAL CONVENTION ON SAFETY OF LIFE AT SEA.

Convention.

* * * * *

SECOND, THIRD, FOURTH AND FIFTH SCHEDULES.

* * * * *

THE MERCHANT SHIPPING (SALVAGE) ACT, 1916.

[6 & 7 GEO. V. c. 41.]

AN ACT TO AUTHORISE THE RECOVERY OF SALVAGE IN RESPECT OF SERVICES RENDERED BY CERTAIN SHIPS BELONGING TO HIS MAJESTY.

BE it enacted, etc.

Right of Admiralty to claim salvage in respect of services of certain ships.

1. Where salvage services are rendered by any ship belonging to His Majesty, and that ship is a ship specially equipped with salvage plant, or is a tug, the Admiralty shall, notwithstanding anything contained in section five hundred and fifty-seven of the Merchant Shipping Act, 1894, be entitled to claim salvage on behalf of His Majesty for such services, and shall have the same rights and remedies as if the ship rendering such services did not belong to His Majesty.

Short title and construction.

2. This Act may be cited as the Merchant Shipping (Salvage) Act, 1916, and shall be construed as one with the Merchant Shipping Acts, 1894 to 1914, and those Acts and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1916.

PART IV.

LIABILITY OF EMPLOYERS FOR INJURIES TO WORKMEN.

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CHAPTER I.

INTRODUCTORY REMARKS ON THE RELATION OF MASTERS AND SERVANTS AT COMMON LAW.

The relations between master and servant to-day, whatever may have been the case in the past, are purely founded on contract. Nor is there any reason why such contract should not be exactly what the parties choose to make it. So, further, as far as express terms are concerned, it is (saving statutory enactment) entirely as made. As regards implied terms, these have to be sought in the transitional periods and in the dim past of history, and some of them, no doubt, owe their origin to villenage, feudal tenures, and other ancient usages where the relationship was far from being one of contract.

Broadly speaking, a man is responsible for his own acts and own acts only. The great exception even more broadly stated, is that he is also responsible for those who act for him by his authority. But in the case of those employed as his servants, there is always the implied term in their contract of service that he shall not be answerable to them for the acts of their fellow servants. Put another way, the implied term is that where a man enters an employment, he takes all the risks incident to it, of which the risk of the negligence of a fellow servant is always one (*Priestly* v. *Fowler*, (1837) 3 M. & W. 1 ; 7 L. J. (N. S.) Ex. 42 ; 49 R. R. 495). But this in no way modifies an employer's responsibility for his own acts.

To his servant, as to any member of the public, he owes a duty to take reasonable care in all that he does. He must not lay a trap for him. If the service involve hidden, or secret, or unusual dangers, he must point them out. As regards such secret dangers, the servant is in the position of the public, as no man can be presumed to take a risk of the existence of which he is rightly ignorant. In all their relations together, the master must be reasonably careful, and however he carry on his business, whether in person or otherwise, he must conduct it on a system reasonably safe to all concerned, and in work of a dangerous character must take all reasonable precautions for the safety of his men ; for instance, he should not permit fuses to be used which do not give the men sufficient time to get into cover (*Sword* v. *Cameron* (1839) 1 D. 439 ; *Paterson* v. *Wallace*, 1 Macqueen, 748 ; *Smith* v. *Baker*, (1891) A. C. 325 ; 60 L. J. Q. B. 683). Whether a master conducts his business in person or not will soon transpire, but if he does not, the servant has a right to assume that he has done his best to select a competent man to act in his place (*Wilson* v. *Merry*, (1868) L. R. 1 H. L. Sc. 326). If he does act in person, it will be a question of fact for a jury whether the act of which his workman has reason to complain, was or was not negligent. *E.g.*, Are fellow servants incompetent ? Tools or appliances defective ? To which he may answer, he has taken all reasonable care in their selection, or as regards tools, that he has obtained them from responsible makers. He is not bound to provide the latest appliance, he must simply act with reasonable care, it might not be reasonable for a master after making inquiries about safety appliances which would have prevented the accident to fail to adopt any of them (*Toronto Power Co., Ltd.* v. *Kate Paskwan*, (1915) A. C. 734; 84 L. J. P. C. 148 ; [1915] W. C. & Ins. Rep. 444). So with similar questions. But however dangerous or perilous a service, a man may choose to face it for the sake of the extra earnings he presumably makes. So on discovering risks he had not anticipated he may still prefer to run them rather than close the engagement. In case of accident through want of care on the part of the master, the rights of the parties are well shown by the course taken by the pleadings. Thus, suppose a driver injured by a defective kecker to a cart supplied for his use by the defendant. His statement of claim shows a good cause of action when it alleges that by want of care, and in breach of a duty to him by the defendant, he has been injured. The defendant should have taken all reasonable care to supply a proper cart. The defence is complete when it alleges the plaintiff was a servant in the employ of the defendant, and was injured by a risk of such employment. The reply again is an answer when it states that he was ignorant of the risk, and it was not one contemplated by the contract. Such, the strict course of the common law. From time to time the legislature have seen fit to protect a man against his own improvidence, *e.g.*, as where it insists on the fencing of machinery. Apart from such statute, the parties might bargain the machinery should or should not be fenced, and that the man should or should not take the risk. Again, if he did, presumably he would get higher wages, and the difference might more than pay for his insuring himself. But the statute says he shall not so contract. Hence the man's statement of claim, showing a complete cause of action, is met by a defence which the statute says shall be no defence. Therefore he is entitled to judgment

(*Baddeley* v. *Granville*, (1887) 19 Q. B. D. 423; 56 L. J. Q. B. 501; *Britton* v. *Great Western Cotton Co.*, (1872) L. R. 7 Ex. 130; 41 L. J. Ex. 99; *Groves* v. *Wimborne*, (1898) 2 Q. B. 402; 67 L. J., Q. B. 862). We now come to injuries caused him by the negligence of fellow servants. This we have seen is a risk he impliedly contracts to take. There is no reason the implied contract should not be varied by express contract. Probably but for the intervention of the legislature, with the growing power of the men's unions, the implied terms would have been modified by an express term in every case, and by one far better suited to the needs of each industry than the cast-iron rule of an inflexible Act. The implied term that a man takes the risk of the negligence of his fellow servants whatever their rank, is now general, though in Scotland the rule once prevailed that a master should be responsible for a man who was in his place and acted for him. But as regards such high officials, there is little need for any exception on their account; they will be usually good for damages themselves. The general rule holds in their case that every man is responsible for his own act, and it is no defence to an action for negligence that the injured man was a fellow servant (*Lees and Sykes* v. *Dunkerley Bros.*, (1911) A. C. 5; 80 L. J., K. B. 135).

Where a master is negligent and otherwise responsible, and relies on the implied term the man took the risk, we have to inquire: Was the risk contemplated? This will depend on the facts in each case, but generally we find that the implied term narrows down to where there is a *common work and a common master* (*Williams* v. *Linotype and Machinery, Ltd.*, (1915) 84 L. J., K. B. 1620. A man employed as a clerk, say, does not usually take the risk of being shot by a gamekeeper employed by the same master, and, of course, if men are employed on the same job by different masters, and one is hurt by the other's man, there is no contract whatever, express or implied, between them, and he will have the usual rights of a stranger (*Johnson* v. *Lindsay*, (1891) A. C. 371). One of the merits of the common law is its power of adapting itself to the varying needs of contemporary life. Thus we find that a gradual change was coming (I don't say had come) over this implied term, and it was being modified to suit actual facts. It was becoming more clear that men did not willingly contract to relieve their master of all consequences of his negligence because they happened to know as much about the facts as he did, and hence the implied term was coming rather to be that whilst a man took all the risks really incident to his employment—*e.g.*, a seaman the perils of the sea; a collier the perils of the mine; a driver the perils of the road—he did not take any risk which could have been reasonably avoided by the proper care and attention of a fairly considerate master (*a*). However, the natural development and modification of the implied contract between the parties, has been arrested first by the Employers' Liability Act, 1880, which made statutory what public opinion was beginning to require, and which, if left to itself, it would probably have effected in a far better way, and next by the Workmen's Compensation Act, of which the less said the better. Whether it is worse in principle, drafting or practice, we will not venture to decide, but the net result is that fraud and malingering have much increased, and that the honest workman, not his master, not the public even, as is vainly taught, but the honest workman himself, has to pay four shillings to insure a shilling risk, which is surely a triumph of legislative achievement.

NOTE.—(*a*) See further under Employers' Liability Act, 1880, "Defences to Action."

CHAPTER II.

LORD CAMPBELL'S ACT.

[9 & 10 Vict. c. 93.]

An Act for compensating the Families of Persons killed by Accidents.

(26th August, 1846.)

Whereas no action at law is now maintainable against a person who by his wrongful act, neglect, or default may have caused the death of another person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, that whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

2. And be it enacted, that every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

3. Provided always, and be it enacted, that not more than one action shall lie for and in respect of the same subject-matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

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4. And be it enacted, that in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

5. And be it enacted, that the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter.

6. And be it enacted, that this Act shall come into operation from and immediately after the passing thereof, and that nothing therein contained shall apply to that part of the United Kingdom called Scotland.

7. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

LORD CAMPBELL'S ACT AMENDMENT ACT.

[27 & 28 Vict. c. 95.]

An Act to amend the Act 9 & 10 Vict. c. 93, for compensating the Families of Persons killed by Accident.

(29th July, 1864.)

By this Act the following provisions were added:

1. If and so often as it shall happen at any time or times hereafter in any of the cases intended and provided for by the said Act that there shall be no executor or administrator of the person deceased, or that there being such executor or administrator no such action as in the said Act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought by and in the name of his or her executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would

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have been, if it had been brought by and in the name of such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure as nearly as may be, as if it were brought by and in the name of such executor or administrator.

2. And whereas by the second section of the said Act it is provided that the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided between the before-mentioned parties in such shares as the jury shall by their verdict direct: Be it enacted and declared, that it shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said Act for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

3. This Act and the said Act shall be read together as one Act.

Before this Act if a person was killed by the negligence of another his representatives had no right of action on the principle *Actio personalis moritur cum personâ*. As to the case of the wrongdoer dying before verdict given, the law is unaffected by the Act. So the statute only applies to death *caused* by the wrongful act. If death takes place from an independent cause before judgment obtained, the axiom applies, and the right of action is gone entirely.

The measure of damages where the claim is for a person killed is not the same as where a man is injured and claims for himself. In this case those entitled can only recover compensation for the actual pecuniary loss suffered by them, and not for mental suffering, nor loss of companionship (*Blake* v. *Mid. Ry.* (1852) 21 L. J. Q. B. 233), and damages cannot be recovered for funeral expenses or mourning (*Dalton* v. *S. E. R.*, (1858) 27 L. J. C. P. 227; 114 R. R. 726). But though the estate of the deceased may not have suffered, yet if a person has suffered damage himself he is entitled to recover as where property remains in the family, but he gets less advantage from it (*Pym* v. *G. N. R.*, (1863) 32 L. J. Q. B. 377). A reasonable expectation of pecuniary advantage from the deceased having remained alive may be taken into account by the jury, *e.g.*, the future earnings of a child (*Taff Vale Rail. Co.* v. *Jenkins*, [1913] A. C. 1; 82 L. J., K. B. 49); or the superior education children would have received if their father had lived (*Pym* v. *G. N. R.*, (1863) 32 L. J. Q. B. 377), and legal liability is not the test in respect of which damages may be recovered under this statute. In *Hetherington* v. *N. E. R.*, (1882) 10 Q. B. D. 160; 51 L. J. Q. B. 495, a son might have helped his father who was fifty-nine and blind, and it was held there was some evidence of such expectation (see also *Franklin* v. *S. E. R.*, (1858) 4 Jur. N. S. 565), but where it was admitted that the cost of main-

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tenance exceeded a girl's wages and no evidence of expectation of future benefit was given, it was held that no action was maintainable (*Meddan* v. *Minnis*, (1893) 37 S. J. 253). In a case where the dependants might have proceeded alternatively under the Workmen's Compensation Act, 1906, the judge should not in directing the jury refer to the amount of compensation which might have been recovered had such proceedings been taken (*Price* v. *Glynea and Castle Coal and Brick Co.*, (1916) W. C. & Ins. Rep. 93.

If no pecuniary damage be proved the action fails, and the defendants are entitled to a verdict (*Duckworth* v. *Johnstone*, 29 L. J. Ex. 25); and on the principle of compensation being only given for actual pecuniary loss sustained. In *Grand Trunk Railway of Canada* v. *Jennings*, (1889) 13 Ap. C. 800; 58 L. J. P. C. 1, it was held that any money received from an insurance on the life of the deceased has to be taken into account in assessing the damages. This has now been altered by the Fatal Accidents (Damages) Act, 1908. Action under the Act will only lie in those cases where the deceased would himself have been entitled to recover if he had remained alive; and if he has settled his claim in his lifetime no further action can be brought on his dying through the same injuries (*Read* v. *G. E. R.*, (1868) L. R. 3 Q. B. 355; 37 L. J. Q. B. 278). If, however, he has been induced by fraud, or through a mistake has given a discharge for an inadequate compensation, such discharge will not be conclusive against him if he lives, nor against his representatives in case of his death (*Stewart* v. *G. W. R.*, (1865) 2 D. J. & S. 319; *Hirschfield* v. *L. B. & S. C. R.*, (1877) L. R. 2 Q. B. D. 1; 46 L. J. Q. B. 94; *Lee* v. *L. & Y. R.*, (1877) L. R. 6 Ch. 527; *McDonagh* v. *MacLellan*, (1886) 13 R. 1000).

A child *en ventre sa mere* is entitled to recover under the Act (*The George and Richard*, (1871) 24 L. T. N. S. 717), but not an illegitimate child (*Re Wilson*, (1866) 35 L. J. Ch. 243, and *Dickenson* v. *N. E. R.*, (1864) 33 L. J. Ex. 91).

CHAPTER III.

THE EMPLOYERS' LIABILITY ACT, 1880.

[43 & 44 Vict. c. 42.]

An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their Service.

(7th September, 1880.)

Be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords spiritual and temporal and Commons in this present Parliament assembled and by the authority of the same as follows :

Amendment of law.

1. Where after the commencement of this Act personal injury is caused to a workman

(1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or

(2) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence ; or

(3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed ; or

(4) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or

(5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway ;

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a

workman of nor in the service of the employer nor engaged in his work. Section 1.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say, Exceptions to amendment of law.

(1) Under sub-section 1 of section 1, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

(2) Under sub-section 4 of section 1, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned; provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of Her Majesty's principal Secretaries of State, or by the Board of Trade or any other department of the Government under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.

(3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give or cause to be given information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

Generally.]—The effect of this sect. 1, as qualified by sect. 2, is to negative to a certain extent the implied contract on the part of the servant to take the known risks of the employment. It does not apply to express contracts to the contrary, nor to contracting out of the Act (*Griffiths* v. *Dudley* (*Earl of*), (1882) 9 Q. B. D. 357; 51 L. J. Q. B. 543), which may be done expressly or by implication or from notices posted about the building if brought to the workman's knowledge before engagement (*Carus* v. *Eastwood*, (1875) 32 L. T. N. S. 855). If a workman so contracts out, his representatives will be bound (*Griffiths* v. *Dudley*, *supra*). In the case of an infant there will be the further question, was it for his benefit (*Clements* v. *L. & N. W. R.*, (1894) 2 Q. B. 482).

By sub-s. 1 of sect. 1 as qualified by sect. 2, sub-s. 1, a master is made liable for defects, etc., due to his own negligence as at common law, or due to the negligence of some one entrusted by him with the duty of seeing such ways, etc., were in proper condition.

A master is made further liable by sub-s. 2, as qualified by sect. 8, for any one entrusted by him with superintendence, as stated by sub-s. 3 for any one authorised by him to give orders, and by sub-s. 4 for any act, etc., the result of an authorised instruction or of defective rules, unless as qualified by sect. 2, sub-s. 2, the rules have been certified as proper as there mentioned, Sub-s. 5 deals with railway signals, etc.

When a workman brings himself within the Act, his rights are precisely stated at the end of sect. 1. He is to have the same rights as if he were not a workman, in other words, he is to have the rights of a stranger.

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Defences to Action.]—In addition to traversing the workman's statements which bring him within the Act, a master has the special defences under the Act itself, viz., under sect. 2, sub-s. 3, as to the giving of notice of any defect, and under sect. 4, as to the giving of notice of injury and the bringing of an action within the time there limited. But in addition, an employer has the defences he would have had if sued by an actual stranger. These are traverse of the negligence alleged and the plea of contributory negligence. This latter is too well understood to need further comment, but under the traverse of negligence grew up a defence which threatened to shipwreck the Act, viz., the defence known as *volentia*, a useful but inaccurate word. The defence is quite independent of sect. 2, sub-s. 3, which requires a man to give notice of any defect of which he is aware. This defence goes to making the Act not apply at all: *Volentia* only arises where the Act has been found to apply and the workman has been given the rights of a stranger. Such rights are founded in tort and can be in no way modified or altered by contract. They exist or they do not exist. In our civic relations with one another, the underlying principle of our mutual responsibilities is found in the maxim, *sic utere tuum ut alienum non laedas*. So in *Heaven* v. *Pender*, (1883) 11 Q. B. D. 507; 52 L. J. Q. B. 702, Brett, M.R., well tells us "actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care or skill, by which neglect the plaintiff, without contributory negligence on his part, has suffered injury to his person or property." But a person may waive such duty. A person knowing such duty is not discharged, and still acting as if it were, does waive it. *Injuria non fit volenti*. If there is a danger, and you know it is there, you should not run into it, and then seek to make another liable if you are injured. Thus a man having established a case against his master under the Act finds he is to have the same rights as a stranger, and as a stranger he finds that, as he knew of the danger, knew of the neglect of duty, and yet willingly faced it, he has waived such duty being discharged to himself, and therefore has no claim. The logic is unanswerable, but it threatened to repeal the Act. In ninety-nine cases out of a hundred, a workman knows as much or more about defects than his master, and in each case he willingly faces them and waives his right to his master discharging his duty to him. Then what rights has he under the Act of any value? Thus the fine judgment of Bowen, L.J., in *Thomas* v. *Quartermaine*, (1887) 8 Q. B. D. 685; 56 L. J. Q. B. 340. But Esher, M.R., was against him on broad principles, and in the Divisional Court—overruling (*sic*) the Court of Appeal—in *Yarmouth* v. *France*, (1888) 19 Q. B. D. 647; 57 L. J. Q. B. 7, the distinction was made between accepting a risk and simply knowing of it. A man was told to drive a vicious beast of a horse and much objected, but in the end grumblingly obeyed. Then he had his leg broken in consequence, and the court held he might have known of the risk—it was evident he did, he had grumbled so much—but he had not agreed to take it. The good sense of the decision was as manifest as the logic was doubtful, and finds a modified confirmation in the House of Lords in the great case of *Smith* v. *Baker*, (1891) A. C. 325; 60 L. J. Q. B. 683, where the logic was unimpeachable, but the facts found somewhat amazing and startling. Here a man in a quarry was exposed to danger by stones being slung over him on a crane. In the end one slipped and injured him, and the Lords found in his favour. To appreciate the judgments of the majority it must be carefully remembered that the masters not having taken the point below that there was no evidence of negligence, the Lords would not there hear them to deny it before themselves.

The jury's findings in the county court were most jury-like, but the verdict had been challenged on the one point only, that the man had knowingly taken the risk. The law is most unexceptionable, and entirely agrees with that laid down by Bowen, L.J. The way the facts were viewed is alone debateable. As viewed by the majority, they came to this: The man

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knew stones were being slung over him, and had been for months. Therefore he could not be taken to say he was not *volens* so far. But he did not know that the employers were swinging them over him with machinery that was not reasonably fit for the purpose (the first finding of the jury) and which was admittedly negligence on their part. Thus the defence of *volentia* must always be narrowly scrutinized to see exactly how far a man is *volens* or is not. As a rule, in the case of all the ordinary and known risks of his employment, he is *volens*, but when risks are superadded by negligence, it must be further shown that he also knew of such superadded risks, and also took them.

In contract a man's position may be more favourable than under the Act. In contract a man may say to his master, "My implied contract is to take all the risks of my employment, equally yours is to take all reasonable care. I know you are not doing so, but nevertheless, I will continue working for you; but note, if anything happens to me through your want of care, I shall look to you for damages." This was said and assented to in *Yarmouth* v. *France*, and on such lines would have abundantly satisfied that decision, and in general, very little evidence would be required to establish this modified term instead of the agreement to take all risks as the true contract between the parties, so the *obiter* in *Smith* v. *Baker* almost go to the length of saying that this really now is the term to be implied. But under the Employers' Liability Act, a workman's rights are rigid and are to be those of a stranger only and are purely in tort, and as such, no modification can be implied. Therefore so far as you can bring home to him knowledge that a duty owed to him is not being discharged, then so far he must be taken to waive its discharge. I am in the streets of London. I take all the perils of crossing —very serious nowadays—but I do not take the superadded perils of negligent driving. But a motor cab is being wildly, madly driven and I choose to try to run past it, then I know of the added risk, and in taking it, clearly am *volens*. In tort the distinction between *sciens* followed by action and *volens* reduces to nothing. In contract *sciens* may be quite consistent with a master still remaining responsible for his own negligence. That he does, we may take it is very nearly the law, and it will take little to make the courts say that it actually is so in fact.

Sect. 1 in Detail.]—Note the overriding conditions in sect. 2, sub-s. 3.

Sub-s. 1.—By reason of a defect in the condition of the ways.]—This means a defect of a permanent or *quasi*-permanent nature, not merely an obstacle carelessly left in a roadway (*McGriffin* v. *Palmer's Ship Building Co.*, (1883) 10 Q. B. D. 5; 52 L. J. Q. B. 25), but the way itself may be of a temporary character, *e.g.*, a plank for mill hands to use (*Bromley* v. *Cavendish*, (1886) 2 T. L. R. 881). "In a shop where workmen are employed, any part of the shop which a workman is required, or it is his duty to traverse in the course of his employment, is a way" (*Willetts* v. *Watts*, (1892) 2 Q. B. 92; 61 L. J. Q. B. 540).

If a man is permitted to use a dangerous way, but an alternative safe way is provided, he may be debarred from recovering (*Prichard* v. *Lang*, (1889) 5 T. L. R. 639).

A hatchway on a ship left open by a fellow servant did not constitute a defect within this section (*M'Carthy* v. *Bristol Shipowners' Co.*, (1883) 10 L. R. Ir. 384). Work being naturally dangerous, as when a ship is being built, may involve ways being dangerous without being defective (*Forsyth* v. *Ramage*, (1891) 18 R. 21). A ladder close to an open tank to be used when dark and without a light might be a defective way (*Jamieson* v. *Russell*, (1892) 19 R. 898).

Defect in the condition of the works, machinery, or plant.]—By works completed works, not those in course of construction, are to be understood (*Howe* v. *Finch*, (1887) 17 Q. B. D. 187). But a servant injured by a wall falling down, which was in the course of being pulled down was held entitled (*Brannigan* v. *Robinson*, (1892) 1 Q. B. 344; 61 L. J. Q. B. 202), as similarly

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where a rotten floor in a building also being pulled down, gave way. A machine, not out of order, but constructively unfit for the purpose, may be defective (*Heske* v. *Samuelson*, (1884) 12 Q. B. D. 30; 53 L. J. Q. B. 45; *Paley* v. *Garnett*, (1886) 16 Q. B. D. 52), or being used for a purpose foreign to its intention, *e.g.*, a ladder used to support a scaffold, or a ladder supported against a piece of pipe instead of a wall (*Cripps* v. *Judge*, (1884) 13 Q. B. D. 583: 53 L. J. Q. B. 517, and *Weblin* v. *Ballard*, (1886) 17 Q. B. D. 122; 55 L. J. Q. B. 395).

A master is not bound to have the most up-to-date machine on the market if the one he has is reasonably fit for the purpose (*Walsh* v. *Whiteley*, (1888) 21 Q. B. D. 371; 57 L. J. Q. B. 586; *Butler* v. *Birbaum*, 7 T. L. R. 287); but he must not expose his servants to unnecessary risks as by not fencing (*Morgan* v. *Hutchings*, (1890) 59 L. J. Q. B. 197); on the other hand, neither must a servant wilfully run into danger and then seek to make his employer liable (*Martin* v. *Connah's Quay Alkali Co.*, (1884) 33 W. R. 216). A man has a right to assume his employer's tackle is sound, and is not bound to provide against possible defects, *e.g.*, as by taking shelter if he might think a chain defective (*Rooney* v *Allen*, (1883) 10 R. 1224). Machinery in itself not defective, but liable to be used by unskilled men, becomes constructively defective if they are likely to use it in such a way as to make it prove dangerous (*Staunton* v. *Scrutton*, (1893) 62 L. J. Q. B. 405). Of course, if a machine properly fit in itself becomes dangerous through the negligent user of a fellow servant, it will not be defective within the Act (*Robbins* v. *Cubbitt*, (1882) 46 L. T. 535, where a man was injured through a pail falling on him, due to the absence of the man who ought to have steadied it).

In this class of case the defence of *volentia* to which we have referred became one of increasing importance, but this we have discussed in defences to an action.

Along with the defect must also be proved the negligence as specified in the qualifying sect. 2, sub-s. 1, and when a wall was swaying dangerously, and the foreman at once stopped work, called in a proper contractor to make it secure, and when, after he had left it safe as he thought, the men returned and it fell on the plaintiff, it was held the master had been guilty of no negligence, either in person or by his foreman (*Moore* v. *Gimson*, (1889) 58 L. J. Q. B. 169). As a rule, the employment of a competent contractor to do work for an employer negatives negligence on his part, even if it proves defective (*Kiddle* v. *Lovett*, (1885) 16 Q. B. D. 605), and even if a master borrow plant, say a ladder, there is no presumption of negligence if it proves defective (*Perry* v. *Brass*, (1889) 5 T. L. R. 253). Note, this is the general rule as regards servants. As regards the general public it is subject to qualifications; *e.g.*, an owner pulling down a dangerous building cannot escape all responsibility by simply employing someone else to do it for him (*Hughes* v. *Percival*, (1883) 8 Ap. Cas. 443; 52 L. J. Q. B. 719).

Sect. 1, sub-s. 2.—By reason of the negligence of any person in the service of the employer who has superintendence entrusted to him whilst in the exercise of such superintendence.]—This sub-section must be read with sect. 8 as follows: *The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence and who is not ordinarily engaged in manual labour.* This qualification does not apply to where a superintendent voluntarily and temporarily engages in manual labour (*Ray* v. *Wallis*, (1887) 3 T. L. R. 777); nor need the superintendent of a necessity have actual superintendence over the workman injured. Thus in *Osborne* v. *Jackson*, (1883) 11 Q. B. D. 619, a bricklayer was at work near a scaffold which was being taken down by other men. The foreman helping them, handed a plank to a labourer, but owing to his being too far off he could not hold it, and through its falling the plaintiff was injured.

As a rule, one of a gang who himself works will not be a person within this section, even if he be the one to give directions (*Shaffers* v. *General*

Steam Navigation Co., (1883) 10 Q. B. D. 356 ; 52 L. J. Q. B. 260, and *Kellard* v. *Rooke*, (1888) 21 Q. B. D. 367 ; 57 L. J. Q. B. 599) ; otherwise if he be a foreman (*M'Monagee* v. *Baird*, (1881) 9 R. 364). In *Race* v. *Harrison*, (1893) 10 T. L. R. 92, a boy lost his fingers when cleaning a machine which the foreman told him to do, at the same time providing him with no proper scraper, and was held entitled.

1.—(3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed.

The negligence is not confined to the order itself, nor is it necessary that conformity to the order should be the *causa causans*, but there must be an intimate connection between the negligence, the injury, and the conformity to the order (*Wild* v. *Waygood*, (1892) 1 Q. B. 783 ; 61 L. J. Q. B. 391). An order not given in a particular case may be presumed from a course of action where in similar cases orders have been given previously ; as where a vanman has usually told a boy to help him to untie packages, and on one occasion he has been hurt through doing so, though without then receiving particular instructions (*Millward* v. *M. R. Co.*, (1885) 14 Q. B. D. 68 ; 54 L. J. Q. B. 202). Where men of the same standing and when working at a job, one tells the other to do something, such order does not come within the section (*Howard* v. *Bennett*, (1889) 58 L. J. Q. B. 129). Orders to do a forbidden thing, obviously do not come within the section. A man knows his duty is rather to disobey than to conform to them (*Bunker* v. *M. R. Co.*, (1883) 47 L. T. 476). A man may be used merely as a medium to convey orders from the master. This does not constitute him one to whose own orders a man is bound to conform (*Snowden* v. *Baynes*, (1890) 25 Q. B. D. 193 ; 59 L. J. Q. B. 325).

1.—(4) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf.

Note this is to be read as qualified by sect. 2, sub-s. 2. This is a section that has not been largely used. *Whatley* v. *Holloway*, (1890) 62 L. T. 639, seems to be the only case where it has been relied upon, and then hopelessly.

1.—(5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway.

The term railway applies to a temporary railway laid down by a contractor for the purposes of construction of works (*Doughty* v. *Firbank*, (1883) 10 Q. B. D. 358 ; 52 L. J. Q. B. 480) ; but a steam crane fixed in a trolley and propelled by steam on a set of rails is not a locomotive (*Murphy* v. *Wilson*, (1883) 52 L. J. Q. B. 524).

In *Gibbs* v. *G. W. R.*, (1884) 12 Q. B. D. 208 ; 53 L. J. Q. B. 543, where it was the duty of "F" to clean and adjust the points, etc., of the defendants' line, and he did it negligently, it was held there was no evidence of control.

In *Cox* v. *G. W. R.*, (1883) 9 Q. B. D. 106, a man in charge of a capstan worked by hydraulic power, set it in motion and, without giving the usual warning, sent some trucks along a line in a goods station and injured the plaintiff. Held, he had charge or control of a train (see also *Robinson* v. *Watson*, (1893) 20 R. 144, where a brake on a wagon was defective, but no duty to test was proved against the defendant, and the pursuer failed. In *M'Cord* v. *Cammell*, (1896) A. C. 57 ; 65 L. J. Q. B. 202, the question of fact as to control of a train was also involved.

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Limit of sum recoverable as compensation.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

This section prescribes a limit, not a measure of damages recoverable, and these have to be assessed once and for all (*Mitchell* v. *Darley Main Colliery Co.*, (1886) 11 A. C. 127; 55 L. J. Q. B. 529). Up to this limit a workman is entitled to receive compensation for all loss sustained as if he were a stranger. Thus in *Bortick* v. *Head*, (1886) 53 L. T. 909, the plaintiff belonged to a class of workman whose average earnings in three years would have amounted to 169*l.* Anything up to 169*l.* the court held he would have been entitled to, and therefore when the jury gave 69*l.* as damages—60*l.* for loss sustained in the service of his employer, and 9*l.* for loss of overtime worked for someone else—he was held entitled to both.

Nor may the limit thus ascertained be exceeded. In *Noel* v. *Redruth Foundry Co.*, (1896) 1 Q. B. 453; 65 L. J. Q. B. 330, the county court judge held that the 5*s.* a week which an apprentice received was nominal and gave 80*l.* compensation. The Divisional Court held this wrong, and decided that adventitious advantages such as tuition could not be included.

The principles on which the loss sustained is to be estimated are fully discussed in *Phillips* v. *L. & S. W. R.*, (1879) 4 Q. B. D. 406, affirmed (1880) 5 Q. B. D. 78; 49 L. J. Q. B. 233. They include: Damages for loss of time and the expense of his cure; for pain and suffering; and for the loss of future profit or earnings; of these the measure is the difference between what the plaintiff might have earned and was likely to have earned if he had not been injured, and what he might earn and was likely to earn in his injured state. The injured man's own damages are not to be lessened on account of any insurance he holds (*Bradburn* v. *G. W. R.*, (1875) L. R. 10 Ex. 1; 44 L. J. Ex. 9), though a different rule governs in case of death.

In case of death, the rights are provided for by the latter part of sect. 1, and are to be those of a stranger (see *ante*, under Lord Campbell's Act).

Limit of time for recovery of compensation.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks and the action is commenced within six months from the occurrence of the accident causing the injury, or in case of death, within twelve months from the time of death: provided always that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

See under sect. 7.

Money payable under penalty to be deducted from compensation under Act.

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been

Section 5.

brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

If a man has recovered penalties they are simply to be deducted under this section, but where a man has a remedy against two or more wrongdoers, and recovers against one, he cannot recover anything more from anyone else, whether he sues such other for the same cause of action or a different cause, but arising out of the same wrongful act. In *Wright* v. *London Omnibus Co.*, (1877) 2 Q. B. D. 271; 46 L. J. Q. B. 429, a cabman was injured through two 'bus drivers racing. They were summoned and fined, and had to pay him 10*l.* compensation. Afterwards, when he obtained a verdict against the 'bus company for nearly 200*l.*, judgment was entered for the defendants on the ground he had been already compensated. Following a *dictum* of Manisty, J., in *Munday* v. *Thames Iron Works Co.*, (1883) 10 Q. B. D. 62; 52 L. J. Q. B. 119, a practice has grown up in county courts of not allowing any other cause of action to be joined with that under the Act. But *Yarmouth* v. *France*, (1888) 19 Q. B. D. 647; 57 L. J. Q. B. 7, as law is only intelligible on the basis that rights both at common law as well as under the Act were taken into consideration.

Trial of actions.

6.—(1) Every action for recovery of compensation under this Act shall be brought in a county court, but may upon the application of either plaintiff or defendant, be removed into a superior court in like manner and upon the same conditions as an action commenced in a county court may by law be removed.

(2) Upon the trial of any such action in a county court before the judge without a jury one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a county court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in county courts.

"County court" shall with respect to Scotland mean the "Sheriff's Court" and shall, with respect to Ireland mean "Civil Bill Court."

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party in the manner provided by, and subject to, the conditions prescribed by section 9 of the Sheriff Courts (Scotland) Act, 1877.

40 & 41 Vict. c. 50.

Section 6.

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties and in respect of different injuries.

Sub-s. 1.]—In *Munday* v. *Thames Iron Works Co.*, (1883) 10 Q. B. D. 59; 52 L. J. Q. B. 119, it was held no reason for removal that the plaintiff had given a defective notice and wished to consolidate his action under the Act with one he had commenced in the High Court on his master's common law liability. Nor is it a reason for removal that more than 50*l.* is likely to be recovered (*McEvoy* v. *Waterford S. S. Co.*, (1885) 16 L. R. Ir. 291). Sect. 62 of the County Courts Act, 1888, entitles the defendant in any action of tort, when the claim exceeds a certain amount, and on certain conditions as to giving security for costs, etc., to remove the case to the High Court. Held by the Court of Appeal this section did not apply to actions under the Act (*Claxton* v. *Lucas*, 14 Q. B. D. 905). Application for *certiorari* is to a master in chambers on affidavit (Order LIV. r. 12).

In *Bates* v. *Warner*, (1889) 5 T. L. R. 582 (C. A.), where the defendant alleged he would not get a fair trial in the county court, and undertook to pay all extra costs incurred whether he won or lost, and after Lord Coleridge had been communicated with and had expressed his willingness to hear the case at the Chelmsford Assizes, he was allowed to have it removed.

Practice special to the Act.]—Order XLIV. deals with the practice special to the Act subject to which the procedure is that of the county court. (See Order LIII. r. 8 (1) as to certain special allowances authorised under the Act.)

Practitioners should remember that no appeal can be brought on any point unless it has been taken at the trial in the county court, and a note to that effect made by the judge (*Smith* v. *Baker*, (1891) A. C. 325; 60 L. J. Q. B. 683), as this somewhat differentiates from the more familiar procedure under the Workmen's Compensation Acts.

The following form of particulars can be adapted to most cases:—

No. of plaint.

In the county court of .
Holden at .

Between A. B. plaintiff,
and
C. D. defendant.

THE EMPLOYERS' LIABILITY ACT, 1880.

PARTICULARS OF DEMAND.

(I.) The plaintiff [*in case of death*, says that Y. Z., late of *give address*] was on the day of 19 a workman in the employ of the defendant, and on that day when at work [*give a short narrative of where and at what he was working and how the accident came about*] and by reason of such [*fall, blow or as the case may be*] he has sustained personal injuries [*describe such injuries*], and has suffered much pain, and has incurred, and will incur, much expense and loss on account thereof, and the plaintiff says that such injuries were caused him:—

(1) By reason of a defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the defendant namely [*state the defect and how such defect directly caused the accident*], and such defect arose from or was not discovered or remedied owing to the negligence of the defendant, or of E. F. [*give his description*], or some other person in the service of the defendant, and entrusted by him with the duty of seeing that the ways, works, plant, or machinery were in proper order.

(2) By reason of the negligence of J. K., who was in the service of the defendants as their [*describe his position*], and was a person in superinten-

dence, and whilst in the exercise of such superintendence, namely [*state facts relied on, and their connection with the accident*]. **Section 6 Notes.**

(3) By reason of the negligence of L. M., who was in the service of the defendants as a [*describe his position*], and was a person to whose orders and directions at the time of such injury he was bound to conform, and did conform, and that his injuries resulted from his having so conformed, namely, in ordering him to [*state orders, and their connection with the accident*].

(4) By reason of the act—or omission—of N. P., who was in the service of the defendant as [*state occupation*], done—or made—in obedience to the rules or byelaws of the defendant, namely [*describe act or omission, and set out the rule or byelaw relied on*].

(4A) By reason of the act—or omission—of N. P., who was in the service of the defendant as [*state occupation*], done—or made—in obedience to particular instructions given him by R. S. [*state his occupation or position*], who was a person delegated with the authority of the defendant in that behalf, namely [*state act or omission of N. P., and the instructions given him by R. S.*].

(5) By reason of the negligence of T. V., who was in the service of the defendant as a [*state occupation*], and had charge or control of the signal, points, locomotive engine, or train [*or as the case may be*] upon the railway of the defendant, namely [*state facts relied upon*].

(II.) The following are particulars of the loss and expenses sustained by the plaintiff by reason of the said injuries :—

Loss of weeks' wages from the [*date of accident*] to the date hereof, at £ per week .
Loss of week's wages for overtime worked with X. Y. [*give address*] between the same dates, at *s.* per week (*a*) . . . . . .
Other loss, if any . . . . . .
Paid expenses—
Doctor . . . . . .
Nurse . . . . . .
Extra nourishment . . . . .
Journey to seaside, lodgings, etc. . . . .
Other items actually incurred . . .
£

NOTE.—(*a*) *Bortick* v. *Head*, 53 L. T. 909.

The plaintiff claims £ [*the aggregate of three years' average wages of a workman in a similar employment*].

Dated this day of 19 .

(*Signed*)

Solicitor for the above-named plaintiff, who will accept service of all proceedings on his behalf at his office [*give address*].

To the Registrar of the Court
and to C. D., the defendant.

In case of death the above form can be readily altered, but this further clause must be added :—

(III.)—This action is brought by the plaintiff as the executor [*or as the case may be*] of the said Y. Z., deceased, for the benefit of E., the wife, and W. M. and D., the children of the said Y. Z., deceased. Particulars pursuant to statute are delivered herewith.

Particulars under Lord Campbell's Act (9 & 10 Vict. c. 93), s. 4, should be attached, and should give the facts as to the names, ages, and relationship to the deceased of those claiming, as well as the pecuniary advantage they received, or were likely to receive, from him had he not been killed.

It will be observed that the above form only covers a master's statutory liability. If the draughtsman likes to allege personal negligence throughout, in addition, no harm will be done.

Section 7

Mode of serving notice of injury.

7. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy and that the defect or inaccuracy was for the purpose of misleading.

Also read with this section, sect. 4.

Notice under the Act, except in case of death, is a condition precedent to recovering (*Clarkson* v. *Musgrave*, (1882) 9 Q. B. D. 386; 51 L. J. Q. B. 525), and it must be in writing, and the courts cannot waive its being given, even where, as in *Moyle* v. *Jenkins*, (1881) 8 Q. B. D. 116; 51 L. J. Q. B. 112, the defendant visited the injured man when in hospital, and the matron wrote as to his condition. More, a notice should conform to the requirements of sect. 7, and where a notice by the plaintiff's solicitor referred to particulars, given verbally, it was held insufficient (*Keen* v. *Millwall Dock Co.*, (1882) 8 Q. B. D. 482; 51 L. J. Q. B. 277).

But the notice is enough if it substantially gives the name and address of the person injured, and the cause and date of the injury. In *Stone* v. *Hyde*, (1882) 9 Q. B. D. 76; 51 L. J. Q. B. 452, the notice only gave the date of the injury, and stated that the plaintiff was and had been for some time under treatment at a hospital for injury to his leg. Held, having regard to the saving clause it might pass. So in *Clarkson* v. *Musgrave*, (1882) 9 Q. B. D. 396; 51 L. J. Q. B. 525, the notice stated as the cause the defendants' negligence in leaving a certain hoist in their warehouse unprotected, whilst the jury found it was their negligence in allowing the plaintiff, a young girl, to go into the hoist alone. Held notice sufficiently stated the cause of the injury.

In *Carter* v. *Drysdale*, (1883) 12 Q. B. D. 91; 53 L. J. Q. B. 557, the date was omitted, but the judge at the trial found it was not for the purpose of

misleading, and it was held a defect that could be cured. So in *Beckett* v. *Manchester Corporation*, (1888) 52 J. P. 346, the omission of address and date was not held fatal; and in *Previdi* v. *Gatti*, (1888) 58 L. T. 762, where the letter was not registered but was acknowledged, and where the date of the accident was stated as August 8th instead of August 9th, and the address and cause of injury omitted, it was also held good as a notice for the same reason. More, the court held its having been posted on August 19th was evidence of its having been received on the 20th. As regards delivery, this is in accordance with the Scotch case (*McGovan* v. *Tancred*, (1886) 13 R. 1033), where it was held if a notice be *de facto* received its mode of delivery is not material. But if sent by post on such a day that it could not possibly be received in time it will be bad (*McDonagh* v. *McLellan*, (1886) 13 R. 1800). In another case (*Rathbone* v. *Ross*, 35 S. J. 208), a workman who had been injured gave a notice addressed to Mr. Wm. Ross, but who in fact had been dead six months, his business being carried on by his trustee. Held it was sufficient. In case of death of the plaintiff, reasonable excuse for not sending notice is a question for the judge (*Trail* v. *Kelman*, (1887) 15 R. 4).

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On the other hand, if the defendant wishes to avail himself of the want of notice, it being a special defence, he must file the usual five days' notice required by Order X. r. 10, County Court Rules, 1889 (*Conroy* v. *Peacock*, (1897) 2 Q. B. 6; 66 L. J. Q. B. 425).

Again, the action must be commenced within six months from the occurrence of the accident. This condition cannot be waived. In *Clark* v. *Adams*, (1885) 12 R. 1092, notice had been given by a former agent who had died. A new agent was ignorant of the notice, and brought action at common law and failed. Then he learnt notice had been given, and asked leave to amend the claim so as to bring it under the statute. Six months having elapsed it was held not competent to allow the amendment.

8. For the purposes of this Act unless the context otherwise requires— Definitions.

The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour;

The expression "employer" includes a body of persons corporate or unincorporate.

A company acts by its directors acting in their capacity of directors, but their manager is only their servant and fellow-servant with the other employees of the company. It does not change the position that such manager has been appointed in pursuance of an Act of Parliament to that effect (*Howells* v. *Landore Steel Co.*, (1874) L. R. 10 Q. B. 62; 44 L. J. Q. B. 25). It does not include a mine owner where a workman is employed by an independent contractor, merely because he has a statutory control over his mine (*Marrow* v. *Flimby Coal Co.*, (1898) 2 Q. B. 588; 67 L. J. Q. B. 976; and *Fitzpatrick* v. *Evans*, (1902) 1 K. B. 505; 71 L. J. K. B. 302).

The expression "workman" means a railway servant and any person to whom the Employers' and Workmen Act, 1875, applies. 38 & 39 Vict. c. 90.

In the Employers' and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 10, a workman is thus defined:—

"The expression 'workman' does not include a domestic or menial servant but save as aforesaid means any person who being a labourer servant in husbandry journeyman artificer handicraftsman miner or other-

Section 8 Notes.

wise engaged in manual labour whether under the age of twenty-one years or above that age has entered into or works under a contract with an employer whether the contract be made before or after the passing of this Act be expressed or implied oral or in writing and be a contract of service or a contract personally to execute any work or labour."

And sect. 13 of the same Act enacts :—

"This Act shall not apply to seamen or to Apprentices to the sea service."

Nor does it apply to apprentices paying a premium of more than 25*l.*, nor to servants of the Crown, as the Crown is never included unless specifically named (*Attorney-General* v. *Hill*, 2 M. & W. 160; 6 L. J. Ex. 105; 46 R. R. 542).

It is a question of fact for the jury whether a man is a workman or not within the definition (*Pearce* v. *Lansdowne*, (1893) 62 L. J. Q. B. 441), though perhaps the court in some cases may find a difficulty in explaining to them the meaning to be applied to the word "menial." In Dr. Johnson's Dictionary we find "menial" defined as "Belonging to the retinue or train of servants"; and it is derived from the Saxon "meiny," "many," or "mani," or the old French "mesnie."

Other definitions have been attempted, but this seems to most harmonize with the decisions in some early cases where its meaning was involved. Thus a gardener has been held to be a menial servant (*Johnson* v. *Blenkinsop*, (1841) 5 Jur. 870; 62 R. R. 865); so also a head gardener, receiving a salary of 100*l.* a year, with the right to take apprentices (*Nowlan* v. *Ablett*, (1826) 2 Cr. M. & R. 5; 4 L. J. Ex. 155); and a huntsman (*Nicoll* v. *Greaves*, (1864) 33 L. J. C. P. 259); and in a recent case a potman in a public-house has also been so held (*Pearce* v. *Lansdowne*, *supra*).

Again, the following, not being workmen as specified, and not being engaged in manual labour were held not within the Act:—A grocer's assistant (*Bound* v. *Laurance*, (1892) L. R., 1 Q. B. 226; 61 L. J. M. C. 21); the driver of a tramcar (*Cook* v. *North Metropolitan Tramways Co.*, (1887) 18 Q. B. D. 683; 56 L. J. Q. B. 309); and the conductor of an omnibus (*Morgan* v. *London General Omnibus Co.* (C. A.), (1883) 13 Q. B. D. 832; 53 L. J. Q. B. 352); but the driver of a cart and horse used by wharfingers is a workman within the Act (*Yarmouth* v. *France*, (1888) 19 Q. B. D. 647; 57 L. J. Q. B. 7).

The following have been held to be workmen within the Act: A potter's printer, paid by the piece, and employing and paying assistants (*Grainger* v. *Aynsley*, (1881) 6 Q. B. D. 182; 50 L. J. M. C. 48); a slater, paid by the piece, using his own tools and the materials of his master (*Stuart* v. *Evans*, (1882) 49 L. T. 138); and a fireman on a steam canal barge is not a seaman within the excepting clause 13, and is within the meaning of the section (*Oates* v. *Monkland Steam Iron Co.*, (1884) 11 R. 579).

Commencement of Act.

9. This Act shall not come into operation until the first day of January one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.

Short title.

10. This Act may be cited as the Employers' Liability Act, 1880, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty-seven, and to the end of the then next session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

CHAPTER IV.

WORKMEN'S COMPENSATION ACT, 1906.

[6 Edw. VII. c. 58.]

An Act to Consolidate and Amend the Law with Respect to Compensation to Workmen for Injuries suffered in the Course of their Employment.

(21st December, 1906.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

SECTION 1.

Liability of Employers to Workmen for Injuries.

Liability of employers to workmen for injuries.

1.—(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as herein-after mentioned, be liable to pay compensation in accordance with the first schedule to this Act.

Any Employment.—Jurisdiction.]—This Act is limited to the ambit of the United Kingdom, *e.g.*, it does not apply to a contractor employing a workman in Malta (*Tomalin* v. *Pearson*, (1909) 2 K. B. 61), nor to a workman lost on a ship when on his way to do work for his English employers abroad (*Schwartz* v. *Indiarubber, etc., Telegraph Works*, (1912) 2 K. B. 299), and in *Kyzus* v. *Crow's Nest Pass Coal Co.*, (1913) W. C. & Ins. Rep. 38, an alien widow living in Austria, of a workman (also an alien) killed in Canada, was held entitled under an Act with similar provisions (see also *Baird* v. *Savage*, 43 S. L. R. 370).

Personal Injury.]—This is not limited to physical results, and nervous shock, etc., is included (*Brown* v. *John Watson, Ltd.*, (1914) W. C. & Ins. Rep. 228, at p. 232) ; *e.g.*, where a man became incapacitated through seeing a fellow workman killed (*Yates* v. *South Kirby, etc., Collieries*, 3 B. 418).

Accident.]—Onus of proof on applicant (*Maxwell* v. *Ruabon Coal and Coke Co., Ltd.*, (1917) W. C. & Ins. Rep. 36). When accident is admitted the arbitrator has no jurisdiction to inquire into the question whether there has been an accident or not (*Rudge* v. *G. Young and Son*, (1914) W. C. & Ins. Rep. 374). It has long been settled that an accident may be either external to the subject, *e.g.*, a man injured by an explosion ; or be purely subjective, as where a man unintentionally injures himself, *e.g.*, by a strain. But whichever it is it must be traceable to a definite act at a definite time. In *Alloa Co.* v. *Drylie*, (1913) W. C. & Ins. Rep. 213, a pump in a coal mine broke down, water accumulated, the men

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quitted work, it rose to their knees, one of them got pneumonia and died, and it was held through accident (compare *Barbeary* v. *Chugg*, (1915) W. C. & Ins. Rep. 174). In *Brown* v. *John Watson, Ltd.*, (1914) W. C. & Ins. Rep. 228, reversing *Watson* v. *Brown*, (1913) W. C. & Ins. Rep. 225, it was held that where an accident in a neighbouring shaft resulted in a delay in getting out of the mine, with the result a man had to stand waiting for the cage in a draught, and also got pneumonia and died, there was evidence of an accident directly affecting the man. See also *Glasgow Coal Co., Ltd.* v. *Welsh*, (1916) W. C. & Ins. Rep. 79. Contrast *Lyons* v. *Woodilee Coal and Coke Co.*, (1916) W. C. & Ins. Rep. 235. It does not follow that the accident must be held to arise out of the employment (*Lyons* v. *Woodilee Coal and Coke Co.*, (1916) W. C. & Ins. Rep. 235). Injury from disease not traceable to a definite act at a definite time is not injury from accident (*Eke* v. *Hart-Dyke*, (1910) 2 K. B. 677; *Coe* v. *Fife Coal Co.*, (1909) S. C. 393; *Martin* v. *Manchester Corporation*, (1912) W. C. Rep. 289; *Finlay* v. *Tullamore Union* (*Guardians*), (1914) W. C. & Ins. Rep. 222). The circumstances in which disease may be deemed an injury by accident was discussed in *Scott* v. *Pearson*, (1916) W. C. & Ins. Rep. 128 (the cattle ringworm case). Anthrax, according to facts, may or may not be traceable to such definite act (*Sherwood* v. *Johnson*, (1913) W. C. & Ins. Rep. 57); as also an injury from frost bite (*Warner* v. *Couchman*, (1912) A. C. 35); or injury from heat stroke; or disease caused by inhaling poisonous gases (*Broderick* v. *L. C. C.*, (1908) 2 K. B. 807; *Finlay* v. *Tullamore Union* (*Guardians*), *supra*). In *Morgan* v. *Zenaida*, 2 B. 19, the "definite act" was due to exposed position; in *Ismay* v. *Williamson*, (1908) A. C. 437, to the suddenness of attack. See also *M'Millan* v. *Singer Sewing Machine Co.*, (1913) W. C. & Ins. Rep. 70 (workman heated, chill, pleurisy; application dismissed); *Martin* v. *Manchester Corporation*, (1912) W. C. Rep. (there must be a definite time and place); *Swinbank* v. *Bell Bros.*, (1911) 5 B. W. C. C. 48 (the disease must be shown to be caused by the accident); *Ritchie* v. *Kerr*, (1913) W. C. & Ins. Rep. 297; *Coe* v. *Fife Coal Co.*, (1909) S. C. 393; *Spence* v. *William Baird & Co.*, (1912) W. C. Rep. 18; *Black* v. *New Zealand Shipping Co.*, (1913) W. C. & Ins. Rep. 480 (heart strain); *Lewis* v. *Port of London Authority*, (1914) W. C. & Ins. Rep. 299; *Walker* v. *Hockney Bros.*, (1909) 2 B. 20; *Clarkson* v. *Charente S. Co.*, (1913) W. C. & Ins. Rep. 422; *Evans* v. *Dodd*, (1912) 5 B. 305; *White* v. *Sheepwash*, (1910) 3 B. 382; *Walker* v. *Murrays*, (1911) Sc. 825; *Hayward* v. *West Leigh Colliery Co.*, (1914) W. C. & Ins. Rep. 21; (1915) W. C. & Ins. Rep. 235 (disease caused by an accumulation of facts); *Maskery* v. *Lancs. Shipping Co.*, (1914) W. C. & Ins. Rep. 290 (delicate stoker's death in the tropics due to heat stroke). Contrast *Pyper* v. *Manchester Liners, Ltd.*, (1916) W. C. & Ins. Rep. 301 (stoker's death from heat-stroke no "accident"). See *per* Pickford, L.J., at p. 306, for a short explanation of the cases.

Intentional or Felonious Assault.]—A free worker injured by strikers is not injured by accident (*Murray* v. *Denholm*, 48 S. L. R. 896); though a cashier murdered when travelling is (*Nisbet* v. *Rayne and Burn*, (1910) 2 K. B. 689). It was also held in *Blake* v. *Head*, (1912) W. C. Rep. 198, that a boy injured by a madman (his employer) was not entitled, though this decision seems doubtful. In *Anderson* v. *Balfour*, (1910) 2 Ir. R. 497, a gamekeeper while acting as such was attacked by poachers. Held that he had been injured by accident. In *Low* v. *Port of London Authority*, (1913) W. C. & Ins. Rep. 324, the appeal was formally dismissed with a view to an appeal to the House of Lords. The matter has now been settled by *Trim Joint District School, etc.* v. *Kelly*, (1914) W. C. & Ins. Rep. 359, which decided that accident includes premeditated injury intended by others, but not by the workman. But the "accident" must, of course, be incidental to the employment, and in most cases of premeditated injury the consequent incapacity through "injury by accident" would not be "injury by accident arising out of, etc." See, *e.g.*,

Section 1 Notes.

Clayton v. *Hardwick Colliery Co., Ltd.*, (1914) W. C. & Ins. Rep. 343 (reversed on appeal to the House of Lords on the ground that there was some evidence to support the arbitrator's finding, (1916) W. C. & Ins. Rep. 33); *Weekes* v. *Wm. Stead, Ltd.*, (1914) W. C. & Ins. Rep. 434. This distinction, however, does not appear to have been made in *MacFarlane* v. *Shaw* (*Glasgow*), *Ltd.*, (1915) W. C. & Ins. Rep. 32.

Suicide.]—Suicide while insane where the insanity is induced by the accident may be held to be an injury by accident arising out of, etc. But it would be necessary to give evidence of insanity. See, *e.g.*, *Grime* v. *Fletcher*, (1915) W. C. & Ins. Rep. 250. Suicide will not be presumed (*Furnivall* v. *Johnson's Iron and Steel Co.*, 5 B. 45). Of course all the links in the chain connecting injury with death must be proved (see, *e.g.*, *Withers* v. *L. B. & S. E. Ry.*, (1916) W. C. & I. 317).

Consequent Results due to Unreasonable Conduct or other Intervening Cause.]—The law is easier to state than to apply. Whatever a man's condition and to whatever that condition is due, a man must act reasonably, having regard to that condition. A man has typhoid—is he to eat a beefsteak? Or bronchitis—is he to sleep in a damp bed? The answer is no, and in each case he must do all that he reasonably can to perfect his recovery, and this whether his condition is due to accident or other cause. If he does so act reasonably—irrespective of whether the result proves he acted for the best or not—it is clear that the final consequence is as much due to the accident as if it had at once manifested itself. On the other hand, if he acts unreasonably, takes no care, the consequences are not due to the accident, but to his own folly. Of course the court may find as a fact that notwithstanding his want of care the same result would have taken place even had he been reasonable and careful, as that the typhoid or bronchitis instanced would have proved mortal in any event, and then the accident may still be held the cause of consequences apparently most remote (*Dunnigan* v. *Cavan*; *Thorburn* v. *Bedlington Coal Co.*, 5 B. 128). Where surgical appliances and first aid are provided, arbitrators may well find serious injuries developed from neglected trifling hurts to be due, not to the accident, but the neglect (see remarks, Court of Appeal, in *Brady* v. *Can. Pac. R.*, (1913) W. C. & Ins. Rep. 479). An arbitrator need not necessarily give no compensation. Thus refusing to undergo a reasonable operation or treatment may debar the workman from recovering, but a suspensory or nominal award may in certain circumstances be made in case the treatment proves ineffective. See *Wright* v. *Sneyd Collieries, Ltd.*, (1915) W. C. & Ins. Rep. 354. The arbitrator can award so much as he finds due to the accident (*Harwood* v. *Wyken*, (1913) W. C. & Ins. Rep. 317). In *M'Nally* v. *Furness, Withy & Co.*, (1913) W. C. & Ins. Rep. 717, where an injured man was sent to gaol for highway robbery, the court held that, since had he been at liberty to work he would be partially incapacitated, the mere fact that a collateral cause (viz., imprisonment) also prevented him working did not prevent him recovering compensation; and see *Harwood* v. *Wyken Colliery*, (1913) W. C. & Ins. Rep. 317.

But of course there must be incapacity *due* to the accident. If there is an intervening cause between accident and injury, *e.g.*, workman's own carelessness, refusal to undergo operation, etc., the incapacity is not *due* to the accident (see further under Schedule I. (3), "Physical Incapacity").

It may happen that a supervening cause may be the cause of the incapacity, as where a man broke his arm and it was set so badly by an unqualified man he could not use it. It was held that such bad setting was in no way a necessary result of the accident, and he failed to recover (*Humber Towing Co.* v. *Barclay*, 5 B. 142).

But when a lad hurt his knee, and went to a hospital, and there caught scarlet fever which attacked his knee, it was decided: "If the incapacity is the result of the accident, the chain of causation remains unbroken, although a fresh cause arising casually or uninvited by any special conditions of the workman may have aggravated the original injury (*Brown* v. *Kent*, (1913)

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W. C. & Ins. Rep. 639). Note, in the first case, the man acted unreasonably, or as may be said, invited the further injury by going to an unqualified man. In *Brown's case* the boy did the very best he could. Had he deliberately gone to a friend's room sick with the fever, he also might have been said to have invited his own misfortune. A man's own conduct usually differentiates the two classes of cases; *e.g.*, a seaman hurt his wrist, it was getting well. He went on shore, returned the worse for liquor, had a fight, it was hurt again, and he could not recover (*Nelson* v. *Allan Bros.*, (1913) W. C. & Ins. Rep. 532). Submitted that the test is, did the workman act reasonably ? (see *Molamphy* v. *Sheridan and Others*, (1914) W. C. & Ins. Rep. 19; *Walsh* v. *Locke & Co.*, (1914) W. C. & Ins. Rep. 95).

If the result of an accident remain it is no answer that a concurrent cause by disease or a second accident would have caused the incapacity. For even if true, the result of the first accident would still be found in diminished earning capacity; *e.g.*, a man might be earning 40*s.* a week and be entitled to 20*s.* a week compensation. Partially incapacitated, he might only be able to earn 20*s.* a week, when if again injured, he would only be entitled to 10*s.* a week compensation. Thus the result of his first accident is still found in his being reduced from a 40*s.* to a 20*s.* a week man (*Harwood* v *Wyken*, and *M'Nally's case*, *supra*).

Results due to Prior Accident or Diseased Condition.]—A subsequent incapacity is not necessarily to be regarded as due to an antecedent accident, the question is not whether the antecedent accident is a contributing cause of the later incapacity but whether the later incapacity was caused by an accident (*Noden* v. *Galloways, Ltd.*, (1912) 1 K. B. 46). An accident is no less an accident because it would not have happened or there would have been no ill results had there been no prior accident or diseased condition (*Borland* v. *Watson Gow*, 49 Sc. L. R. 10; see also analogous cases under "Arising out of.—Questions Involved, IV."). Of course the incapacity must be due to the accident and not solely to the diseased condition. Which is the cause is a question of fact, and if there is evidence to support the arbitrator's finding it cannot be reversed. See *e.g.*, *Legge* v. *Nixon's Navigation Co.*, (1914) W. C. & Ins. Rep. 306; *M'Ardle* v. *Swansea Harbour Trust*, (1915) W. C. & Ins. Rep. 448; *Beane* v. *Garrod*, (1915) *ibid.* 438.

"Arising out of and in the course of."—Introductory.]—A double condition is in these words. The applicant must prove both that the accident arose *out of*, and *in the course of* the employment. The words are used conjunctively, not disjunctively, not as meaning *out of*, that is to say, *in the course of*. An applicant fails if no evidence be given or if it be as consistent with one view of the facts as another (*Pomfret* v. *L. & Y. Rail. Co.*, (1903) 2 K. B. 718).

Evidence that Compensation has been paid.]—Such evidence is admissible on the issue whether the injury was due to an accident arising out of, etc. See *Harley* v. *Walsall Wood Collierg Co., Ltd.*, (1915) W. C. & Ins. Rep. 9.

Evidence of Workman's Habits.—This also is admissible if it throws light on the cause of death (*Joy* v. *Phillips, Mills & Co., Ltd.*, (1916) W. C. & Ins. Rep. 47).

Inference from Facts.]—Every material fact is rarely proved direct. It is often only inferred from other facts. Such inference is a question of law, and is the subject of appeal. Facts found are not the subject of appeal, and a finding of fact can only be set aside if there be *no* evidence in support.

Questions Involved.]—These mostly come under four heads:—

I. *Was there an accident in fact, and if so, where?*

Accident, when presumed]—There are cases where, direct proof being wanting, an accident has to be inferred (*Proctor* v. "*Serbino*" (*Owners*), (1915 W. C. & Ins. Rep. 425; (1916) W. C. & Ins. Rep. 30). The leading case is

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Mitchell v. *Glamorgan Coal Co.*, 9 W. C. C. 16. Here a miner injured his finger, and died from blood poisoning. It was unexplained how he injured it. He may have told his wife or doctor, but their evidence would not be admissible (see Schedule II. (4)). But it was proved he left home and reached the mine with it all right, and that when he again reached home it was crushed. From these facts was inferred that he had been (1) injured by accident, and (2) when at work, as the nature of his injuries was more consistent with what might have happened to him then rather than when on his way home. But note this case does not justify mere guessing nor mere deciding on probabilities. Facts must be proved from which the alleged accident may be inferred (*Howe* v. *Fernhill Collieries*, (1912) W. C. Rep. 408). "For inference, there is a fact which leads to the inference; in guessing, there is no fact to lead" (Buckley, L.J., in *Fleet* v. *Johnson*, (1913) W. C. Rep. 149).

Stapleton v. *The Dinnington Main Colliery Co.*, (1912) W. C. Rep. 376, is a valuable illustration of the kind of evidence agreed to warrant such inference. Here a miner complained of having been hurt, a thing the witness could see was the case, who then went to the place where he had been working and saw that a piece of coal three or four pounds in weight had fallen there, and the doctor agreed from what she saw that such a piece of coal falling on a man's foot would cause the injury complained of. Again in *Bateman* v. *Albion Combing Co.*, (1914) W. C. & Ins. Rep. 18, a workman was injured by the fall of a lid of a barrel from a window, no evidence was adduced to show why the lid fell. It did not merely fall perpendicularly, but must have had a considerable horizontal movement when it left the window. Held, that the workman had failed to show that it was an accident arising out of, etc.

Questions Involved.—II. *Was the man substantially doing what he was employed to do: or as otherwise put, was he acting within the sphere of his employment when he was injured?*

This proposition almost answers itself. Thus, if a man was doing what he was employed to do, even though in a wrong, negligent or forbidden way, the accident still arises out of the employment; on the other hand, if he was even meritoriously doing something he was not employed to do, the accident does not arise out of his employment.

The principle involved cannot be better shown than in *Harding* v. *Brynddu Colliery Co.*, (1911) 2 K. B. 747. Here a collier was set to drill a hole from above a seam in order to draw off dangerous gases which rendered the seam unsafe. He asked if he might go into the seam to see if his drill was running straight and was told, No! But he went all the same and was suffocated in consequence. Here, though disobedient, he was still about the work he was employed to do, viz., drilling the hole. The accident arose out of his trying to do such work, and as disobedience was no defence, his employers were held liable.

The contrary is shown in *Kerr* v. *Baird*, 48 S. L. R. 646, where a miner was injured through firing a shot which it was no part of his business to do. As the Lord President said, "He was arrogating to himself duties which he was neither engaged nor entitled to perform." See also *Pugh* v. *Dudley (Earl)*, (1914) W. C. & Ins. Rep. 265; *Anderson* v. *Sir W. G. Armstrong, Whitworth Co. Ltd.*, (1917) W. C. & I. 71.

So in *Plumb* v. *Cobden Flour Mills*, (1914) W. C. & Ins. Rep. 48, a man employed to stack bags, for his own convenience, improvised a revolving shaft as a pulley to raise them with and was injured. Held, he was employed to work in a specified way; if he chose to work in another, he was not doing what he was employed to do. Compare *Brinckman* v. *Harris*, (1916) W. C. & Ins. Rep. 45; *Chinnock* v. *Potter & Clark, Ltd., ibid.*, 55; *Payne* v. *Curtis & Son*, (1915) W. C. & Ins, Rep. 501; *Leggett* v. *Gibbons*, (1916) W. C. & Ins. Rep. 154. *A fortiori*, where a man through idleness chose such other dangerous way (*Burns* v. *Summerlee Iron Co.*, (1913) W. C.

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Rep. 45). But the mere fact that he is doing his work in a dangerous manner does not debar him from recovering (*Bullworthy* v. *Glanfield*, (1914) W. C. & Ins. Rep. 221; *Partridge* v. *Whiteley, Ltd.*, (1915) W. C. & Ins. Rep. 56). Contrast *Russell* v. *A. & G. Murray, Ltd.*, (1915) W. C. & Ins. Rep. 532. Consider also *Lancashire and Yorkshire Ry.* v. *Highley*, (1917) W. C. & I. 179. But if disobedience to an order extends the scope of the employment, *i.e.* adds a risk, and not merely a danger, and it is that risk which induces the accident, it may be held as in *Herbert* v. *Samuel Fox & Co., Ltd.*, (1915) W. C. & Ins. Rep. 154, (1916) W. C. & Ins. Rep. 1, that the resulting injury was not caused by an accident arising out of, etc. These cases of added risk should be very narrowly viewed. They generally resolve themselves into cases of a workman doing something quite apart and distinct from what he was employed to do. See *e.g. Hopley* v. *Pool, Lorrimer and Tabberer*, (1915) W. C. & Ins. Rep. 280; *Palmer* v. *Harrods, Ltd.*, (1916) W. C. & Ins. Rep. 213 (where a man used a parcels lift to go from floor to floor). Phillimore L.J. in the latter case (at p. 215) suggested a useful distinction when he differentiated between incurred risks and added risks. Contrast *Sexton* v. *Hosford*, (1916) W. C. & Ins. Rep. 216. If he be merely doing his work in a wrong way he can recover (*Corbett* v. *H. S. Pitt & Co.*, (1915) W. C. & Ins. Rep. 295). Entering a train while in motion has recently been held to add a risk (*Jibb* v. *Chadwick*, (1915) W. C. & Ins. Rep. 342). Compare *Baker* v. *Bradford* (*Earl*), (1915) W. C. & Ins. Rep. 576; affirmed, (1916) W. C. & Ins. Rep. 177. The tendency appears to be to extend the borders of this defence. (See further *infra, sub-tit.* **Rule disregarded**).

In exceptional cases a man may do a thing not within the letter of his contract of service, but within the spirit of it as in cases of emergency, *e.g.*, stopping a runaway horse in his master's interest (*Rees* v. *Thomas*, (1899) 1 Q. B. 1015); but still he can only recover on the principle: he was doing what he was employed expressly or impliedly to do.

A general direction "to find a job" might, of course, considerably extend the scope of the employment (*Lane* v. *W. Lusty & Son*, (1915) W. C. & Ins. Rep. 326). The scope would also probably be extended by a foreman saying that the workman would be dismissed if something happened, and the workman took the risk to prevent that thing happening or being discovered. See *McNally* v. *Bootle Jute Factory Co., Ltd.*, (1916) W. C. & Ins. Rep. 64.

Difficult questions arise when a man, doing what he is employed to do, is injured by an act not material to the employment. Still the true question seems to be, Was he injured through doing something he was substantially employed to do. An unsettling case and somewhat doubtful one is *M'Laughlin* v. *Anderson*, 48 S. L. R. 349, where a driver of a traction engine dropped his pipe, and jumping down to recover it, fell, and was killed, and his widow recovered. Had he dropped a tool it would have been clear. Compare *Evans* v. *Holloway*, (1914) W. C. & Ins. Rep. 75, where a driver was injured while altering a seat to give a fellow-workman a lift. Held, that the accident arose out of and in the course of, etc. *Watkins* v. *Guest, Keen and Nettlefold*, (1912) W. C. Rep. 150, raises a similar difficult point. Here employers provided a train for their men. Fifty yards before it arrived at a platfrom one got on the footboard, fell, and was injured. The court held, substantially he was doing what he was employed to do, viz., being carried by the train. Buckley, L.J., held he was not, viz., he was riding on the footboard. Contrast, *Price* v. *Tredegar Iron and Coal Co.*, (1914) W. C. & Ins. Rep. 295. A man may be within the "margin" of his employment while on his way to work along his employer's private road if such road be open to workmen. See *Nicol* v. *Young's Paraffin Light, etc., Co.*, (1915) W. C. & Ins. Rep. 72. Where a man is employed to do work in place A. he is still entitled to compensation if injured in place B. if there is evidence to show that he went to place B. in connection with his work at place A. (*Robert* v. *Geo. Trollope, etc.*, (1914) W. C. & Ins. Rep. 269). But

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such an act must be reasonably incidental to the employment. Thus where a carter went along a railway line where he had no business to be in order to get a loading permit it was held in *Morris* v. *Rowbottom, ibid.*, p. 67, that the accident did not arise out of, etc. Where a man is employed to do work A. but it is the practice to also do occasionally work B. and there is no rule against it, and if it were not done the works generally would be inconvenienced and the workman is injured while doing work B. he can recover (*Robson* v. *Wm. Baird & Co., Ltd.*, (1914) W. C. & Ins. Rep. 402).

Cases of men injured going to or from work turn frequently on the following principle laid down by the Master of the Rolls in *Whittall* v. *Staveley Iron and Coal Co., Ltd.*, (1917) W. C. & I. Rep. at p. 205. "If the circumstances are such that, either expressly or by implication, you must hold that the workman was entitled, as against his employer, to use a particular way over his employer's land, or over somebody else's land, in respect of which the employer has for the purpose of the contract of service obtained a right, then it is an implied term of the contract that the man should be there, and being there is part of his employment, and an accident happening there arises out of and in the course of the employment." See further, as to such cases, *infra*, p. 1386.

Where a commercial traveller went on a journey to a town on his route for his own convenience and was found dead on the rails and it appeared that shortly before he was drunk, it was held that the accident did not arise out of, etc. (*Renfrew* v. *R. & J. M'Crae, Ltd.*, (1914), W. C. & Ins. Rep. 195). So where a man was knocked down by a train when crossing the line by walking over the rails instead of crossing by the bridge (*Pritchard* v. *Torkington*, (1914) W. C. & Ins. Rep. 271). Compare *L. & Y. Ry.* v. *Highley*, (1917) W. C. & I. 179, a decision of the House of Lords which renders *Fox* v. *Rees and Kirby*, (1916) W. C. & I. 339 doubtful Where a scene shifter at a theatre was injured whilst doing the work of a baggage man for his own profit, it was held that that accident did not arise out of his employment as scene shifter (*Huscroft* v. *Bennett*, (1914) W. C. & Ins. Rep. 9). Where a boots, whose duty it was to await trains, fell on the rails it was held that the accident arose "out of" (*Blake* v. *Ramsay*, (1917) W. C. & I. 84).

Modification by Conduct.]—Saving as to statutory requirements, parties may make any contract of service they please. In many cases, material terms are found in notices, rules, etc., but even these may be modified by conduct. If a rule says one thing, and the accepted practice is another, it is some evidence the contract has been varied. Of course, as regards statutory rules and requirements, all parties know that these cannot be varied, and ignorance of them is of no avail (*Dobson* v. *United Collieries*, 43 S. L. R. 260). No doubt difficult questions arise whether a contract has thus been varied, but they are questions of fact and not of law.

Rule disregarded.]—If a rule is disregarded, it is *primâ facie* strong evidence a man was doing what he was not employed to do, *e.g.*, a colliery boy riding in a tub when not allowed to (*Barnes* v. *Nunnery Colliery Co.*, (1912) A. C. 44); but doing a thing in breach of a rule or carelessly or negligently or even disobediently does not necessarily debar the workman from recovering (*Blair & Co., Ltd.* v. *Chilton*, (1915) W. C. & Ins. Rep. 283; *M'Guire* v. *Gabbott*, (1915) W. C. & Ins. Rep. 363). If the disobedience adds a risk, distinct from those arising from the employment, which leads directly to the injury the man may not recover (*Herbert* v. *Samuel Fox & Co., Ltd.*, (1915) W. C. & Ins. Rep. 154; (1916) W. C. & Ins. Rep. 1). A man may, however, still be doing what he was employed to do, though most outrageously careless or stupid (*Bullworthy* v. *Glanfield*, (1914) W. C. & Ins. Rep. 221). Where there is a breach of a rule the workman may still recover (*Sanderson* v. *H. Wright, Ltd.*, (1914) W. C. & Ins. Rep. 177). It largely (perhaps entirely) depends on whether the rule limits the ambit of employment or

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merely defines the modus operandi, *ibid.* See also *M'William* v. *G. N. of Scotland Ry.* (1914), W. C. & Ins. Rep. 135; *Jackson* v. *Denton Colliery Co.*, (1914) W. C. & Ins. Rep. 91; *Hopley* v. *Pool, Lorrimer and Tabberer*, (1915) W. C. & Ins. Rep. 280; *Corbett* v. *H. S. Pitt & Co.*, (1915) W. C. & Ins. Rep. 295; *Wardle* v. *H. G. Enthoven & Sons, Ltd.*, (1917) W. C. & I. 18.

As regards statutory rules properly posted, a man cannot be heard to say he did not know of them (*Dobson* v. *United Collieries*, 43 S. L. R. 260).

Larking obviously is foreign to the employment altogether, and even an innocent workman so injured by another cannot recover (*Armitage* v. *L. & Y. Rail. Co.*, (1902) 2 K. B. 178) (note, however, the case of *Clayton* v. *Hardwick Coll. Co., Ltd.*, (1916) W. C. & Ins. Rep. 33); but if a workman properly doing his work is injured by the larking of a stranger, and his employment lends itself to such larking, *e.g.*, an engine driver going through a bridge from which little boys like to drop stones, he can recover (*Challis* v. *L. & S. W. Rail. Co.*, (1905) 2 K. B. 154). Whether the injury was caused by larking or arose out of and in the course of the employment is a question of fact and the arbitrator's decision will not be upset if there be evidence to support it (*Durrant* v. *Smith*, (1914) W. C. & Ins. Rep. 282; *Sambrook* v. *New Sharlton Colliery*, (1914) W. C. & Ins. Rep. 284). Payment of compensation in ignorance that the injury was caused by larking does not estopp the employer from raising this defence (*Harrison* v. *Featherstone*, (1917) W. C. & I. 74). See *infra*, IN THE COURSE OF.

Questions Involved.—II. (*continued*). **As to Seamen.**—Difficult questions arise where seamen are missing or found drowned, and no direct evidence of the accident is available. To entitle dependants to recover, they must prove (1) facts from which it can be inferred that at the time of his death, the deceased was doing what he was employed to do; and (2) facts from which it can be inferred that such employment would take him into the danger from which his death resulted. Both propositions must be proved. A seaman's contract of employment covers periods of leisure as well as periods of active duty, but during the former there is usually nothing to take him into a danger area. In *Swansea Vale* v. *Rice* (1912) A. C. 238, the inferred facts were that a mate on duty fell overboard through being giddy, and his dependants recovered; but in *Bender* v. *Zent*, (1909) 2 K. B. 41, it was only proved deceased went on deck for air, and they failed. In *Lee* v. *Stag Line*, (1912) W. C. Rep. 3, it was well held that in the tropics a fireman rightly went on deck for air, but the weak part of the case was its not being shown that this necessarily took him into danger; whilst in *Burwash* v. *Leyland*, (1912) W. C. Rep. 400, it was held a cook's employment at his galley could not have taken him into danger. But against this was the fact that the ship was rolling and the weather bad, and it might well have been held in such a case a seaman's contract of employment, even during the leisure period, took him into danger. The point, however, was not argued, and remains open for decision. The cases on the question of disappearance of seamen at sea were reviewed in *Lendrum* v. *Ayr S.S. Co.*, (1914) W. C. & Ins. Rep. p. 438; *Proctor* v. "*Serbino*" (*Owners*), (1915) W. C. & Ins. Rep. 425; (1916) W. C. & Ins. Rep. 30. As regards seamen on shore, see, further, IN THE COURSE OF.

Mines.]—The risk due to these engines of destruction has resulted in several accidents, accidents which in some cases could have been avoided had the master followed Admiralty instructions. Even in such a case, however, injury suffered by a seaman, at any rate, other than the master, would be injury by accident arising out of, etc. See *Risdale* v. *Kilmarnock* (*Owners*), (1915) W. C. & Ins. Rep. 141.

Questions Involved.—II. (*continued*). Presumptions when not provable what deceased was actually doing.

A man found dead within the **ambit of his employment** is a fact from which may (not must) be inferred he met his death when doing what he was

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employed to do, *e.g.*, a man whose duty it was to start machinery and who was found dead under revolving shafting (*McNicholas* v. *Dawson*, (1899) 1 Q. B. 773); a man who was being carried from his work and who fell out of a carriage when apparently putting a basket on a rack (*Pomfret* v. *L. & Y. Rail. Co.*, (1903) 2 K. B. 718); a policeman whose duties took him all over the company's premises and who was killed on a siding (*Grant* v. *Glasgow and S. W. Rail. Co.*, 45 S. L. R. 128); a carpenter employed at work on a barge who fell into the water on a dark night while crossing a dock quay not open to the public (*Longhurst* v. *J. Stewart & Son* (1912), *Ltd.*, (1916) W. C. & I. 292), compare *Armstrong* v. *Gregson & Co.*, *ibid.*, p. 226; and a mate who lived on board ship when in dock and was found drowned, and near his body on a jetty was some food he had obviously been obtaining (*Richardson* v. *Avonmore*, 5 B. 34). Contrast *Renfrew* v. *R. & J. M'Crae, Ltd.*, (1914) W. C. & Ins. Rep. 195; *Booth* v. *Leeds and Liverpool Canal Co.*, (1914) W. C. & Ins. Rep. 310. The evidence must lead to something more than a mere surmise or guess. It must go to prove definite connection between employment and accident (*Kettle* v. *McKay and Ryland*, (1916) W. C. & I. 297). If a seaman is drowned by falling from a quay when returning to his ship his dependants must show that he was running a risk not common to everybody (*Craig* v. *Cormack*, (1914) W. C. & Ins. Rep. 394).

Questions Involved.—III. *Was there a causal relation between his employment and his accident, i.e., was it to his employment, and not to something outside of it, that his accident was ultimately due?*

Causal Relation.]—A man is doing what he was employed to do and is injured. Still he must prove the accident arose out of the employment. The murder of a colliery cashier travelling with wages (*Nisbet* v. *Rayne*, (1910) 2 K. B. 689), and a gamekeeper injured by poachers (*Anderson* v. *Balfour*, 3 B. 588), have been held to arise out of the employment (these cases rather turn, however, on the meaning of the term "injury by accident"); but otherwise a free worker or so-termed blackleg attacked by strikers (*Murray* v. *Denholme*, 48 S. L. R. 896; see, however, now *Trim Joint District School* v. *Kelly*, (1914) W. C. & Ins. Rep. 359), or a carter attacked by a drunken rowdy (*Mitchinson* v. *Day Bros.*, (1913) W. C. Rep. 324), doubted in *Simpson* v. *Sinclair*, (1917) W. C. & I., at p. 169. Absence of causal relation, may prevent an innocent workman injured by his fellows from recovering. For example, a maid injured by a ball playfully thrown at her by the nurse in the same house failed to recover (*Wilson* v. *Laing*, 2 B. 118). Then there is the well known case of a cockchafer flying into the face of a sempstress sitting at an open window (*Craske* v. *Wigan*, (1909) 2 K. B. 635). Compare *Griffiths* v. *Robins*, (1917) W. C. & I. 44. More recently there occurred the case of a sailor who drank a solution of caustic soda which he thought was water put out to cool. It was held in the House of Lords that the resulting injury was not the result of an accident arising out of the employment (*Hutchison* v. *M'Kinnon*, (1916) W. C. & Ins. Rep. 17. Equally failed a sailor who injured himself through his drunken state (*Frith* v. *Louisianian*, (1912) 2 K. B. 155; *Murphy and Sandwith* v. *Cooney*, (1914) W. C. & Ins. Rep. 44; *Nash* v. "*Rangatira*" (*Owners*), (1914) W. C. & Ins. Rep. 490; 83 L. J. K. B. 1496; compare *Fraser* v. *John Riddell & Co.*, (1914) W. C. & Ins. Rep. 125). *Frith's Case*, *Murphy's Case*, *Nash's Case*, and the Scotch decision in *Renfrew* v. *R. & J. M'Crae, Ltd.*, (1914) W. C. & Ins. Rep. 195, were distinguished, however, in *Williams* v. *Llandudno Coaching and Carriage Co.*, (1915) W. C. & Ins. Rep. 91, which follows Fraser's case, and where the Master of the Rolls laid down the following principle: "A workman who, while doing an act which it was part of his duty to do, meets with an accident to which he is more exposed than persons not so engaged, is—or in case of death his dependants are—entitled to compensation from the employer, although the act is done negligently or contrary to rules." Of

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course, if serious and wilful misconduct be available as a defence the case is different. In *Cook* v. *Manvers Main Colliery*, (1914) W. C. & Ins. Rep. 278, a man went for his own convenience to a dangerous part of the mine, it was held that a consequent accident did not arise out of his employment or rather that his dependants had failed to discharge the *onus* of proving that it did. Contrast *Fearnley* v. *Bates and Northcliff, Ltd.*, (1917) W. C. & I. 207.

An important question always is, *Was the accident due to a danger special to the employment or to one common to the public in general?*

The leading cases on either side of the line are *Andrew* v. *Failsworth*, (1904) 2 K. B. 32, and *Warner* v. *Couchman*, (1912) A. C. 35. In the former case a workman while employed upon a building some thirty feet high was struck by lightning. It was held that there was evidence upon which the arbitrator could find that the accident arose out of the employment. In the latter case a journeyman baker was injured by frost bite while on his rounds. The arbitrator held that the accident did not arise out of the employment and the House of Lords held that he was justified in so finding. Both cases proceed on the principle enunciated by Cozens-Hardy, M.R., "it is not enough for the applicant to say the 'accident would not have happened if I had not been engaged in that employment, nor if I had not been in that particular place.' He must go further, and must say, 'The accident arose because of something I was doing in the course of my employment, or because I was exposed by the nature of my employment to some peculiar danger.'" Consider, however, *Simpson* v. *Sinclair*, (1917) W. C. & I. p. 164, at p. 169, where it was held that an accident due to a peril peculiar to the locality of employment though unconnected with the nature of the employment may be injury arising "out of." The same point was made in the Scotch case of *Robson* v. *Blakey*, (1912) W. C. Rep. 86, where a plumber in low health was laying pipes in a trench on a hot day and succumbed to the heat. Lord Kinnear summed up the position excellently as follows: "I only say in a word that I do not think that this man was exposed by his employment to any special risk to which other people were not liable, provided they happened to be working in the open air on July 26th, 1911." See also *Karemaker* v. *Corsican*, 4 B. 295.

On the other hand a result similar to that arrived at in *Andrew* v. *Failsworth* was attained in *Davies* v. *Gillespie*, 5 B. 64. See also *Pierce* v. *The Provident Clothing Co.*, (1911) S. C. 12, and *McNiece* v. *Singer*, (1911) 1 K. B. 997 (both of which cases were discussed in *Hughes* v. *Bett*, (1914) W. C. & Ins. Rep. 614), where collectors used bicycles to visit customers, and such use was contemplated by their employment, and where they had to continually ride through narrow and crowded streets and were injured by the traffic, it was there held that, though such danger was common to all users of the streets, yet it was a danger incident to their particular calling and arose out of their doing what they were employed to do. It is different where the cycling is only occasional (*Slade* v. *Taylor*, (1915) W. C. & Ins. Rep. 53; *Dennis* v. *A. J. White & Co.*, (1916) W. C. & Ins. Rep. 106; *Read* v. *Baker*, *ibid.*, 133; *Ince* v. *Reigate Education Committee*, *ibid.*, 278). And why not frost bite caused when delivering bread? Because, to quote Collins, M.R., in *Andrew* v. *Failsworth*, "If there is, under particular circumstances in a particular vocation, something appreciably and substantially beyond the ordinary normal risk which ordinary people run, and which is a *necessary* concomitant of the occupation the man is engaged in, then I am entitled to say that the extra danger to which the man is exposed is something arising out of his employment," a *dictum* quoted in *Slade* v. *Taylor*, *supra*. In *Martin* v. *John Lovibond*, (1914) W. C. & Ins. Rep. 76, where a drayman who had left his horse to get beer was injured while crossing the street on the return it was held that he could recover, as did the taxi-cab man who was wounded by a sentry while driving an officer to a fort (*Thorn* v. *Humm &*

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Co., (1915) W. C. & Ins. Rep. 224). In *Symmonds* v. *King*, (1915) W. C. & Ins. Rep. 282, a painter's assistant who crossed the road to fetch whitening and was knocked down was held not entitled to recover; he was running no risk *qua* painter's assistant. Compare *Harder* v. *A. E. Ganis & Sons*, (1916) W. C. & Ins. Rep. 99; *Hadwin* v. *Shepherd*, (1915) W. C. & Ins. Rep. 503 (where, however, had the arbitrator found differently, his finding would certainly not have been upset). Contrast *Mullinger* v. *Bidewell*, (1917) W. C. & I. 51, there a man was travelling on a cart on which he had been given a lift, the horse took fright, bolted. Result: Accident and injury. The man took the lift to get on his way with a heavy parcel. Held "out of" because the man had need of a lift to convey the parcel. The case raises some very nice points. *Pierce* v. *The Provident Clothing Co.*, *supra*, was discussed in *Sheldon* v. *Needham*, (1914) W. C. & Ins. Rep. 274, where a charwoman sent to post a letter stepped on a banana skin and was injured and it was held that the accident did not arise out of the employment. Compare *Chapman* v. "*John W. Pearn*" (*Owners*), (1916) W. C. & Ins. Rep. 47. In *Cooper* v. *North Eastern Ry.*, (1915) W. C. & Ins. Rep. 572, where an engine driver was killed by a shell fired by German warships near the Hartlepools, it was held that the "accident" did not arise "out of" the employment—it was a risk common to all in the locality. The Irish case (*Aldridge* v. *Merry*, (1913) W. C. Rep. 97) is a valuable decision. Here a servant slept in a room where plaster from the ceiling was continually falling. A piece struck her in the eye. The continual falling made it a special risk.

Questions Involved.—IV. *Was the personal injury due to an accident, or to some other existent cause, e.g., disease?*

See also notes to Sched. I. (1) "Incapacity."

In the first place it is to be observed that whether accident or disease caused the injury is a question of fact, and the arbitrator's finding, if reasonable, will not be upset (*Woods* v. *Wilson, Sons & Co., Ltd.*, (1915) W. C. & Ins. Rep. 285). The arbitrator has no right to examine the man privately (*Earle's, etc.* v. *Walker*, (1917) W. C. & I. 54).

In many cases the disease is really the cause of the so-called accident, as but for it no accident of any sort would have happened. This has occurred again and again when heart disease, and not the employment, has been the cause of the misadventure. Hence this class of case divides into two: (*a*) where there has been an undoubted accident, and (*b*) where there has been what we can only term a "fictional" accident.

As regards (*a*) there is little difficulty. An accident is no less an accident because, owing to diseased tissues, the consequences are most serious and unexpected. Thus in *Hensey* v. *White*, (1900) 1 Q. B. 481, a man, trying to start a wheel which stuck, strained himself. Owing to his diseased condition this caused a rupture of blood vessels which killed him. Other men who helped and exerted themselves were not even hurt, but this did not affect the fact he had been clearly injured by an accidental strain. But cases under (*b*) are full of doubt. Of these the leading case is *Clover and Clayton* v. *Hughes*, (1910) A. C. 242, where anything like an accident never happened. Here a man in the last stage of heart disease fell dead when screwing a nut on a bolt. He was doing an ordinary act in an ordinary way, and yet was found to have met his death by accident. The logic of this decision was preserved by the finding that the screwing on the nut caused an extra strain, which extra strain ruptured an artery, which rupture caused the death. This case having passed the House of Lords, mainly that they would not disturb an arbitrator's finding of fact, is unexceptional as regards its law. It really does not say more than in the case of a real accident, viz., a man brings his disability with him and his employer shall not be heard to say, "But for the diseased condition, no ill results would have happened from the accident relied on." For note, the fiction of an accident neither is, nor can be dispensed with, nor is it established by a man merely falling dead (*Barnabas* v.

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Bersham, 4 B. 119). And further, if an interval of time elapses between the "fictional" accident and the death, as in *Hawkins* v. *Powell's Tillery S. C. Co.*, (1911) 1 K. B. 988, where an old man, who might have strained himself in the morning, died of *angina pectoris* in the evening, the court may hold the connection between the accident and the death not proved. And even when death takes place after what has been an undoubted accident, still it must be proved that it was due to such accident and not to the disease. *E.g.*, a driver fell from his bus, and it could not be shown whether heart disease caused the fall or whether the fall aggravated the disease. Here was such failure of proof (*Thackway* v. *Conelly*, 3 B. 37). But an accident that starts into active malignity ills from which a man suffers falls within the ordinary rule. Where a man died from apoplexy brought on by the exertion of running to telephone for a doctor (it being his duty so to telephone), it was held in *Aitken* v. *Finlayson, Bousfield & Co., Ltd.*, (1914) W. C. & Ins. Rep. 398, that his dependants could recover.

In the Course of.]—In the course of the employment is entirely a question of what is the contract of service in every case a question of fact. What the contract really means may be a question of law, but this determined, whether an act does or does not fall within its provisions will be a question of fact. *In the course of* is an overriding condition, for whilst *arising out of* involves *in the course of* as well, the contrary proposition does not hold good.

Where there is no express contract, or no contract to be presumed from the conduct of the parties, decisions on similar cases are gradually becoming a code as to terms to be implied. Difficult questions usually arise where a man is injured before or after his actual work has commenced or ended, or when it has been suspended or been intermittent. Few contracts of service contemplate only steady unintermittent work, and certain cessations are customary and usual and provided for as well. For example, a man may want to relieve nature. This generally is recognized as in the course of the employment if he acts as mutually agreed (expressly or impliedly) but not otherwise. Periods for rest and eating may or may not be in the course of the employment also as agreed, though in the vast majority of cases where nothing to the contrary is provided such periods usually are regarded as in the course of the employment, the usual practice being complied with.

So employers may agree to employ men in one place and to take them to their actual work in another when such period of carriage with all its incidents would probably be in the course of the employment, or they may employ men to work in a certain place and provide facilities for getting there with or without such facilities when availed of being in the course of the employment, or they may agree that the employment shall begin and end with being on actual premises, even though they permit private paths and short cuts to be used. But the variety of possible agreements is infinite, as the Act nowhere says a man must employ a servant in only such a manner. So as regards decided cases it may be that the practice adopted has been for the very purpose of avoiding a particular decision.

Illustrative Cases.—*General Rule.* "It is well established that a man is not within the protection of the Act when he goes from his master's place—from the factory or wherever it may be—to his home" (*per* Cozens-Hardy, M.R., in *Poulton* v. *Kelsall*, (1912) 2 K. B. 131). But compare the Master of the Rolls' dictum in *Whittall's Case*, quoted *supra*, p. 1381. A reasonable margin is many times an implied term (*Fitzpatrick* v. *Hindley Field Col. Co.*, 4 W. C. C. 7, waiting at pit brow; *Sharp* v. *Johnson*, (1905) 2 K. B. 139, early train; *Mackenzie* v. *Coltness Iron Co.*, 41 S. L. R. 6, slipping just before starting work). The use of employers' paths, etc., rarely extends period of employment (*Gilmour* v. *Dorman*, 4 B. 279; *Holness* v. *Mackay*, (1899) 2 Q. B. 319; *Waters* v. *Staveley Coal and Iron Co.*, 4 B. 89 and *Williams* v. *Smith*, (1913) W. C. Rep. 146). But see the case of *Nicol* v. *Young's Paraffin*

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Light, etc. Co., (1915) W. C. & Ins. Rep. 72, where the authorities are considered. Carriage to or from work will depend on exact terms of contract (*Cremins* v. *Guest*, (1908) 1 K. B. 469, and *Watkins* v. *Guest*, (1912) W. C. Rep. 150; *Holmes* v. *G. N.*, (1900) 2 Q. B. 409; and *Walton* v. *Tredegar*, (1913) W. C. & Ins. Rep. 457, held within course of employment; whilst *Davies* v. *Rhymney Iron Co.*, 2 W. C. C. 22, is *contra*). In *Richards* v. *Morris*, (1914) W. C. & Ins. Rep. 112, a labourer working on an island lived on the mainland. It was held that there was an implied term in the contract of service that he might cross over in his employer's boat. In *Whitfield* v. *Lambert*, (1915) W. C. & Ins. Rep. 48, no such implied term existed and the workman did not recover. Interruptions usually within course of employment are: getting meals as arranged (*Carinduff* v. *Gilmore*, (1914)) W. C. & Ins. Rep. 247; *Blovelt* v. *Sawyer*, 6 W. C. C. 16; *Morris* v. *Lambeth Council*, 8 W. C. C. 1; and *Rowland* v. *Wright*, 1 B. 192, the stable cat case); so also getting a drink (*Keenan* v. *Flemington Coal Co.*, 40 S. L. R. 144); and relieving nature (*Lawless* v. *Wigan Coal Co.*, 124 L. J. C. C.). This will not extend to going to a distance (*Thomson* v. *Flemington Coal Co.*, 48 S. L. R. 740); or to an unreasonable place (*Rose* v. *Morrison*, 4 B. 277; *Cook* v. *Manvers Main Colliery*, (1914) W. C. & Ins. Rep. 278). In these cases though the accident arose in the course of, it may not arise out of the employment (*Keen* v. *St. Clement's Press, Ltd.*, (1914) W. C. & Ins. Rep. 292). Then there are acts perfectly justifiable but yet not in course of employment, being for a man's own purposes only (*Smith* v. *L. & Y. Rail.*, (1899) 1 Q. B. 141, a guard having a chat with a friend; *Reed* v. *G. W. Rail.*, 99 L. T. 781, an engine driver crossing lines to get a book), etc., all of which cause a break in the employment.

Further, a contract may be to work on certain days, and to be paid on another. This latter will still be in the course of the employment, though the service be otherwise terminated (*Molloy* v. *South Wales Anthracite Colliery Co.*, 4 B. 65).

Volunteers.]—It well may happen that an act meritorious in itself is yet altogether outside the contract of service. Then an accident cannot happen in the course of the employment, but the workman will be in the position of a volunteer, *e.g.*, a hospital doctor who, in the interest of a patient, allowed himself to be experimented upon with X-rays (*Curtis* v. *Talbot*, 5 B. 41). So a workman told to do a thing one way and doing it another may also act as a volunteer, as masters are entitled to have work done in their own way (*Smith* v. *Morrison*, 5 B. 161, an unsatisfactory case on the actual facts).

As regards Seamen it has been decided that the contract of service, unless otherwise agreed, covers the periods when men go on shore with leave so that they still remain in the course of their employment (*Kitchenham* v. *S.S. Johannesburg*, (1911) A. C. 417), though at the same time as they will then be exposed to no more risk than any other member of the public, an accident then happening to them is not likely to arise out of the employment. When they encounter and suffer from a risk peculiar to their employment will be a question of fact in each case. The risk will probably be deemed peculiar to their employment if it arises from the traversing of a means of egress or ingress peculiar to the employment or not common to the public at large (*Webber* v. *Wansborough Paper Co.*, (1915) W. C. & Ins. Rep. 313). If a man falls from the quay waiting for a boat to take him to his ship his dependants would probably fail to recover (*Hewitt* v. *S.S. Duchess*, (1911) A. C. 671), if he was actually on a gangway they might be more successful. If a seaman goes on shore without leave (express or implied), so far he puts himself outside the contract of service entirely. When he again comes within it will be a question of fact. Probably the test of again coming within it will be when he is doing an act in his master's interest, and not as a result of

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or to further his own pleasure. Thus, if a seaman went ashore with leave, and returning fell from the gangway, he might well recover, but otherwise if he went without leave. Though the seaman goes ashore to buy provision he is not acting within the ambit of his employment if he deviates in order to go home, although permitted so to do (*Lee* v. "*St. George*" (*Owners*), (1914) W. C. & Ins. Rep. 17). Where seamen have to buy their own provisions it is a question whether there is an implied term in the contract requiring the seamen to buy provisions. If not, the seaman is deemed to be on his own business while ashore to purchase, etc. (*Parker* v. "*Black Rock*" (*Owners*), (1915) W. C. & Ins. Rep. 369). In *Cook* v. *Montreal*, (1913) W. C. Rep. 206, it has been held a sailor ceases to be in the course of his employment when ending his contract of service he has left the ship and got on the quay or works pertinent to the quay and not to the ship. Contrast *Webber's Case*, *supra*. On the question of "ambit of employment" reference may also be made to *May* v. *Ison*, (1914) W. C. & Ins. Rep. 40.

Disabled one week.

(2) Provided that—

(*a*) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed :

This is also to be read with the proviso to par. (1) (b) of Schedule I.

Provided that (*a*) if the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week.

If a workman is in fact disabled from earning full wages for more than a week he is entitled under the Act, even though his employer continues to pay him his full wages. But in this case, as no present weekly sum is payable, he can only ask for an agreement admitting liability, and this he is entitled to. The meaning of this sub-section was considered in *Chandler* v. *Smith*, (1899) 2 Q. B. 506.

Alternative remedies.

(*b*) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid.

This provision reserves to a workman all rights against his employer other than under the Act. Sect. 4 provides for sub-contracting, and sect. 6 reserves his rights against a stranger. But such rights reserved are only alternative, not cumulative, and the Act is most clear. A workman shall not attempt to be paid twice for the same injury. He must elect which remedy he will enforce, and having elected will be bound by it. It may be that he may try to assert other rights against his employer and

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fail; in this case, sect. 1 (4) provides machinery—which must be adopted—by which he may fall back upon the Act for compensation. So it may be he may try to assert rights under the Act and fail, but if the Act in no way applies—to give him compensation, *e.g.*, if he claims as a workman when he is not a workman—neither will it apply to deprive him of any rights he may have outside it. It will be otherwise, however, if a claim be made and dismissed on its merits, *e.g.*, for wilful disobedience (*Burton* v. *Chapel Coal Co., Ltd.*, 36 S. L. R. 375). There are many cases as to what is an effective exercise of an option, but none furnish a conclusive test. Such exercise is clearly a question of fact to be determined by evidence in every case. The filing a claim, withdrawn on receipt of respondent's answer and the initiation of legal proceedings, generally is only some evidence of the exercise of such option, and is by no means final. The one only test that emerges as at all general—and it is by no means of universal application—is, has the man deliberately taken money with the full knowledge it has been given him and only given in discharge of the payer's liability. If so, he has elected and can seek further payment from no one else and for no other cause. If the payment and receipt has been with a reservation, *e.g.*, by a master making an allowance to a workman pending an action against a third party, there is no evidence of an election, rather the reverse (*Oliver* v. *Nautilus S.S. Co.*, 5 W. C. C. 65; *Wright* v. *Lindsay*, 49 S. L. R. 210). In the case of *Codling* v. *John Mowlem & Co.* (No. 1), (1914) W. C. & Ins. Rep. 579, where the workman died and the employers paid into court £300, the maximum sum due under the Act, and it was invested on behalf of his children with the knowledge and consent of his widow, the widow was held to have elected and an action by her at common law for negligence was held not maintainable.

So it has been held that an arbitrator rightly found there was no evidence of a *bonâ fide* election when the parties settled under the Employers' Liability Act to avoid coming under the Act. The man died, his dependants tried to reopen the matter and succeeded (*Howell* v. *Bradford*, 4 B. 203, also *Hawkes* v. *Cole*, 3 B. 163). As to independent rights of dependants, see *Gill* v. *Fortescue* (to be reported), under sect. 13, "Dependants."

(*c*) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

Serious and wilful misconduct.

Serious and Wilful Misconduct is a question of fact, *per* Halsbury, L.C., in *Bist* v. *L. & S. W. Rail. Co.*, (1907) A. C. 209, at p. 212; it must be proved by the employer; and to be a defence must be the cause of the accident. Effect must be given to the word "misconduct," though moral misconduct has not to be shown. It must be serious quite apart from whether the results are serious or slight, *e.g.*, a servant injured while going out by the front door when told to use the back would not be guilty of serious misconduct; and it must be wilful or deliberate, intentional or the result of a reckless indifference to consequences as opposed to mere inattention, carelessness or negligence, however gross (*Johnson* v. *Marshall*, (1906) A. C. 409). *Bist* v. *L. & S. W. Rail. Co.*, (1907) A. C. 209, is a valuable illustrative case. An engine driver, in breach of a rule, left the footplate of his engine whilst in motion to get coal from the tender, and on passing under a bridge was killed. He was held guilty of serious and wilful misconduct. It was misconduct, being disobedience of a rule. It was serious misconduct, as the rule was to protect life—the breach of a rule as to trivial matters might only be trifling misconduct—and it was wilful, being deliberate. As nothing was shown requiring disregard of the rule, the House of Lords approved the finding of the arbitrator, and being under the old

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Act the dependants failed to recover. It may be serious and wilful misconduct to cross a railway line contrary to rules (*Sanderson* v. *Henry Wright, Ltd.*, (1914) W. C. & Ins. Rep. 177, at p. 179). Getting drunk may amount to serious and wilful misconduct (*Fraser* v. *John Riddell & Co.*, (1914) W. C. & Ins. Rep. 125, at p. 127). Under this Act the defence does not apply where the injury results in death or in serious and permanent disablement. Effect here also must be given to the words serious and permanent. In *Hopwood* v. *Olive and Partington, Ltd.*, 3 B. 357, a boy had the top joint of his first and third fingers torn off, and was held so disabled.

In addition to being guilty of serious and wilful misconduct a workman's act may be one not arising out of his employment, when, of course, he will not be entitled in any event (*Weighill* v. *South Heaton Coal Co.*, (1911) 2 K. B. 757, n.).

If any question.

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this Act, be settled by arbitration, in accordance with the second schedule to this Act.

Question must be specified in application for arbitration (Rule 8).

If any Question.]—Some question is a condition precedent to arbitration and must be existent on the launching of the application (*Wooder* v. *Lush*, (1914) W. C. & Ins. Rep. 328; *Higgins* v. *Poulson* (*No.* 1), 5 B. 66). To what must an employer agree if he would avoid litigation and "any question"? His attitude is, "I will give everything the Act requires of me." The workman on his part asks for an agreement in terms expressing this, so that he may register it. Then what does the Act give?

This we find in sect. 1, sub-s. 1, read with Schedule I. par. (1) (i.) (b) of the Act. Read together shortly we get—*his employer shall be liable to pay compensation where total or partial incapacity results, which shall be a weekly payment during the incapacity not exceeding so much.*

Here it is clear that whatever the amount, the payment is to be during *the incapacity* however long it continues. And therefore, at the outset a workman has a right to an unqualified agreement by the master to pay him compensation during such incapacity. A master cannot say, "Yes, you are incapacitated this week and I will pay you," and then go on admitting liability from week to week only. The man's right is a vested right to compensation for the whole period of *the incapacity*, and a master must admit this or a question will arise (*Shaddick* v. *Palmer's Shipbuilding and Iron Co.*, (1917) W. C. & I. 225). But the incapacity may vary. Certainly this is the very thing the Act contemplates, and the compensation should automatically vary with it. A master must admit liability to pay compensation, *i.e.*, some compensation, during the whole term of the incapacity, but this does not mean he must admit liability to pay any specific amount the whole time. The amount, as we have said, must vary as the incapacity varies. So a test of any proffered agreement in this respect is: Suppose the employer at any time stops payment, will the workman be able to enforce his rights or have to take proceedings to have his rights declared (see judgment, Haldane, L.C., in *Freeland* v. *Summerlee Iron Co.*, (1913) W. C. Rep. 302). Thus for an employer to make an agreement beyond cavil, it should be to pay the agreed amount during the total incapacity, and thereafter during partial incapacity such amount as might from time to time be agreed, or failing agreement as might be determined by arbitration. Agreement to

pay the full compensation during *total* incapacity *only* does not preclude a question arising (*Cooper* v. *Wales Ltd.*, (1915) W. C. & Ins. Rep. 307; *Round* v. *Wathen & Son*, (1917) W. C. & I. 134).

The position is somewhat different where compensation is being actually paid and received for then, if an employer thus admits amount and liability the fact that he further intimates that he thinks the man almost well, or that when he does think he is well, or that when his doctor certifies he is well he will stop payment does not raise a question, certainly not a present one. And so where a memorandum of agreement is filed providing for payment of an agreed sum during total disablement, but leaving future payments, when disablement has ceased to be total, open for future agreement. it was held in *Sampson* v. *G. S. N. Co.*, (1914) W. C. & Ins. Rep. 36, that no question had arisen. Again, where the employers did not deny liability but asked for and obtained medical examination, and no further correspondence passed, and thirteen days later the workman commenced proceedings, it was held that no question had arisen (*Crone* v. *Donaldson Line, Ltd.*, (1916) W. C. & I. 233). See also *Bedwell* v. *London Electric Rail. Co.*, (1914) W. C. & Ins. Rep. 408, where employers expressed willingness to pay full compensation until in their opinion workman was fit to resume but declined to make an unqualified admission and it was held that no question had arisen. A question may arise when for any reason he says the incapacity is ended or altered and the workman says it is not (*Payne* v. *Fortescue*, (1912) W. C. R. 386). If the workman desires the more exact agreement to which he is entitled, he must demand it before accepting compensation, the giving and receiving of which without reservation goes far to establishing a present agreement between the parties. If he does so insist, he will be entitled to an agreement to be paid during the incapacity, and not during the pleasure of his employer's doctor.

Form 24 gives the form of award made on arbitration proceedings. It has been approved in *Higgins* v. *Poulsom* (*No.* 2), (1912) W. C. Rep. 244. After first stating the weekly sum to be paid, it then says—but which the Act does not—that it, the particular amount, is to be continued during the total *or* partial incapacity of the workman, or until ended, diminished, etc., as provided. This hitherto has proved highly favourable to the workman, who gets the full amount between the application and the hearing of the review, even if totally recovered. True, by *Morton* v. *Woodward*, 4 W. C. C. 143 an employer may get an order dating from the application, though not earlier, but virtually it is useless, as he cannot set off the over-payments against current compensation (*Hosegood* v. *Wilson*, (1911) 1 K. B. 30). So an arbitrator may have regard to them under Schedule I. (3) in fixing a new weekly sum, but this does not help when the amount should be ended. In Workmen's Compensation Appeals, 1910–12, p. 143, the author suggested employers should have the right to reduce payments when applying for review, and that there would be no danger of the right being abused, as the danger of being heavily mulcted in costs would be too great. In the Rules of April, 1913, now **Rule 59 (4)**, this has been given effect to subject to the employer applying to the court for leave.

If not Settled by Agreement.]—It is almost needless to observe that for an agreement to hold it must have been made with a full appreciation of its terms (*Brown* v. *Hunter*, 49 S. L. R. 695); and an arbitrator must inquire into its validity so as to determine how far he has jurisdiction. Such validity will, of course, be governed by the common law applicable to all agreements (*Ellis* v. *Lochgelly Iron, etc., Co.*, 46 S. L. R. 960). This is, of course, independent of the special matters dealt with in Schedule II. (9), (10).

When a claim is made, an employer is entitled to a reasonable time in which to admit or deny liability, and proceedings must not be rushed (*Caledon, etc.* v. *Kennedy*, 43 S. L. R. 637).

An infant's agreement, apart from the Act of 1906, needs the consent of the court to make it binding (*Bates* v. *John Holding & Co.*, (1914) W. C. & Ins. Rep. 6). As to the need to register the agreement, see Schedule II. (10).

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If a point be agreed, *e.g.*, that the applicant is a "workman" the arbitrator has no jurisdiction, either on an original application for compensation and on an application to record a memorandum of agreement, to open up the point agreed (*Goodsell* v. "*Lloyds*" (*Owners*), (1914) W. C. & Ins. Rep. 585).

When action dismissed.

(4) If, within the time herein-after in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, had been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

Practice, Rule 54.

The prosecution of an action—certainly to its conclusion—is an election under sect. 1, sub-s. 2 (b). On failing, a workman has no further rights under the Act save what are given by this sub-section, and, therefore, its provisions must be strictly complied with. No independent application for compensation can be made. On dismissal application must be made then and there (as in *Potter* v. *John Welch & Sons, Ltd.*, (1914) W. C. & Ins. Rep. 607) to the court having seisin of the action, or the right will be lost. On such application further evidence may be given (*Baxter* v. *Norris*, 9 W. C. C. 33), and the judge will hear it as an arbitrator would (*Slavin* v. *Train*, 49 S. L. R. 93).

If an appeal is contemplated, the application must still be made *pro formâ*, but not as an election (*Isaacson* v. *New Grand, etc.*, (1903) 1 K. B. 539). If so made no appeal is open (*Neale* v. *Electric, etc., Co.*, (1906) 2 K. B. 558). If a defendant appeal successfully, application under this sub-section must be made to the appellate court, which, however, will remit the action for assessment of compensation to the original court (*Greenwood* v. *Greenwood*, 1 B. 247). Rights under this sub-section are limited to the actual parties in the action, and do not enure for the benefit of other dependants (*Kyle* v. *M'Gintys*, 4 B. 389).

As to costs, see *infra*, Schedule II. (7).

(5) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

So, contrariwise, being fined is no defence to an action for damages by an injured man (*Lees and Sykes* (*third parties*) v. *Dunkerley Bros.*, (1911) A. C. 5).

SECTION 2. Section 2.

TIME FOR TAKING PROCEEDINGS.

Time for taking proceedings.

2.—(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death :

Provided always that—

(*a*) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause ; and

(*b*) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or if there be more than one office, any one of the offices of such body.

Notice.

The giving of notice *as soon as practicable*, and the making a claim within six months are conditions precedent to recovering. The notice of accident must probably be in writing (*Hughes* v. *Coed Talon Colliery Co.*, (1907)

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1 K. B. 957 (and see *infra*)), though the claim need not be (*Lowe* v. *Myers*, 8 W. C. C. 22). If the arbitrator leaves undecided the question of want of notice a new trial may be ordered (*Silk* v. *Isle of Thanet Rural Council*, (1913) W. C. & Ins. Rep. 647). Weekly payments made are usually conclusive evidence of a claim made and recognised, and certainly furnish a reasonable cause for its want under proviso (*b*). Whether a notice has been given "*as soon as practicable*" is a question of fact. When a letter making a claim is posted a presumption arises that it has been delivered (*Watts* v. *Vickers, Ltd.*, (1917) W. C. & I. 24).

As to Notice.]—The giving of it and complying with the formalities are questions of fact, as also the giving it as soon as possible. If a workman fails in giving a proper notice he may be excused if he prove *either* that his employer has not been prejudiced in his defence, *or* that he has not done so through mistake, etc. The conditions are disjunctive. If a workman proves mistake a master will be liable, even if prejudiced to an extent of losing an insurance indemnity, and, if he proves he is not prejudiced, it is not material how the defect or non-giving came about.

Prejudiced.]—Formerly it was considered that like every other fact, no prejudice must be proved by evidence, though "no specific evidence of 'no prejudice' is required; it is an inference to be drawn from the whole facts of the case" (Farwell, L.J., in *Eaton* v. *Evans*, 5 B. 82). In the absence of any evidence one way or another the workman's claim was held to be barred (*Ing* v. *Higgs*, (1914) W. C. & Ins. Rep. 84; *Lacey* v. *John Mowlem & Co.*, (1914) W. C. & Ins. Rep. 63; *Hodgson* v. *Robins, Hay, Walters and Hay*, (1914) W. C. & Ins. Rep. 65). Slight evidence is sufficient to shift the *onus* (*Shearer* v. *Miller*, (1899) 2 F. 114). It is probable, however, that since the House of Lords decision in *Eydmann* v. *Premier Accumulator Co., Ltd.*, (1916) W. C. & Ins. Rep. 167, that the earlier cases will have to be limited in application, since that case decides that there is no onus on the applicants of establishing the negative proposition that the respondents were not prejudiced and that the question of prejudice or no prejudice must be answered from a consideration of the evidence generally, and if the evidence is negative either way, the respondents must give positive evidence of prejudice. In other words, the burden is upon the respondents of establishing prejudice and not upon the applicant of establishing no prejudice, but the judge may find that the respondent was prejudiced from the general facts of the case. Certainly, in the words of Scrutton, L.J., in *Mills* v. *Donnington Main Coal Co.*, (1917) W. C. & I. at p. 17, "under the present decisions of the House of Lords, employers will always run great risks who do not try and give some positive evidence of prejudice [in doubtful cases]." Compare and considered, *Selkirk* v. *National Radiator Co.*, (1917) W. C. & I. 99. Reference may also be made as to what time will not be deemed as soon as practicable to *Hunt* v. *Highly Mining Co.*, (1914) W. C. & Ins. Rep. 406; *Dalgleish* v. *J. H. Gartside & Co., Ltd.*, (1914) W. C. & Ins. Rep. 319. But note, an employer must be prejudiced in his defence, not merely in his pocket; *Butt* v. *Gellyceidrim Colliery Co., Ltd.*, (1909) 3 B. 44; *Snelling* v. *Norton Hill Colliery Co.*, (1913) W. C. & Ins. Rep. 497. The words "in his defence" are not confined to cases where owing to absence of notice the employers cannot ascertain the true facts or set up the proper defences. See per Phillimore, L.J., in *Wassall* v. *James Russell & Sons, Ltd.*, (1915) W. C. & Ins. Rep. 88, at p. 90. If the injury is fatal in any event it would probably be held, apart from exceptional circumstances, that the employer was not prejudiced, *Lochgelly Iron & Coal Co., Ltd.* v. *Kirk*, (1916) W. C. & Ins. Rep. 3 2; *Burvil* v. *Vickers, Ltd.*, (1915) W. C. & Ins. Rep. 563. Contrast *Jones* v. *Arnold*, (1915) W. C. & Ins. Rep. 513; *Jones* v. *Thomas & Co., Ltd.*, (1916) W. C. & Ins. Rep. 761. Compare the case of cancer induced by a fall, *Howard* v. *Rowsell and Matthews*, (1914) W. C. & Ins. Rep. 314.

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By this section an employer is entitled to the earliest possible notice, that he may at once investigate all the circumstances attending the accident. If want of notice prevents this, unless it can be shown it would have been useless in any event, it is strong evidence he is prejudiced (*Leach* v. *Hickson*, 4 B. 153). For the workman to recover in such a case the arbitrator must find specifically that there has been no prejudice. Thus in *Hayward* v. *West Leigh Colliery Co.*, (1914) W. C. & Ins. Rep. 21, where workman died of septic poisoning due to a scratch and no notice was given for a week (and then was verbal), *i.e.*, two days before death, the master was held by the Court of Appeal to have been prejudiced. The House of Lords, however, reversed the court below, (1915) W. C. & Ins. Rep. 233, largely on the ground that knowledge would have been useless in any event and that there was evidence to support the arbitrator's finding of "no prejudice." See also *Miller* v. *Richardson*, (1915) W. C. & Ins. Rep. 381; contrast *Unger* v. *Howell*, (1914) W. C. & Ins. Rep. 58); on the other hand, if knowledge of the accident in fact can be brought home to him, it will be strong evidence of *no prejudice*. But if a workman gives an informal notice, or a verbal notice, to a wrong person, as to a kind of foreman, he does it at his own risk, and if it does not come to the employer's knowledge in fact, he will fail (*Jackson* v. *Vickers, Maxim* & Co., (1912) W. C. Rep. 274; *Griffiths* v. *Atkinson*, (1912) W. C. Rep. 277). Evidence of a conversation between the wife of the injured workman and the employer's book keeper was apparently held admissible in *Eydmann* v. *Premier Accumulator Co., Ltd.* (*supra*). *Coltman* v. *Morrison and Mason*, (1914) W. C. & Ins. Rep. 43, suggests a doubt as to whether (apart from waiver) verbal notice is sufficient. See *Coltman's Case, supra*, and *Hughes* v. *Coed Talon Colliery Co.*, (1907) 1 K. B. 957; *Brady* v. *Can. Pac. Rail.*, (1913) W. C. & Ins. Rep. 479. But the employer may waive (*Davies* v. *Point Ayr Collieries*, (1909) 2 B. 157). Entry by a manager of the particulars of the accident in a special book supplied for the purpose will be sufficient written notice (*Stevens* v. *Insoles, Ltd.*, (1912) W. C. Rep. 111). If verbal notice is given and the employer sends a messenger to enquire after the health of the workman this would probably constitute waiver, but not if the employer was in the habit of paying wages to sick workmen quite apart from accidents (*Ford* v. *Gaiety Theatre, Ltd.*, (1914) W. C. & Ins. Rep. 53).

Mistake, Absence or other Reasonable Cause.]—These words equally refer to **claims** not made in time. Mistakes may be mistakes of law, or mistakes of fact. Ignorance of law, or that the law exists, is not a mistake (*Bramley* v. *Evans*, 3 B. 34; *Roles* v. *Pascall*, (1911) 1 K. B. 982). But it is possible that ignorance in the case of an infant may be an excuse. (See *per* Judge Mullingan in *Mason* v. *King's Lynn Docks Co.*, L. J. C. C. Rep., April 14th, 1917, p. 27.) A mistake in law may be taking a wrong view, or wrongly construing an Act of Parliament. A mistaken belief is not a mistake of fact (*Clapp* v. *Carter*, (1914) W. C. & Ins. Rep. 80). A mistake of fact must be a mistake of an existing fact (*Roles* v. *Pascall*, (1911) 1 K. B. 982). It is questionable how far, if a man does not realise he is injured, that is such a mistake (*Coulson* v. *South Moor Colliery Co., Ltd.*, (1915) W. C. & Ins. Rep. 161; *Flood* v. *Smith and Leishman*, (1915) W. C. & Ins. Rep. 212; *Clapp* v. *Carter*, (1914) W. C. & Ins. Rep. 80; contrast *Fox* v. *Barrow Hematite Steel Co., Ltd.*, (1915) W. C. & Ins. Rep. 321; *Haward* v. *Rowsell and Matthews*, (1914) W. C. & Ins. Rep. 314; *Hoare* v. *Arding and Hobbs*, 5 B. 36; *Millar* v. *Refuge Ass. Co.*, (1912) S. C. 37; *Breakwell* v. *Cleehill Granite Co.*, 5 B. 133. The determining question probably is, Is the injury latent or trivial—or patent or serious?) See *Potter* v. *John Welch & Sons, Ltd.*, (1914) W. C. & Ins. Rep. 607. If he does so realise he must at once give notice and make his claim (*Edgerton* v. *Moore*, (1912) 2 K. B. 308; *Webster* v. *Cohen*, (1913) W. C. & Ins. Rep. 268; distinguished in *Thompson* v. *N. E. Marine Engineering Co.*, (1914) W. C. & Ins. Rep. 13). In *Griffiths* v. *Atkinson*, (1912) W. C. Rep. 277, a plumber gave notice to his employer, a sub-contractor, in the expecta-

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tion he would pass it on to the principal. The expectation was not realised, but it was held not a mistake as to an existing fact, and so not within the proviso. See also *Pimm* v. *Clement Talbot, Ltd.*, (1914) W. C. & Ins. Rep. 350.

There have been innumerable cases of fact decided, but an arbitrator can find no better guide than that given by Cozens-Hardy, M.R., in *Eaton* v. *Evans*, 5 B. p. 83, "I have said more than once that where there is a possible doubt of an accident at all, the court should be astute to require notice speedily, and should also be astute on the question whether the employer has been prejudiced. . . . That must not be taken to lay down any principle of law applicable to a case where the *bona fides* of the claim is absolutely beyond dispute, where the fact of there having been an accident has been proved to the satisfaction of the county court judge, and where the ailment from which the applicant is suffering is one which does not make itself manifest immediately."

Similarly, his lordship expressed a still stronger opinion on the duty of men to at once report slight hurts where first aid was provided, and which, if used, might prevent serious developments (*Brady* v. *Can. P. Rail.*, (1913) W. C. & Ins. Rep. 479).

The following cases may also be referred to : *Thompson* v. *N. E. Marine Eng. Co.*, (1914) W. C. & Ins. Rep. 13 (workman thought accident trivial for some time when he saw doctor, held reasonable cause), compare the similar case of *Zillwood* v. *Winch*, (1914) W. C. & Ins. Rep. 87 ; *Rankine* v. *Alloa Coal Co.* (1904), 6 F. 375 ; *Ellis* v. *Fairfield S. & E. Co.*, (1913) W. C. & Ins. Rep. 88 ; *Brown* v. *Lochgelly Iron and Coal Co.*, (1907) S. C. 198. If the injury were not apparent at the time it was received the court would probably hold it a reason for want of notice. See cases, *supra*, and *Tibbs* v. *Watts Blake, Bearne & Co.*, (1909) 2 B. 164 ; *Fry* v. *Cheltenham Corp.*, 81 L. J. K. B. 41. Contrast *Webster* v. *Cohen*, (1913) W. C. & Ins. Rep. 268 ; *Clapp* v. *Carter*, (1914) W. C. & Ins. Rep. 80. Receipt of *ex gratia* payments made by the employer after notice of accident may form a reasonable excuse for not making a claim (*Harper* v. *Harper*, (1916) W. C. & Ins. Rep. 260).

Absence.—In *Dight* v. *S.S. Craster Hall* (*Owners*), (1913) W. C. & Ins. Rep. 714, a sailor suffered severe injuries, he reached a port in U.S.A. There he spent a considerable time in hospitals and convalescent homes, eventually reaching England two years later as a distressed seaman. He might have returned earlier as a distressed seaman. Held, want of notice due to absence, and absence due to accident, not to another cause, *e.g.*, settling down abroad.

Claim.

As to Claim (As to failure to make claim in consequence of **Mistake, Absence or other Reasonable Cause**, see *supra*).—Claim for compensation means, not initiation of proceedings, but a notice of claim for compensation (*Powell* v. *Main Colliery Co.*, (1909) A. C. 366). Since *Thompson* v. *Goold & Co.*, [1910] A. C. 409, mere notice of intention to claim is probably sufficient (compare *In re Allen and Hoey Arbitration*, (1915) W. C. & Ins. Rep. 193, and contrast *Bennett* v. *Wordie & Co.*, (1899), 1 F. 855 ; *Marno* v. *Workman Clark & Co.*, (1900) 2 Q. B. 149, n.). It is not necessary to state amount claimed (*Thompson* v. *Goold*, *supra*). It need not be in writing (*Lowe* v. *Myers*, (1906) 2 K. B. 265). A conversation between the applicant's wife and respondent in which the latter is asked by her whether he will compensate is apparently insufficient (*Johnson* v. *Woolton*, (1911) 27 T. L. R. 487). But conversations which showed the employer clearly that the workman intended to seek legal aid unless payments which had been stopped were continued is sufficient (*In re Allen and Hoey Arbitration*, *supra*). Mere notice of accident is not a claim (*Perry* v. *Clements*, (1901) 49 W. R. 669 ; *Abbott* v. *Biggleswade Joint Hospital Bd.*, (1915) W. C. & Ins. Rep. 533). An application for arbitration is a claim (*Fraser* v. *G. N. of Scotland Rail.*, (1901) 3 F. 908). The *onus* that claim

is made within time is upon the applicant (*Roberts* v. *Crystal Palace Football Club*, (1909) 3 B. 51). Section 2 Notes.

As to whether an absolute bar.—The fact that claim is not made within the six months is not an absolute bar. The employer may be estopped (*Turnbull* v. *Vickers, Ltd.*, (1914) W. C. & Ins. Rep. 323; *Wright* v. *Bagnall*, (1900) 2 Q. B. 240; *Heaton* v. *Tomlinson & Son*, (1904) 117 L. T. Jo. 3). The question is whether the workman has been *lulled into security* (*Heaton* v. *Tomlinson & Son, supra*); or he may have waived (*Linklater* v. *Webster & Son*, (1904) 117 L. T. Jo. 3). Where it was doubtful whether there was estoppel or waiver owing to state of the evidence the case was sent back in *Lee* v. *Cortonwood Colliery Co.*, (1901) *Times* Newspaper, November 11th. Payment by the employer of maximum compensation may not constitute waiver (*Rendall* v. *Hill's Dry Dock, etc., Co.*, (1900) 2 Q. B. 245; *O'Neill* v. *Motherwell*, (1907) S. C. 1076; *Healey* v. *Galloway*, (1907) 41 Ir. L. T. 5; *Lynch* v. *Lansdowne* (*Marquis*), (1914) W. C. & Ins. Rep. 244). But payment of full wages is in all cases "reasonable cause" for not making a claim (*Luckie* v. *Merry*, (1915) W. C. & Ins. Rep. 395).

Six Months.—Where the accident happened at 11.30 a.m. on November 24th, and claim was lodged at 5.30 p.m. on May 24th following, it was held to be within the six months in *Peggie* v. *Wemyss Coal Co.*, (1909) S. C. 93.

Acquiescence in Stoppage of Payments.—See *Rankine* v. *Fife Coal Co.*, (1915) W. C. & Ins. Rep. 207.

SECTION 3.

Contracting Out.

Contracting out.

3.—(1) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2) The registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

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(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in sub-section (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint and, if satisfied that good cause exist for such complaint, shall unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

(8) The Chief Registrar of Friendly Societies may make regulations for the purpose of carrying this section into effect.

For rules, see Appendix DD.

See also Workmen's Compensation (War Addition) Act, 1917, sec. 2, *infra*, p. 1460.

By *Horn* v. *The Lords Commissioners of the Admiralty*, (1911) 1 K. B. 24, a valid scheme under this section is substituted for the provisions of the Act in its entirety. It is under this section only that contracting out of the Act is provided for, but when a workman does come within the scheme he is outside the Act altogether. This case was followed in *Haworth* v. *Andrew Knowles*, (*No.* 2) (1913) W. C. & Ins. Rep. 746, when a scheme came to an untimely end, and the man wanted to make the masters liable, but could not. He had contracted out of the Act. *Horn's Case* was distinguished in *Leaf* v. *Furze*, (1914) W. C. & Ins. Rep. 601, where the meaning of the word "accident" in a valid scheme was read according to the extended meaning given to it in the Act, *i.e.*, so as to include industrial disease.

In *Godwin* v. *Admiralty Commissioners*, (1913) W. C. & Ins. Rep. 680 the same decision was given, and the objection to the recertifying of the scheme under the old Act of 1897 was disallowed (see also under sect. 15).

Where the rules are revised with the result that the compensation payable is increased a workman injured before the revision is entitled to compensation at the increased rate as from the date of revision (*Beard* v. *Committee, etc. West Yorkshire Coll.*, (1917) W. C. & I. 222).

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Sub-s. 1. This Act shall apply.]—Apart from this section contracting out is forbidden, but in *Ryan* v. *Hartley*, (1912) W. C. Rep. 236, it was decided that a disputed claim might be settled by payment of a lump sum, and that this did not constitute an agreement requiring registration under Schedule II. par. 10. Here a workman slipped from a ladder and injured the tendon of his leg. He commenced proceedings; the employers replied he had fully recovered within a fortnight of his accident, and that he had accepted 35*s.* in full satisfaction of his claim. The man tried to reopen the agreement and, certainly on a question of merits or honesty, rightly failed. The decision is wholly satisfactory on every point but this; the bearing of this section was in no way discussed, in fact the section does not even appear to have been considered. Here was a *bonâ fide* claim recognised and settled for a lump sum. So far it is clearly not a contracting out, but a recognition of the Act. But then, having recognised the Act, the parties proceed to make a contract of their own neither recognised by the Act nor allowed by it. The Act imperatively directs that in cases other than death the compensation payable is to be a weekly sum and only a weekly sum. Instead they bargain for a lump sum. Of course, had the claim been *bonâ fide* disputed in its entirety it would have been otherwise. If the employers had said, "You were well in a week," or "You have no claim at all, but here is 35*s.* to get rid of you," the decision would have been unimpeachable. Having regard to the form of receipt given, a *dictum* of Buckley, L.J.—with which the judgment of Cozens-Hardy, M.R., is in no way inconsistent—would almost seem to suggest the facts were so regarded. The whole claim and case was more or less doubtful. This being so it hardly seems that it will be safe for employers to compound genuine cases without as now obtaining the approval of the court. If they do they may some day find themselves fronted with the unpleasant dilemma: They could not settle under the Act save by a weekly payment (*Mulholland* v. *Whitehaven Collieries*, (1910) 2 K. B. 278), nor outside the Act by virtue of this section. To pay a sum for the Act not to apply if an accident does happen does not seem vastly different to paying a sum for the Act not to apply if an accident has happened.

To make an agreement beyond doubt, a weekly sum should be agreed; the incapacity estimated at so many weeks; compounded for under proviso, Schedule I. (17); registered under Schedule II. (9), when the requirements of Schedule II. (10) will be complied with.

Apart from this, the only protection a master has is, a "spent agreement" cannot be registered (*Popple* v. *Frodingham Iron and Steel Co.*, (1912) 2 K. B 141)

In *British and South A. S. N. Co.* v. *Neil*, 3 B. 413, the parties agreed that if a dispute arose as to total incapacity the workman should join in an application for a reference to a referee under Schedule I. (15), and that if he refused compensation should be ended. This penal clause was held to be a contracting out of the Act, and therefore rendered the agreement void.

Where a scheme provided that any question with regard to what was an injury within the meaning of that term as used in the scheme should be determined by the committee, it was decided in *Allen* v. *G. E. R.*, (1914) W. C. & Ins. Rep. 388, that the decision of the committee was final and ousted the jurisdiction of the courts.

SECTION 4.

Sub-Contracting.

Sub-contracting.

4.—(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor

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of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

Provided that, where the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this Act to pay compensation to any workman employed by him on such work.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by arbitration under this Act.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

It will be observed this section does not apply unless the contract is in the course of or for the purposes of a person's trade or business (*Brine* v. *May*, (1913) W. C. Rep. 148), and unless it be for *any work undertaken by him* for such purposes. These latter words have been the occasion of much doubt which, however, has been considerably cleared up by the recent cases of *Skates* v. *Jones*, (1910) 2 K. B. 903; *Luckwill* v. *Auchin Steam S. Co.*, (1913) W. C. & Ins. Rep. 167; and *Hayes* v. *Thomson*, *ib.* 161. In *Zugg* v. *Cunningham*, 45 S. L. R. 670, the Lord President construed the section as if it referred to sub-contracting only, almost as if the words "for another" were to be read into the provision. The English courts would not so limit the words. The section applied to all work undertaken by the principals in the course of their trade. The decisions were given in cases rather peculiar in their special facts and apparently wider than they really have proved to be. The words "undertaken by" are used in contradistinction to "undertaken *for* a principal." To enable a principal to carry on his trade or business, he may need to have many things done for him by outsiders. If a shipowner, boilers may need scaling; if a manufacturer, tanks may need taring; if a barge owner, barges may need overhauling; moulding manufacturers may need wood stacking. As to whether in the case of

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such contracts he is a principal to the men so employed to do the work, see *Hockley* v. *West London Timber and Joinery Co., Ltd.*, (1914) W. C. & Ins. Rep. 504: 83 L. J. K. B. 1520; *Bobbey* v. *W. M. Crosbie & Co., Ltd.*, (1916) W. C. & Ins. Rep. 36. But on the other hand, work may be undertaken by him as part of his regular trade or business, and through press of time or for other reason he may contract with others to do it for him, *e.g.*, a speculative builder who sublets the mason work or the plumbing or the brick-setting; or a firm using lighters all over the world for the sale of coal, and wanting another lighter in another place (*Dittmar* v. *Ship V.* 593, (1909) 1 K. B. 389); then in such contracts he will be a principal to the men employed by the contractor. Owing to sect. 13, as to the exercise, etc., of their powers, the liability of corporations under this section is considerably extended (*Mulrooney* v. *Todd and Bradford Corporation*, (1909) 1 K. B. 165).

A man has no more rights against a principal than against his employer, *e.g.*, *Marks* v. *Carne*, (1909) 2 K. B. 516; where a man being a member of the employer's family was not a "workman" within the Act. So notice given to an employer does not bind the principal who must be served (*Griffiths* v. *Atkinson*, (1912) W. C. Rep. 277); and a man having elected to make one liable cannot afterwards proceed against the other (*Meier* v. *Dublin Corporation*, *ib.* 30). Whether both can be rightfully joined together in the same proceedings was left in doubt in *Mulrooney* v. *Todd*, (1909) 1 K. B. 165.

Machinery driven by Mechanical Power.]—This was involved but not decided in *Walsh* v. *Hayes*, 43 Ir. L. T. 114, and it must be remembered cases under the old Act are misleading, as there the words were machinery driven by steam, water, or other mechanical power, *i.e.*, other mechanical power *ejusdem generis* with steam and water. Here the words have no such restricted meaning.

Principals are to be indemnified. For extent of indemnity, see under sect. 6. For practice, see rr. 20—28.

Sub-s. 4.]—In *Dittmar's Case*, *supra*, work on the barge, it being still in English waters, was held to be *on or in or about*. In the numerous cases under the old Act, the idea of proximity was involved.

SECTION 5.

Provision as to Cases of Bankruptcy of Employer.

Provision as to cases of bankruptcy of employer.

5.—(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

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(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

(3) There shall be included among the debts which under section one of the Preferential Payments in Bankruptcy Act, 1888, and section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding up, and those Acts and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to this Act.

51 & 52 Vict. c. 62.
52 & 53 Vict. c. 60.
60 & 61 Vict. c. 19.

(4) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependants of a miner, shall have the like priority as is conferred on wages of miners by section nine of that Act, and that section shall have effect accordingly.

50 & 51 Vict. c. 43.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

The rights of a workman against his employers' insurers are simply the rights of his employers, and nothing more, nothing less. See for an example of the extent of the workman's right against the employer's insurers where employer becomes bankrupt (*Craig and Another* v. *Royal Insurance Co., Ltd.*, (1915) W. C. & Ins. Rep. 139). If arbitration be a condition precedent to their recovering, it will be equally a condition precedent to his recovering (*King* v. *Phœnix Assurance Co.*, (1910) 2 K. B. 666); if the payment of calls in a mutual society is a condition of benefiting, but the employers through non-payment have not lost their rights, neither will the workman have lost his (*Daff* v. *Mid. Coll., etc.*, 5 B. 671, and in H. L. to be reported). To ascertain his rights a workman may examine his bankrupt employer (**Rule 37**).

Preferential Claims.]—Sub-s. 3 provides how compensation is to be treated in bankruptcy, etc. The weekly payment and its lump sum value will be assessed in the usual way by arbitration proceedings. So assessed, it can be proved for in the bankruptcy proceedings, and to the extent of

100*l.* made a preferential charge (*Re J., an arranging debtor, Ex parte Reid*, 45 Ir. L. T. 247). When fixed, the sum will be paid into court to abide the order of the county court judge (*ib.*). An arbitrator has himself no power to order payment (*Homer* v. *Gough*, (1912) 2 K. B. 303). Section 5 Notes.

Where an employer company was insured and both the employer company and the insurance office became insolvent and the workman sought to prove in the liquidation of the employer company, it was held in *In re Pethick, Dix & Co., Ltd.*, (1915) W. C. & Ins. Rep. 5, that there was no right in such a case of preferential payment, and the workman's only remedy was proof against the insurance office.

The effect of sub-s. 2 on sub-s. 1 is explained in *Thrashbush Coal Co., Ltd.* v. *M'Inally*, (1915) W. C. & Ins. Rep. 267, which also considers the position where both employer and insurer are in liquidation.

For a consideration of the employer's position where he is insured, compromises a claim made by a workman, and then the insurance office goes into liquidation, see *Empire Guarantee, &c.* v. *Owen & Sons*, (1915) W. C. & Ins. Rep. 270.

As regards companies in liquidation, these are now governed by the Companies (Consolidation) Act, 1908, s. 209; whilst s. 240 is substituted for the provisions of sub-s. 4.

SECTION 6.

Remedies both Against Employer and Stranger.

Remedies both against employer and stranger.

6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and

(2) If the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this Act.

Sub-s. 1. Workmen's Election.]—See under sect. 1, sub-s. 2 (b). Mr. Dawbarn suggested in a previous edition, "That taking proceedings in itself is not an election seems to follow from the words '*both against.*' In the old Act the similar section distinctly stated 'a workman may at his option proceed . . . against that person or against his employee . . . but *not* against both.' Thus his election seems not final unless he both proceeds *and* recovers. He is to be paid once, but he is not to be paid nor try to be paid twice." This proposition is, however, very doubtful in view of the *dicta* of Rowlatt, J., in *Woodcock* v. *L. & N. W. R.*, (1913) 3 K. B. 139; (1913) W. C. & Ins. Rep. 563. See also *Long* v. *G. N. Rail. Co.*, (1902)

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86 L. T. 802. Acceptance of compensation from an employer is probably a "recovery" (*Aldin* v. *Stewart*, (1915) W. C. & Ins. Rep. 454; *Gray* v. *N. B. Ry. Co.*, *ibid.*, 458, 460). It is different, however, if the compensation is accepted with the reservation of all rights against third parties and on the terms that if damages are obtained the compensation will be refunded (*Kelly* v. *N. B. Ry. Co.*, (1915) W. C. & Ins. Rep. 516). If a workman recovers under the Act and then dies his dependants cannot proceed at common law against the persons guilty of the negligence which caused the injury (*Gray* v. *N. B. Rail. Co.*, (1915) S. C. 211).

Sub-s. 2. Employer's Indemnity.]—Where a workman would have a right of action against another for the injuries he has sustained, so far, and only so far, and no further has an employer a right to an indemnity.

If a workman would have a right against fellow workmen for negligence, and he has (*Lees* v. *Dunkerley Brothers*, (1911) A. C. 5), an employer has the same. His rights are simply co-extensive with those of his workman. And if such rights once become vested, so also do these of the employer, and even where death would have ended the workman's rights, his death does not end those of his employer. Under the definition, "workman" includes dependants, and in *Smith's Dock* v. *Redhead*, (1912) 2 K. B. 323, the employer on the workman's death had to compensate an illegitimate child with no rights against the third party; but as the injury was caused under circumstances creating a liability in some person other than the employer, and the workman, as defined, recovered compensation, therefore the employer was entitled to be indemnified.

If the employer's own negligence, equally with that of the third party, is the cause of the accident, he has no right over (*Cory* v. *France*, (1911) 1 K. B. 114).

In *Dickson* v. *J. A. Scott, Ltd.*, (1914) W. C. & Ins. Rep. 67, it was decided that the occupiers of premises in which a workman was injured by falling down an unlighted unfenced hole some short time after working hours were liable to the employer who had paid compensation. The workman was regarded as a licensee to whom a duty to take care was owed.

What does the Indemnity cover?]—The whole matter is fully discussed in *Nettleingham* v. *Powell*, (1913) W. C. Rep. 22. On February 18th, 1911, a workman was injured and compensation 15*s.* a week paid. In August, the employer first found injuries due to negligence of defendants and wrote demanding indemnity, which was refused. December 2nd they reduced payments to 7*s.* 6*d.* January 1st, 1912, workman instituted proceedings. Hearing fixed for February 6th. February 5th, informed defendants, who did not attend. On hearing, settled for £52 10*s.* and costs, £22 10*s.* They claimed indemnity:—forty-one weeks' compensation at 15*s.*, £30 15*s.*; nine weeks at 7*s.* 6*d.*, £3 7*s.* 6*d.*; workman's fare to be medically examined, 14*s.* 6*d.*; as settled, £52 10*s.*; his costs, £22 10*s.*; own costs, £17 16*s.*; medical fee, £9 9*s.* 0*d.*; total £136 12*s.* They did not comply with r. 24, now r. 25 and modified to meet this case. It was held this did not forfeit their rights under this section, but put them to strict proof of every item. All were allowed.

Settled by Action.]—If third parties agree to settlement by arbitration, they seriously limit their right of appeal (*Cutsforth* v. *Johnson, N. E. Rail. third parties*, (1913) W. C. Rep. 131), as they can only object to a finding of fact if no evidence.

National Insurance Act, 1911.]—Though the rights and liabilities of the workman under this Act are not directly connected with section 6 of the Workmen's Compensation Act, 1906, the present is a convenient place to introduce the growing body of case law under sect. 11 of the National Insurance Act, 1911. That section provides for a reduction of benefits in the case of a workman receiving compensation, so that the employer pays in the first instance and the approved society is relieved to the extent of the compensation paid. In consequence of this it is manifestly to the

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interest of approved societies to see that their members enforce their rights under the Workmen's Compensation Act, 1906. But the workman has a right to free movement in the first instance. The approved society cannot dictate to him how he shall proceed, what solicitor he is to have, etc. The approved society can only take action or bring pressure to bear on the workman when the insured person, *i.e.*, the workman "unreasonably refuses or neglects to take proceedings." If an approved society proceeds prematurely and before the workman has so refused or neglected the arbitrator may and should dismiss the application. The society cannot later turn round and say, "We were not proceeding as an approved society but simply as a trades union acting on behalf of a member." See *Burnham* v. *Hardy*, (1915) W. C. & Ins. Rep. 146. If the workman starts proceedings and then funds fail and he decides not to go on, and then his approved society decides to help him and continues the proceedings, it must be remembered that notice of change of solicitors must be given, for the workman's solicitors as such may have no *locus standi*. As to this and the question of costs, see *Doughty* v. *Altham Colliery Co.*, (1916) W. C. & Ins. Rep. 102, and cases there cited.

Trades Union.—A trades union may assist a workman in taking proceedings but may not take proceedings in his name (*Bobbey* v. *W. M. Crosbie & Co., Ltd.*, (1915) W. C. & Ins. Rep. 258).

SECTION 7.

Application of Act to Seamen.

Application of Act to seamen.

7.—(1) This Act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications :—

As to meaning of "ship," "seamen," etc., see sect. 13 and Merchant Shipping Act, 1894, s. 742; *ante*, p. 1303. The Act does not seem strictly limited to services actually on board. In *Dothie* v. *MacAndrew*, (1908) 1 K. B. 803, a captain went on shore about deserting seamen and was injured when stepping into a tram and it seemed accepted he was within the Act.

"Manager" by sect. 13 means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner.

Seamen must also be workmen. A master may still be a workman, though owner of shares in the ship. Such ownership does not necessarily make him a partner (*Sharpe* v. *Carswell*, (1910) S. C. 391; 47 S. L. R. 335). As to the position of members of a fishing vessel remunerated in the profit sharing plan, see sub-s. 2, *infra*.

Although s. 7 brings a seaman within the Act, it does not enable him to recover in respect of an industrial disease under s. 8 since he cannot get the necessary certificate. See *Curtis* v. *Black & Co.*, (1909) 2 K. B. 529.

Members of the Crew.]—This may possibly limit "seamen" to regular hands as distinguished from temporary workers, though "signing on" may not be a necessary formality. Cattlemen employed by cargo owners

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to see after their animals on board have been held not part of the crew (*Anglo-Argentine Co.* v. *Temperley S. Co.*, (1899) 2 Q. B. 403).

Registered.]—This section applies only to registered or British ships as specified (*Mortimer* v. *Wisker*, 83 L. J. K. B. 1245). A colonial sailor on a colonial ship belonging to a colonial owner had, therefore, no rights under this section, and though injured locally has no rights apart from it (*Panagotis* v. *Pontiac*, (1912) W. C. Rep. 74).

(*a*) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident :

Practice, Rules 38—40.

(*b*) In the case of the death of the master, seaman, or apprentice, the claim for compensation shall be made within six months after news of the death has been received by the claimant :

(*c*) Where an injured master, seaman, or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly :

57 & 58 Vict. c. 60.

Sect. 695 is printed *ante*, p. 1301.

(*d*) In the case of the death of a master, seaman, or apprentice, leaving no dependants, no compensation shall be payable, if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay the expenses of burial :

This seems to be sect. 34, Merchant Shipping Act, 1906, substituted for sect. 207, Merchant Shipping Act, 1894 (see *ante*, p. 1322).

(*e*) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice :

See above (*d*). This sub-section only means benefits must not overlap

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(*McDermott* v. *Tintoretto*, (1911) A. C. 35). Thus the court has no jurisdiction to award compensation instead of wages under an apprenticeship deed (*Turner* v. "*Haulwen*" (*Owners*), (1915) W. C. & Ins. Rep. 50). Nor will the usual general release signed at the end of the voyage apply to a claim under the Act (*Buls* v. *Teutonic*, (1913) W. C. & Ins. Rep. 752).

(*f*) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under the section of this Act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or personal injury :

(*g*) Sub-sections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices ; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

Ante, p. 1272. The provisions are additional, not substitutive means of proof (*Maginn* v. *Carlingford Lough S.S. Co.*, 43 Ir. L. T. R. 124), and application for arbitration may be brought at any time if other proof of death be available (*Ib.*).

(2) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

A man employed on a fishing vessel who receives, in addition to his food and some other small perquisites, wages at a fixed rate per week, and also poundage on the net profits of the voyage, is a "member of the crew of a fishing vessel . . . remunerated by a share in the profits" (*Costello* v. *Kelsall Bros.*, (1913) W. C. & Ins. Rep. 410). A man in receipt of a bonus varying with the catch, a bonus called "trip money," is not "remunerated by shares in the profits" *Duck* v. *North Sea Steam Trawling Co., Ltd.*, (1915) W. C. & Ins. Rep. 527 ; *Newstead* v. "*Labrador*" (*Owners*), (1915) W. C. & Ins. Rep. 519. This sub-section no less applies because a share fisherman is paid a wage for shore duty (*Gill* v. *Aberdeen S. T. and F. Co.*, 45 S. L. R. 247), or receives payment in kind and a regular wage as well as his share (*Costello* v. *S.S. Pigeon* (*Owners*), (1913) A. C. 407 ; (1913) W. C. & Ins. Rep. 410), or does something incidental to his work as an optional extra (*Whelan* v. *G. N. S.S. Co.*, 78 L. J. K. B. 860), or is guaranteed a minimum weekly amount (*Admiral F. Co.* v. *Robinson*, (1910) 1 K. B. 540), or receives a share and a weekly wage even if the share be a trifle, 3*d.* in the

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pound of net profits, and the weekly wage the substantial remuneration. Contrast *Woolfe* v. *Colquhoun*, (1912) W. C. Rep. 342. But a man is not a share fisherman, who, though remunerated by a share, does not fish, but simply carries fish from curing stations to vessels (*Jamieson* v. *Clark*, 1 B. 228). Men receiving "Stocker" and "Liver money" have been held to be remunerated by shares (*Burman* v. "*Zodiac*" *Steam Fishing Co.*, (1914) W. C. & Ins. Rep. 520 ; 83 L J. K. B. 1683 : *Stephenson* v. *Rossall S. F. Co., Ltd.*, (1915) W. C. & Ins. Rep. 121). It is to some extent a matter of degree. The failure to insert in a running agreement the correct remuneration of the crew as required by section 400 of the Merchant Shipping Act, 1894, does not preclude proof of the actual remuneration (*Burman* v. "*Zodiac*" *Steam Fishing Co., supra*).

(3) This section shall extend to pilots to whom Part X. of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

SECTION 8.

Application of Act to Industrial Diseases.

Application of Act to industrial diseases.

1 Edw. VII. c. 22.

8.—(1) Where—

(i.) the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the third schedule to this Act and is thereby disabled from earning full wages at the work at which he was employed ; or

(ii.) a workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease ; or

(iii.) the death of a workman is caused by any such disease ;

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependants shall be entitled to compensation under this Act as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications :—

(*a*) The disablement or suspension shall be treated as the happening of the accident ;

(*b*) If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable ;

(*c*) The compensation shall be recoverable from the employer who last employed the workman during the said twelve

months in the employment to the nature of which the disease was due : Section 8.

Provided that—

(i.) the workman or his dependants if so required shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation ; and Industrial diseases.

(ii.) if that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable ; and

(iii.) if the disease is of such a nature as to be contracted by a gradual process, any other employers, who during the said twelve months employed the workman in the employment to the nature of which the disease was due, shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this Act for settling the amount of the compensation ;

(*d*) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable ;

(*e*) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment ;

(*f*) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall in accordance with regulations made by the Secretary of State be referred to a medical referee, whose decision shall be final.

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(2) If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the third schedule to this Act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

(3) The Secretary of State may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section.

(4) For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given :

Provided that—

(*a*) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine :

(*b*) Where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(5) In such cases, and subject to such conditions as the Secretary of State may direct, a medical practitioner appointed by the Secretary of State for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

(6) The Secretary of State may make Orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.

(7) Where, after inquiry held on the application of any employers or workmen engaged in any industry to which this section applies, it appears that a mutual trade insurance company or society for insuring against the risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the Secretary of State may, by Provisional Order,

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require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the Order. Where such a company or society has been established, but is confined to employers in any particular locality or of any particular class, the Secretary of State may for the purposes of this provision treat the industry, as carried on by employers in that locality or of that class, as a separate industry.

(8) A Provisional Order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against the Order, the Bill may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of Private Bills, and any Act confirming any Provisional Order under this section may be repealed, altered, or amended by a Provisional Order made and confirmed in like manner.

(9) Any expenses incurred by the Secretary of State in respect of any such Order, Provisional Order, or confirming Bill shall be defrayed out of moneys provided by Parliament.

(10) Nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this Act.

For practice, Rules 41, 98.

Against whom to Proceed.]—The workman should in general proceed against the employer in whose service he was when the disability, in respect of which he is proceeding, occurred, not against an employer in whose employ he was when an earlier attack of the same disease disabled him (*Timpson* v. *John Mowlem & Co., Ltd.*, (1915) W. C. & Ins. Rep. 219).

Sub-s. 1 (iii.). **Death** may result directly from the disease, or indirectly from its sequelæ, *e.g.*, from granular kidney following lead poisoning. Whilst sub-s. 2 assumes a disease in certain cases to be due to the nature of the employment, it does not assume that sequelæ are the result of the disease. This the applicant must prove (*Haylett* v. *Vigor*, (1908) 2 K. B. 837). The defendants must prove in all cases (unless sub-s. 2 applies) that the disease was caused or aggravated by the employment under the respondent employer (*Dean* v. *Rubian Art Pottery, Ltd.*, (1914) W. C. & Ins. Rep. 147). For the meaning of "**at or immediately before**" in sub-s. 2 see *Dean's Case* and *M'Taggart* v. *William Barr & Sons, Ltd.*, (1915) W. C. & Ins. Rep. 335.

In *M'Ginn* v. *Udston*, (1912) W. C. Rep. 134, a miner suffered from nystagmus. He was certified under sub-s. 1 (1), and under (2) it was presumed due to his employment. This presumption was rebutted by the finding of the referee that it was ordinary, not miner's nystagmus. But this did not preclude his proving it *was* miner's nystagmus in the ordinary way. In *Scullion* v. *Cadzow Coal Co.*, (1914) W. C. & Ins. Rep. 129, it was held that the work of a surface labourer was not mining within No. 407 of the Statutory Rules and Orders, 1907. See now, however, the new Statutory Rules and Orders (1913), p. 1462, *infra*.

Notice must be given and claim made as in general, but the nature of

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the disease may furnish a reasonable cause for delay (*Moore* v. *Naval Colliery Co.*, (1912) 1 K. B. 28; Rule 41). The date of the certificate must not by analogy be deemed the date of the quasi-accident (*Keary* v. *Archibald Russell, Ltd.*, (1915) W. C. & Ins. Rep. 201).

Sub-s. 1 (iii.), (c) (ii.), (iii.).—If an employer having to pay compensation can under (ii.) prove the disease was contracted with another employer, he may join such employer and have him substituted for himself, but under (iii.) without proving anything more than that the workman was with such employer during any part of the preceding twelve months he may recover contribution (*Mallinder* v. *Moores, Booth and Moores third parties*, (1912) 2 K. B. 124). In calculating contribution payable the arbitrator ought to take into consideration the working conditions in the various employments (*Barron* v. *Seaton Burn Coal Co., Ltd.*, (1915) W. C. & Ins. Rep. 132.

Sub-s. 1 (iii.) (c).—In apportioning the respective liability of consecutive employers, other things being equal, Judge Parry took as his basis the respective length of time the workman had been in the several employments. The award was made against the last employer with right of contribution from a preceding one (*Lees* v. *Waring and Gillow*, 2 B. 471). The meaning of the term "employment" was considered by Lord Johnston in the Scots' case of *M'Gowan* v. *Merry and Cunninghame, Ltd.*, (1914) W. C. & Ins. Rep., at p. 545).

Certificate.]—Condition precedent, but if procured only in time for hearing will be in order (*Taylor* v. *Burnham*, 46 S. L. R. 482). Sub-s. 1 (i.), (ii.), (iii.). A workman must bring his case within one of these three classes to recover. A seaman not within (ii.) or (iii.) suffered from lead poisoning. Though within the Act he failed to recover because there was no certifying surgeon to whom he could apply for a certificate (*Curtis* v. *Black*, (1909) 2 K. B. 529). Rule 88 now provides for this. The order of a medical referee allowing an appeal against the refusal of a certifying surgeon to give a certificate of disablement and fixing the date of the man's disablement is a sufficient certificate for the purpose of this section. (*Chuter* v. *J. J. Ford & Sons, Ltd.*, (1915) W. C. & Ins. Rep. 104. If the party complaining does not appeal against the terms of the certificate he cannot impugn the certificate at a subsequent hearing of the workman's application for compensation (*Bedford* v. *Cowtan & Sons, Ltd.*, (1916) W. C. & Ins. Rep., 158).

It is doubtful whether a refusal to grant a certificate is conclusive of the non-existence of the disease. In *Bentley* v. *Major & Sons, Ltd.* (unreported) His Honour Judge Fossett-Lock held that it was not conclusive. This was based on the words "not satisfied" in App. AA (3).

Appeal to Referee.]—Sub-s. 1 (iii.) (f). This limits the functions of the referee to allowing or disallowing the certificate of the certifying surgeon having regard to the facts then existing (*Garrett* v. *Waddell*, 48 S. L. R. 937; *Winter* v. *Addie*, *ib.* 940). If he adds a note to his finding, it must be read, but if inconsistent with the finding it must go back to him for a proper report (*M'Ginn* v. *Udston Coal Co.*, (1912) W. C. Rep. 134). In *Birks* v. *Stafford Coal Co.*, (1913) W. C. & Ins. Rep. 755, the date fixed by such surgeon was useless to the applicant. He appealed to the referee. The employer argued no such appeal lay, the finding of such surgeon as to date being final under sub-s. 4. Held not so. The medical referee may do anything that the certifying surgeon could have done (*M'Ginn* v. *Udston Coal Co.*, (1912) W. C. Rep. 134). He may not make a finding on the evidence (*Booth & Sons* v. *Carter*, (1915) W. C. & Ins. Rep. 59). If the certificate is ambiguous and contradictory the arbitrator may refuse compensation (*Mapp* v. *A. Straker & Son, Smith Bros., Ltd.*, (1914) W. C. & Ins. Rep. 98).

Sub-s. 2.—As to what is necessary to rebut the statutory presumption created by this sub-section, see *Glancy* v. *John Watson, Ltd.*, (1915) W. C. & Ins. Rep. 40.

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Review.]—Where the employer applies to review on the ground that the workman is no longer suffering from the industrial disease, evidence showing that the workman is suffering from another disease caused by the industrial disease is relevant and should not be excluded (*Westminster Brymbo Coal and Coke Co.* v. *Evans*, (1916) W. C. & I. 241; consider also *Chorley Colliery Co.* v. *Bolton*, (1916) W. C. & I. 329.

As to practice, see *infra*, Appendix AA., Rule 41.

SECTION 9.

Application to Workmen in Employment of Crown.

Application to workmen in employment of Crown.

9.—(1) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person:

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the Royal Household in which he was employed at the time of the accident shall be deemed to be his employer.

50 & 51 Vict. c. 67.

(2) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this Act.

Practice, Rule 95.

Concurrent Contracts.]—In *Brandy* v. *S.S. Raphael*, (1911) A. C. 413, a stoker on a merchant vessel was a member of the Naval Reserve, and received 6*l.* a year as a retainer. Held this was earnings under a concurrent contract of service under Schedule I. (2) (b). The Crown not being liable in certain cases did not mean no other employer should be.

SECTION 10.

Appointment and Remuneration of Medical Referees and Arbitrators.

Appointment and remuneration of medical referees and arbitrators.

10.—(1) The Secretary of State may appoint such legally qualified medical practitioners to be medical referees for the purposes of this Act as he may, with the sanction of the Treasury, determine, and the remuneration of, and other expenses incurred by, medical referees under this Act shall, subject to regulations made by the Treasury, be paid out of moneys provided by Parliament.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an

Section 10. employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of county courts under the second schedule to this Act shall be paid out of moneys provided by Parliament in accordance with regulations made by the Treasury.

The referee under sect. 8 has an appellate jurisdiction from the certifying surgeon; under Schedule I. (15), in a reference by both parties, his certificate is final; under Schedule II. (15) he simply makes a report. By Schedule II. (5) he may be summoned as an assessor, and may state his opinion, but he cannot be examined, sworn or cross-examined. By leave of court he may be asked questions, but not as a witness, but as adviser (*Hugo* v. *Larkins*, 3 B. 228). For Special Regulations, see Appendix BB. So, further, he may there and then examine the applicant, and an arbitrator may act on his advice without disclosing to the parties what such advice is (*Smith* v. *Foster*, (1913) W. C. Rep. 420).

SECTION 11.

Detention of Ships.

Detention of ships. **11.**—(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made defendant, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

57 & 58 Vict. c. 60. (3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it

has an office in the United Kingdom at which service of writs can be effected. Section 11.

Practice, Rules 39—40.

Suppose a "workman," not a member of the crew, was injured in a home port, when working on a foreign ship for a foreign owner, could he avail himself of the machinery of this section to secure compensation? As it contemplates foreign owners being so liable, probably if he could get over the initial difficulties of making a claim and giving notice—of course sect. 7 would not apply to help him—there seems no reason why he should not. For our courts to so interfere on behalf of a foreign seaman on a foreign ship belonging to a foreign owner merely because he happened to be within our territory would seem to be wanting in the courtesy which is due from one nation to another. We have no right to interfere in the relations of foreign masters with their own servants. The point is discussed in *Panagotis* v. *Pontiac*, (1912) 1 K. B. 74; see also *The* "*M. Moxham*," 1 P. D. 107.

Ante, p. 1300; Rules 39 and 88.

SECTION 12.

Returns as to Compensation.

12.—(1) Every employer in any industry to which the Secretary of State may direct that this section shall apply shall, on or before such day in every year as the Secretary of State may direct, send to the Secretary of State a correct return specifying the number of injuries in respect of which compensation has been paid by him under this Act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the Secretary of State may direct, and in default of complying with this section shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds. Returns as to compensation.

(2) Any regulations made by the Secretary of State containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

For the Regulations now in force, see *post*, Appendix DDa.

SECTION 13.

Definitions.

13. In this Act, unless the context otherwise requires,— Definitions.

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person;

Section 13. "Workman" does not include any person employed otherwise than by way of manual labour whose remuneration exceeds two hundred and fifty pounds a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an outworker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

"Employer," "Workman."]—These are correlative terms. To establish the relationship there must be a contract *of* service as distinguished from a contract *for* service (*Simmons* v. *Heath Laundry*, (1910) 1 K. B. 543). The relationship is practically very much the old relationship of master and servant, not that of anyone doing work for another. An appointment, say, as a doctor in a hospital, is not such a contract of service (*Murphy* v. *Enniscorthy Guardians*, 2 B. 291), nor that of a lecturer about an airship (*Waites* v. *Franco-British Exhibition*, 2 B. 199). The relationship is a question of fact. It no less exists because a man is doing work for his own benefit (*Tombs* v. *Bomford*, (1912) W. C. Rep. 229 (always assuming the accident does not occur while the workman is so working for his own benefit (*Huscroft* v. *Bennett*, (1914) W. C. & Ins. Rep. 9)), nor is a man estopped from saying he is not an employer because he has made weekly payments, thinking he was liable (*Standing* v. *Eastwood*, (1912) W. C. Rep. 200).

Under the National Insurance Act, 1911, curates ((1913) W. C. Rep. 34), and poor law officials (*Ib.* p. 245), and the resident staff of a hospital (*Scottish Insurance Commissioners* v. *Royal Infirmary*, 50 S. L. R. 495), have been held not to work under contract of service. But where a workman under the control of a board of guardians was injured, it was held in *Finlay* v. *Tullamore Union* (*Guardians*), (1914) W. C. & Ins. Rep. 222, that the relationship of employer and workman existed. The stamping of a card under the National Insurance Act, 1911, is not conclusive evidence that the insured person is a workman within the meaning of the Workman's Compensation Act, 1906 (*Barnes* v. *Evans & Co.*, (1914) W. C. & Ins. Rep. 109).

Seamen, masters of ships, etc., must come within s. 13 as well as within s. 7. A master of a barge working on the thirds and fourths system is a co-adventurer and not a workman (*Beck* v. *W. Hill & Sons* (*Carriers*), *Ltd.*, (1915) W. C. & Ins. Rep. 319).

The meaning of the term "**contract for service**" was discussed at length in *Simmons* v. *Heath Laundry Co.*, (1910) 1 K. B. 543. Buckley, L.J., suggested the following tests: Was the workman employed upon terms that he should within the scope of his employment obey his master's orders, or was he employed to exercise his skill and achieve an indicated result in such a manner as in his judgment was most likely to ensure success? Was his contract a contract of service within the meaning which an ordinary person would give to the words? Was it a contract under which he could be appropriately described as the servant of the employer? With these hypothetical questions, compare the decisions in *M'Nally* v. *Fitzgerald*, (1914) W. C. & Ins. Rep. 7, where a plumber was held to be a servant of the person in whose house he was executing repairs, and in *Bobbey* v. *Crosbie & Co., Ltd.*, (1916) W.C. & Ins. Rep. 36, where the employer of a

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ganger was held to be the employer of a member of the gang. On the other hand, a rabbit trapper (*M'Connell* v. *Galbraith*, (1914) W. C. & Ins. Rep. 90); a person who had undertaken to do slating work (*Barnes* v. *Evans & Co.*, (1914) W. C. & Ins. Rep. 109); a man who had undertaken to supply a yawl and crew for pilotage purposes (*Walsh* v. *Waterford Harbour Commissioners*, (1914) W. C. & Ins. Rep. 16), were held to be independent contractors. In *Kemp* v. *Lewis*, (1914) W. C. & Ins. Rep. 512; 83 L. J. K. B. 1535, a quarryman who assisted a farmer carrying hay after his work hours in return for payment in kind but not in money, was held not to be under any contract of service within the meaning of sect. 13. See also *per* Phillimore, L.J., in *Newson* v. *Burstall*, (1915) W. C. & Ins. Rep. 16. In *Richards* v. *Pitt*, (1915) W. C. & Ins. Rep. 417, the niece of a hop picker who helped her aunt to pick hops was held to be under no contract of service with the hop grower. A nurse who attends a patient in the patient's flat for a surgical operation is not under a contract of service with the patient (*Bedford* v. *Marks*, Law Journal, Aug. 18th, 1917, p. 311).

Such contract would hardly appear to exist where work is found by a philanthropic institution as a form of wise charity (*Burns* v. *Manchester, etc., Mission*, 1 B. 305; *MacGilvrays* v. *N. Counties Institute for the Blind*, 48 S. L. R. 811, *contra*, seems a doubtful decision); but is held to exist where work is found under Unemployed Workmen Act, 1905 (*Porton* v. *Central (Unemployed) Body for London*, (1909) 1 K. B. 173). Many cases on questions of fact have been decided, *e.g.*, whether a shipowner or charterer was employer or whether a man was a partner, co-adventurer, independent contractor, or bailee, but turning on the particular terms of each contract, are of little guidance where the terms may differ however slightly.

A case of wider interest is *Pears* v. *Gibbon*, (1913) W. C. Rep. 469, where a trustee in bankruptcy employed an old member of the firm to assist in the winding up. Such assistance does not involve a contract of service, though a trustee may in fact employ such member as a servant if so mutually bargained.

In *Ryan* v. *Tipperary County Council* (No. 2), (1915) W. C. & Ins. Rep. 22, where a workman worked under a ganger breaking stones for a county council the county court judge found that he was not under a contract of service with the county council. On appeal a new trial was ordered.

A contract of service is not determined simply by the injured workman receiving compensation and remaining from work (*Warburton* v. *Co-operative Soc., Ltd.*, (1917) W. C. & I. 124).

Temporarily Lent on Hire.]—Workman must prove a subsisting contract of service between himself and lender (*Boswell* v. *Gilbert*, 2 B. 251; *Mackinnon* v. *Miller*, 46 S. L. R. 299; *Reed* v. *Smith*, 3 B. 223). Where a jobbing grinder rented power for his work from master cutlers and executed such work in their workshops as they gave him to do and did work for third parties when free, and while doing such work was injured, it was held that this was not a case of "lending" (*Oates* v. *T. Turner & Co.*, (1916) W. C. & I., p. 335)

Remuneration Exceeds £250 a Year.]—See Schedule I. (2), "*Earnings.*" If the employment is by way of manual labour the employer is a "workman" whatever his remuneration may be. For a case where it was considered what may amount to manual labour (within the meaning of the National Insurance Act, 1911), see *Re Dairymen's Foremen* and *Re Tailors' Cutters*, (1912) 28 T. L. R. 587. In cases other than those of manual labour, "if the contract [of service] is one which may continue for more than a year, and the servant, as incident to that contract, earns, or, but for some circumstance determining his earning power, would be able to earn in a year a sum exceeding £250, he will be within the exception [in sect. 13], although at the moment of the accident the remuneration he was actually earning might be at a lower rate than that of £250 per annum. So, on the other hand, if the actual or assumed earnings be less than £250 in the

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year, the man would be a 'workman,' although at the moment of the accident the remuneration he was actually earning was at a higher rate," *per* Warrington, L.J. in *Griffith* v. "*Penrhyn Castle*" (owners), (1917) W. C. & I., at p. 117.

Member of the Employer's Family.—Such cannot recover against a principal under sect. 4 as he is not a workman (*Marks* v. *Carne*, (1909) 2 K. B. 516); nor if only temporarily absent (*M'Dougall* v. *M'Dougall*, 48 S. L. R. 315).

Employment of Casual Nature.]—A charwoman regularly employed is not a casual labourer (*Dewhurst* v. *Mather*, (1908) 2 K. B. 754), but a window cleaner's work is of a casual nature (*Hill* v. *Begg*, (1908) 2 K. B. 802), and a man cutting down trees in an employer's garden (*M'Corthy* v. *Norcott*, 2 B. 279; *Knight* v. *Bucknill*, (1913) W. C. Rep. 175). But a labourer regularly employed as a woodman year by year for a season of about two months is not a casual labourer (*Smith* v. *Buxton*, (1915) W. C. & Ins. Rep. 126). Because the windows cleaned are those of a doctor they do not bring case within exception of employer's trade or business (*Rennie* v. *Reed*, 45 S. L. R. 814); but otherwise where the work done was the lopping of trees and the employer was a retired doctor who farmed 215 acres for profit (*Cotter* v. *Johnson*, 5 B. 568); the mere owning of eight cottages and managing them does not constitute trade or business (*Bargewell* v. *Daniel*, 98 L. T. 257), though otherwise if regular business premises are repaired (*Johnston* v. *Monastrevan General Store Co.*, 2 B. 183). Employment for the purposes of improving a house used for a trade or business is not of itself employment for the purposes of the trade or business (*Alderman* v. *Warren*, (1916) W. C. & Ins. Rep. 266). For a case in which the employer was held to be estopped from raising the defence of casual employment, see *Fraser* v. *Driscoll*, (1916) W. C. & Ins. Rep. 222.

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable;

Any Reference to a Workman, etc.]—A dependant's right is independent, not derivative, and an award terminating the rights of the workman is no bar to the claim by the dependants (*Jobson* v. *Cory*, 4 B. 284). Whether these words go this length is doubtful. The Act is clear that if a man dies when in receipt of a weekly payment it intends his dependants to then step into his shoes, and receive a lump sum less what has been paid him (Schedule I. (a) (i.)). But does it intend more? does it intend conflicting rights? for it is clear an injured workman must settle for less for himself if he cannot bar the rights of his dependants. This is the result of an unsatisfactory series of cases commencing with an *obiter* in *O'Keefe* v. *Lovatt*, 4 W. C. C. 109, where the precise meaning was not material, and in all of which were other reasons for the decisions. Hitherto, this has been of little moment, but new developments have now made the question one of the greatest importance.

In *Gill* v. *Fortescue*, (1913) W. C. Rep. 471, a man was killed, leaving children and a widow. The employers admitted liability, paid a lump sum into court, when the widow gracefully renounced all claim in favour of her children—she is suing under Lord Campbell's Act—and the arbitrator awarded them the full amount paid in. After a lengthy argument on another point, which was in the end agreed, the employers cursorily took the second point that the arbitrator should not have awarded the full amount to the children, but should have taken into account the share due to the widow. But she had made no claim and would make no claim, and after three minutes' consideration, if so long, the court held the point "was so far-fetched as scarcely to deserve mention. The arbitrator had not awarded her

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any compensation, and to say the remaining dependants were not entitled to an amount due to a class was an impossible contention." Thus the Master of the Rolls, to which Kennedy, L.J., and Swinfen Eady, L.J., respectively merely added "I agree." Is this decision simply to mean, as it probably does, a sum was in court and duly appropriated to those before the court, and there was nothing for the Court of Appeal to interfere with; or is it to mean that in every case dependants may break up their claims, one set getting the maximum under the Act as compensation, the other a large sum at law as damages? Were this the conclusion, it would be simply shocking. But is it? It is clear sect. 1, sub-s. 2 (b), which says that an employer is not to pay twice, is no defence to an action entirely outside the Act. No court can say to a dependant, "You must come in with the others." But the sub-section as clearly says any proceedings outside the Act are to be a bar to proceedings under it. Thus the election by a dependant to take proceedings outside the Act would be an effective answer to proceedings under it taken by other dependants. In other words, one dependant taking such proceedings can bind all the others. But if such proceedings are not pending? Then all possible dependants should be brought before the court, if necessary, as the rules provide, as respondents. Then, if any one declines to come in with this class, the arbitrator cannot say, "Elect!" Each may well reply, "I am still considering my position"; but he can say, "I can make no award until you do," and adjourn accordingly. Rules providing for conditional payment in and such adjournment might well be made, and would be clearly *intra vires* and would nip in the bud what threatens to be a serious evil if not promptly dealt with.

[I believe there has been a case before Mr. Justice Atkin when he dismissed a widow's action for damages on the ground she was cognizant of the proceedings for compensation, but I can give no details, as I can find no report of it.—ED.]

Death of Dependant, if before claim, still right is vested and enures for benefit of his estate (*United Collieries* v. *Hendry*, (1909) A. C. 383).

"Dependants" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;

Dependants.]—Dependency is now well settled to be a question of fact. But to entirely ignore the legal presumption is to err as much on one side of the law as to found dependency on it is to err on the other. "The fact that a legal duty lay upon the workman to provide maintenance is an element to be considered, no doubt because people usually count upon getting what they are entitled to" (Lord Loreburn, L.C., in *Keeling* v. *New Monkton Collieries*, (1911) A. C. 648), and now so decided in *Potts or Young* v. *Niddrie and Benhar Coal Co.*, (1913) W. C. Rep. 547 (Sc.). But it will be a question of fact how far such rights were being actively enforced and with what likelihood of benefit. The dependency of a child is equally a question of fact (*Lee* v. *Bessie*, (1912) W. C. Rep. 57), as also of illegitimate children. Thus the married daughter of a man who lodged with her may not be a dependant, since the loss of the board money paid really falls on the husband (*Montgomery* v. *Blows*, (1916) W. C. & Ins.

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Rep. 89. But if a daughter was in fact living in entire dependence on her father the fact that she was capable of earning a living is not material, and she is entitled to compensation as one totally dependent (*Simms* v. *Lilleshall Coll*, (1917) W. C. & I. 218). A posthumous child is in the same position as any other child, but a posthumous illegitimate child must prove the putative father had recognized the duty to support it before his death. His statement that he will marry the mother and provide a home for her are admissible in evidence on the issues of paternity and dependence (*Lloyd* v. *Powell Duffryn Steam Coal Co.*, (1914) W. C. & Ins. Rep. 450); *Harris* v. *Powell Duffryn Steam Coal Co.*, (1915) W. C. & Ins. Rep. 527. The question of paternity is a question of fact to be proved in the arbitration (*Johnstone* v. *Spencer*, 45 S. L. R. 802).

See further Sched. I. (1), "*Where death results.*"

As to rights of dependants *inter se*, see Sched. I. (8).

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister;

Member of a Family.]—A son has no claim against his father with whom he worked (*McDougall* v. *McDougall*, 48 S. L. R. 315).

"Ship," "vessel," "seaman," and "port" have the same meanings as in the Merchant Shipping Act, 1894;

"Manager," in relation to a ship, means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner;

53 & 54 Vict. c. 45. 53 & 54 Vict. c. 67.

"Police force" means a police force to which the Police Act, 1890, or the Police (Scotland) Act, 1890, applies, the City of London Police Force, the Royal Irish Constabulary, and the Dublin Metropolitan Police Force;

Police Force.]—This includes a police officer who, as a statutory duty acts as a fireman (*Sudell* v. *Blackburn Corporation*, 3 B. 227).

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this Act, be treated as the trade or business of the authority;

The Exercise and Performance.]—By virtue of this definition in *Mulrooney* v. *Todd and Bradford Corporation*, (1909) 1 K. B. 165, the corporation were made liable under sect. 4 as principals making a contract for work undertaken by them.

"County court," "judge of the county court," "registrar of the county court," "plaintiff," and "rules of court," as respects Scotland, mean respectively sheriff court, sheriff, sheriff clerk, pursuer and act of sederunt.

SECTION 14.

Special Provisions as to Scotland.

Special provisions as to Scotland.

14. In Scotland, where a workman raises an action against his employer independently of this Act in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the sheriff court and concluding for damages under the Employers' Liability Act, 1880, or alternatively at common law or under the Employers' Liability Act, 1880, shall, notwithstanding anything contained in that Act, not be removed under that Act or otherwise to the Court of Session, nor shall it be appealed to that court otherwise than by appeal on a question of law; and for the purposes of such appeal the provisions of the second schedule to this Act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this Act shall apply.

43 & 44 Vict. c. 42.

SECTION 15.

Provisions as to Existing Contracts and Schemes.

Provisions as to existing contracts and schemes.

15.—(1) Any contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1897, for the provisions of that Act) existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

60 & 61 Vict. c. 37.

(2) Every scheme under the Workmen's Compensation Act, 1897, in force at the commencement of this Act shall, if re-certified by the Registrar of Friendly Societies, have effect as if it were a scheme under this Act.

(3) The Registrar shall re-certify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this Act as to schemes.

(4) If any such scheme has not been so re-certified before the expiration of six months from the commencement of this Act, the certificate thereof shall be revoked.

Re-certification of Old Scheme.]—In *Godwin* v. *Admiralty Commissioners*, [1913] W. C. & Ins. Rep. 680, it was held that all the formalities prescribed by sect. 3 for the certifying of a new scheme need not necessarily be complied with in the case of a re-certifying under sub-s. 3 of a scheme valid under the Act of 1897.

Section 16.

SECTION 16.

Commencement and Repeal.

Commencement and repeal.

16.—(1) This Act shall come into operation on the first day of July, nineteen hundred and seven, but, except so far as it relates to references to medical referees, and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this Act.

60 & 61 Vict. c. 37. 63 & 64 Vict. c. 22.

(2) The Workmen's Compensation Acts, 1897 and 1900, are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this Act, except to the extent to which this Act applies to those cases.

Accidents which happened before the Act of 1906 came into operation were and are governed by the Act of 1897 in regard to all their incidents except so far as relates to medical referees as stated in the above sub-s. 1 (*Mackay* v. *Rosie*, (1912) W. C. Rep. 41).

SECTION 17.

Short Title.

Short title.

17. This Act may be cited as the Workmen's Compensation Act, 1906.

SCHEDULES.

FIRST SCHEDULE.

Scale and Conditions of Compensation.

(1) The amount of compensation under this Act shall be—

(*a*) where death results from the injury—

(i.) if the workman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;

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(ii.) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and

(iii.) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

(*b*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound:

Provided that—

(*a*) if the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week; and

(*b*) as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings, one hundred per cent. shall be substituted for fifty per cent. of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings.

Where Death results.]—The county court judge should state in terms whether the dependency is total or partial. The scheme of the Act makes a great distinction between total and partial dependants, and the same conditions do not apply to the two cases, per Lord Cozens-Hardy, M.R. in *Whittaker* v. *J. Joicey & Co., Ltd.*, (1915) W. C. & Ins. Rep. 548. The award may connote partial dependency without any formal finding (*Ford* v *Oakdale Colliery Co., Ltd.*, (1915) W. C. & Ins. Rep. 46. In total dependency the amount is fixed as specified (note the words in Sched. I. (1) (a) (i.) "in the employment of the same employer," words which were explained in *Greenwood* v. *Joseph Nall & Co., Ltd.*, (1915) W. C. & Ins. Rep. 346, where it is pointed out that a change of grade is a change of "employer"); in partial dependency, it is to be a sum *reasonable and proportionate to the injury.* In arriving at the amount there are two limits. One practice is: Find the actual benefit received, reduce to a weekly average, and by analogy with total dependency multiply by 156. The other is: Find the amount payable for total dependency, and simply deduct the capital value of the independent income. This was so done in *Osmond* v. *Campbell and Harrison*, (1905) 2 K. B. 852; followed in *Littleford* v. *Connell*, 3 B. 1. Here a woman earned 1*s.* 11*d.* a week, lost her husband, and the arbitrator gave her as totally dependent 156*l.*, and deducted 6*l.* on account of her independent earnings. The reasonableness of either limit will depend on the particular facts of every case. Either adopted as an invariable rule may prove absurd. *E.g.*, a mother receives, say, 10*s.* a week from a son

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earning 2*l.* wages. Wholly dependent she would receive 300*l.* If she earned 1*s.* 11*d.* (or 11*s.* 1*d.*, the result would be the same) she would only receive 10*s.* × 156 = 78*l.* By the other method of computation, whether her son allowed her 2*s.* 6*d.*, 10*s.*, or even 1*l.* a week, she would still receive the same, namely 300*l.*, less 1*s.* 11*d.* or 11*s.* 1*d.* × 156, as the case might be. To find what is therefore reasonable, regard must be had to deceased's wages, dependant's income, and the amount allowed—three variants, not two. To work this out, no better system can be found than that of Judge Parry in *Turner* v. *Miller*, 3 B. 307, when awarding 125*l.*, arrived at by no particular method: "I considered that the son had been a substantial contributor to the family for many years, and would have continued to be so had he lived, and assessed the money to be paid on that basis." In *Tamworth Colliery Co.* v. *Hall*, (1911) A. C. 665, a father earned weekly 16*s.* 9*d.* in a colliery, and 13*s.* as a barber. His boy, maintained at home, earned 6*s.* 11*d.* in the colliery, and was worth 6*s.* further, helping him as barber. He was killed, and his father claimed as partially dependent. It was held dependency is a question of fact. The contribution of 6*s.* 11*d.* a week might or might not balance the cost of the maintenance. But the boy also was of value helping his father. This could not be reckoned as earnings being made as a member of the family, but there was no reason this claim should not be set off against his maintenance. This might leave a balance to the good contributed to the family chest, which the arbitrator would have to determine. So the facts presented themselves to the House of Lords. What weight (if any) was to be given to the independent income of the father (if any) was not discussed. *Osmond's Case*, *supra*, perfectly right on its own facts, could not possibly apply. Even if he were dependent and the earnings of the boy estimated at 6*s.* 11*d.* plus 6*s.*, and with no deduction for maintenance, still such sum would be more than swamped by deducting the capital value of his own independent income. Here the old general practice might be fairest to give 156 times the amount of the weekly surplus. But even for this there is no rule, and the whole is a question of fact in which every incident at the time of the death, the salient period, must be considered. *Cheverton* v. *Oceanic S.S.* (*No.* 2), (1913) W. C. & Ins. Rep. 462 ("The Titanic" disaster), is an extreme case. The deceased contributed to partial dependants 30*s.* a week, and the arbitrator gave the maximum 300*l.* But see *Gourlay* v *Murray*, 45 S. L. R., where the court did not approve of full amount given to an illegitimate child unwillingly supported by the father. Subject to the maximum in fixing a sum reasonable, etc., an arbitrator may take into account funeral expenses (*Bevan* v. *Crawshay*, 4 W. C. C. 110). The maximum of 300*l.* is the maximum payable from first to last; so if, before death, the employer has paid compensation weekly the amount so paid must be deducted from the 300*l.* (*Robinson* v, *Consett Iron Co.*, (1916) W. C. & Ins. Rep. 201).

There may be total dependency in the case of a posthumous illegitimate child (*Harris* v. *Powell Duffryn Steam Coal Co.*, (1915) W. C. & Ins. Rep. 527.

Taylor v. *Powell Duffryn Steam Coal Co.*, (1916) W. C. & I. 325, is a curious case. There A. married B. and had three children. A. went to live with C. B. joined army. A. had illegitimate child by C. A. received B.'s separation allowance. C. killed by accident arising, etc. Held the illegitimate child was totally dependent, and that had it been proved that the separation allowance went into a common fund it would not follow that C.'s child was not totally dependant on C.'s earnings.

Application by dependants (Rules 4, 5); where no dependants (Rule 6).

As to dependants generally, see sect. 13, and their rights *inter se*, see *infra*, Schedule I. par. (8).

"Where . . . partial Incapacity results." — Weekly Payment.] The average weekly earnings prior to the accident is fixed once and for all, and in all subsequent proceedings is *res judicata*. The wages subsequently

earned may naturally vary. To save applications for continual re-adjustment of the compensation, the arbitrator in *Newhouse* v. *Johnson*, 5 B. 137, fixed the weekly payment at two-thirds of the difference between 1*l.* and what the man actually earned in any given week, with a minimum of 10*s.* per week. Though a most excellent award, and well within the spirit of the Act that compensation and incapacity should vary together, in technicalities it was wrong, as one of the cardinal principles of the Act is that an arbitrator cannot dive into futurity, but must decide every case on evidence actually before him. Hence he must fix a definite amount even if it has to be varied from time to time on a change of circumstances taking place.

Important questions arise as to the meaning of "**incapacity for work.**" A man may be quite capable of work and yet be incapacitated, because employers won't give him work because of his injuries (*Ball* v. *Hunt*, (1912) W. C. Rep. 261). Again, the incapacity must in fact result from the injury (*Ystradowen Colliery Co.* v. *Griffiths*, (1909) 2 K. B. 533). The *onus* is on the applicant to prove incapacity due to accident (*Brownlee* v. *Coltness Iron Co., Ltd.*, (1917) W. C. & I. 235); on the employer to prove an intervening cause (*Bown* v. *Meggitt & Jones*, (1917) W. C. & I. 40). If it be due to an unreasonable refusal to undergo an operation, it is not incapacity resulting from the injury (*Walsh* v. *Locke & Co.* (*Newland*), *Ltd.*, (1914) W. C. & Ins. Rep. 95). *Secus*, if the refusal was reasonable (*Molamphy* v. *Sheridan and Others*, (1914) W. C. & Ins. Rep. 19). The following cases may also be referred to where the incapacity was due to *obesity: Clark* v. *George Taylor & Co.*, (1914) W. C. & Ins. Rep. p. 448; *unskilful surgical treatment: Della Rocca* v. *Stanley Jones & Co.*, (1914) W. C. & Ins. Rep. 33; *old age: Lewis* v. *Wrexham and Acton Collieries Co., Ltd.*, (1916) W. C. & Ins. Rep. 275; *unnecessary operation: Lakey* v. *Blair & Co., Ltd.*, (1917) W. C. & I. 78. A man may be incapacitated by the injury, although a collateral cause also prevents him earning wages, *e.g.*, being shut up in an asylum (*Slater* v. *Blyth Shipbuilding and Dry Dock Co.*, (1914) W. C. & Ins. Rep. 38), or prison (*McNally* v. *Furness, Withy & Co.*, (1913) W. C. & Ins. Rep. 717), or internment (*Cargo Fleet Iron Co.* v. *Funck*, (1916) W. C. & Ins. Rep. 87); or heart disease (*Harwood* v. *Wyken Colliery Co.*, (1913) W. C. & Ins. Rep. 317). See further, *infra*, Schedule I. (3), notes. If it be shown on an original application that the workman is capable of light work, the *onus* is upon him to show that he is unable to obtain suitable light work (*Williams* v. *Ruabon Coal and Coke Co.*, (1914) W. C. & Ins. Rep. 32). If the man is able to do and get his old work, he is not incapacitated although the risk he runs in so working is greater than before. *e.g.*, a one-eyed man risking the loss of the remaining eye, but whether such employment is suitable or not is a question of fact (*Law* v. *William Baird & Co.*, (1914) W. C. & Ins. Rep. 140, as explained in *Burt* v. *Fife Coal Co.*, (1914) W. C. & Ins. Rep. 629). See also *Pearson* v. *Archibald Russell, Ltd.*, (1916) W. C. & Ins. Rep. 71; *Jackson* v. *Hunslet Engine Co., ibid.*, 183. If suitable work at his old wages which he can do is offered without clogging conditions, the workman is not incapacitated from earning wages, and cannot refuse the offer and claim compensation (*Keevans* v. *Mundy*, (1914) W. C. & Ins. Rep. 180). See also *Potts* v. *Guildford Syndicate*, (1914) W. C. & Ins. Rep. 330. The position is, of course, different if no light work is available (*Bonsall* v. *Mid. Coll., etc.*, (1914) W. C. & Ins. Rep. 331). Assuming incapacity, a workman is not disentitled from recovering compensation because he fails to return to work (*Chapel Coal Co., Ltd.* v. *Devlin*, (1914) W. C. & Ins. Rep. 621). For the position where the employer was prevented from giving the old work by a Trades Union, see *Thompson* v. *Johnson and Nephew, Ltd.*, (1914) W. C. & Ins. Rep. 333. Compare *Woodhouse* v. *Midland Ry.*, (1914) W. C. & Ins. Rep. 595.

(2) For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed :—

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(*a*) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;

(*b*) where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;

(*c*) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;

(*d*) where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

Earnings have long been held to include overtime, extras, tips (see *Helps* v. *G.W.R.*, (1917) W. C. & Ins. Rep. 199), profits, board and lodging, a house rent free, and such like, and the actual value to the man is the measure of value (*Dothie* v. *MacAndrew*, (1908) 1 K. B. 803). On the other hand, incidental advantages, as tuition, are not to be reckoned. No deductions are to be made for small payments a man has to make out of his wages, *e.g.*, as for oil for a miner's lamp, or the sharpening of picks, essentials for a well-equipped workman to do his work with (*Abram Coal Co.* v. *Southern*, (1903) A. C. 306). Probably, expenses a man has to so incur to make himself personally fit—say, a joiner, who has to provide his own tools—would still follow this decision, though under the old Act and before this par. (2) (*d*) was added. In *M'Kee* v. *Stein*, 47 S. L. R. 39, doubtfully it would seem the Court of Session went so far as to allow no deduction for dynamite a miner had to provide in the course of his work; but in *Skipp* v. *Frodingham Iron and Steel Co.*, (1913) W. C. Rep. 230, without directly disagreeing, the Court of Appeal held that the terms of the contract—a gang to receive a lump sum, deduct cost of powder, and then divide—did not

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even raise the question, as the man's earnings were his share of the balance, neither more nor less. But apart from this, it is clear that there is all the difference possible between providing dynamite, which might be a very large item, and is only supplied this way to prevent wastefulness, and providing one's own personal tools and keeping them in order. Equally, where a man at his own expense gets another to help him (*M'Kee* v. *Stein*, 47 S. L. R. 39). In *M. Ry.* v *Sharpe*, 6 W. C. C. 119, the House of Lords held that allowances to a guard in respect of board and lodging when away were to be included in earnings. This is clearly changed by this sub-paragraph.

In *Williams* v. "*Maritime*" (*Owners*), (1915) W. C. & Ins. Rep. 97—where the question was whether the captain of a ship was a "workman"—it appeared that he received £20 per month and a gratuity of £48 per annum if he kept the ship free of all damage and claims. If he did not keep the ship so free his remuneration was to be reduced to £16 per month and no gratuity. The ship was lost and it was held that the remuneration must be taken at £16 per month + the value of board and lodging.

Measure of Earnings.]—Where an injured workman ceases to work as a servant, and commences business on his own account, the measure of his earnings will not be governed by his profits or losses, but by what he would have to pay a man to do the work he is then doing (*Duberley* v. *Mace*, (1913) W. C. Rep. 199).

Average weekly earnings.

Amount of Compensation.]—**Note by Workmen's Compensation (War Addition) Act, 1917, as from September 1st, 1917, until six months after the termination of the present war in cases of *total* incapacity the compensation payable is increased by 25 per cent. See for text of Act of 1917, p. 1459.** Save as in par. (1) (*a*) (i.), this is based on the **average weekly earnings,** which we see are to be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. In considering his remuneration no account must be taken of earnings received under a contract of service not within the Act (*Soles* v. *Abbott*, (1916) W. C. & Ins. Rep. 124). See as to the general meaning of the words, "average weekly earnings," *Cue* v. *Port of London Authority*, (1914) W. C. & Ins. Rep. 481; 83 L. J. K. B. 1445. To find the weekly rate we first divide the amount earned by the weeks in which it was earned, noting, if a man takes a week off, he will not earn anything in it, nor will such week be included in those worked. Next, the idea of the Act is to take a period long enough for incidentals and accidentals to average themselves out—fifty-two weeks being the usual time indicated when, if there are some weeks in which no work is done, then for working purposes his year will be not one of fifty-two weeks, but one of fifty-two weeks less such weeks. In *Bailey* v. *Kenworthy*, (1908) 1 K. B. 441, where these rules are given, a man earned 82*l.* 2*s.* 1*d.* in forty-nine weeks, but the full working year was only fifty weeks out of fifty-two. Thus the average rate at which he was being remunerated was $\frac{82l.\ 2s.\ 1d.}{49} \times \frac{50}{52}$.

Whilst weeks in which work could be done, but is not done, are to be disregarded, the same rule does not apply to broken weeks, *e.g.*, in a colliery where a miner as a practice will often only work three or four days a week at most, and therefore a week is to mean an aggregate of days amounting to a week at the rate of as many days to the week as is usual to the employment (*dictum* of Cozens-Hardy, M.R., on *Anslow's Case*, and *Carter* v. *Laing*, 45 S. L. R. 938). The first part of the rule is unsatisfactory, *e.g.*, a man earns 2*l.* a week, "plays" alternate weeks and is killed. If he has been employed three full years, his dependants will only be entitled to his aggregate earnings of 156*l.*; but if for a day less, they will be entitled to 156 times his average earnings of nearly 2*l.* a week, or the maximum of 300*l.* So as the man himself, if only incapacitated, will be entitled to half 2*l.* as compensation or exactly what satisfied him when working, viz, 1*l* a week; therefore it will

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not grieve him if he never does another stroke of work in his life. This part of the rule has not yet been approved, save as an *obiter* in the House of Lords in *Anslow* v. *Cannock Chase Colliery Co.*, (1909) A. C. 435. In this case the other part of the rule, much to the workmen's loss, was approved. Here a man, owing to stoppages, etc., could only be employed thirty-six weeks in a year and was employed only thirty-three weeks, in which he earned 68*l*. Thus the amount he was held entitled to was $\frac{68l.}{33} \times \frac{36}{52}$. Being practically as he well knew a 2*l*. a week man, he was much aggrieved at being thus rated at less than 30*s*., and appealed to the Lords, but without success. In *White* v. *Wiseman*, (1912) W. C. Rep. 403, a man employed first by time and then by piece-work, had busy, ordinary, and slack days. On some he worked overtime, on the others there was not enough for a full day's work. The arbitrator found this was an abnormal incident, and so only regarded the busy and ordinary days. The Court of Appeal had little doubt the slack time was as much a normal incident as the busy times, and required all to be taken into account. So as regards illness, it must be regarded reasonably. To regard two weeks' illness where eight weeks' employment was taken as the basis of calculation, would mean a man would be expected to be ill two out of every eight weeks. But in a long period some illness is rightly to be expected and should be considered (*Turner* v. *Port of London Authority*, (1913) W. C. Rep. 123). Similarly if the workman is in the habit of only working, *e.g.*, as fruit picker, for a few days a year that should be taken into consideration (*Williams* v. *Hollings*, (1915) W. C. & Ins. Rep. 540). For the position where stoppage of work is due to the war, see *Griffiths* v. *W. Gilbertson & Co., Ltd.*, (1915) W. C. & Ins. Rep. 359.

Where a workman, a dairyman, is assisted voluntarily by his sisters to whom he makes an allowance, that allowance must not be deducted in estimating his average weekly earnings (*Roper* v. *Freke*, (1915) W. C. & Ins. Rep. 377).

Provided that . . . Shortness of Time, etc.]—A man's own history, however short, may furnish the best data for computing his compensation. It should be long enough for all incidents to average themselves out, or to furnish an average by inference. But where not sufficiently long, an arbitrator may arrive at his conclusion in any way he thinks best. He may be guided by what the man has previously earned where similarly employed—note be guided—or inquire into the earnings of others as specified. If again he simply has regard to such earnings, merely takes them as a guide, not as a precise measure, his conclusions cannot be interfered with.

Same Grade.]—"In my opinion, the provisions of this par. (2) are intended as a guide, not a fetter" (Farwell, L.J., in *Perry* v. *Wright*, (1908) 1 K. B. 441). What is really wanted is to find the earnings of a man similarly employed, to refer to as *a guide*. See *Cox* v. *Trollope & Sons*, (1916) W. C. & Ins. Rep. 270, for an example of the way this guide may be employed. Whether grade be the same or not, if one man can command four days a week and another only three, the arbitrator should certainly have regard to this fundamental difference (*Barnett* v. *Port of London Authority*, (1913) W. C. Rep. 250). Personal qualifications as well as grade should be taken into consideration (*Snell* v. *Bristol Corporation*, (1914) W. C. & Ins. Rep. 100). Special qualifications in the employment itself should be regarded, but not outside it, as where a skilled artizan takes work as a casual labourer, say, with a different employer.

Change of grade is a question of fact, and operates as a new employment. A temporary change, even with change of designation, as from hobbler to mate, is not conclusive (*Jury* v. *Atalanta*, (1912) 3 K. B. 366). For the position where the grade was changed after filing of declaration of liability, and in consequence of a cause unconnected with the accident, see *Thompson* v. *Richard Johnson and Nephew, Ltd.*, (1914) W. C. & Ins. Rep. 333. Earnings

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in *mixed grades, i.e.*, where men in one grade are employed off and on in another, may be well if not best calculated by adding the earnings in both together, and dividing by the relevant period. The time in either grade is obviously too short to form a conclusive basis of estimating, and therefore an arbitrator must be guided by other factors. In fact, if an arbitrator will only preface his award with the remark that he thinks the time too short to be solely guided by it, and he has to do the best he can from the other evidence before him and says no more, appeals will be even less successful than they now are (*Edge* v. *Gorton*, (1912) 3 K. B. 360).

Unavoidable Cause.—Absence from work owing to a strike is not absence due to unavoidable cause (*Price* v. *Guest, Keen and Nettlefolds, Ltd.*, (1917) W. C. & I. 157).

Concurrent Contracts.]—In *Brandy* v. *S.S. Raphael*, (1911) A. C. 413, a reservist's pay in the Navy was held to be received under a concurrent contract. This case was relied upon in the case of *Harrison* v. *New Brynmally Colliery Co.* in the Wrexham County Court, where a Territorial paid while in camp was treated as having received pay under a contract concurrent with his contract of service as a collier. Where a man has actually been employed three years with the same master, the compensation will be the aggregate of such earnings without including such concurrent earnings (*Buckley* v. *London Docks*, 2 B. 327). To be concurrent, the services need not be *ejusdem generis* (*Lloyd* v. *Midland Railway*, (1914) W. C. & Ins. Rep. 105). For the effect or non-effect of a railway company's rules forbidding employees working at other employments, see *Lloyd* v. *Midland Railway*, *supra*.

(3) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

Regard shall be had to any payment, allowance, or benefit.]—See generally as to the meaning of "payment, allowance or benefit" the important case of *Considine* v. *McInery*, (1916) W. C. & Ins. Rep. 114. This case was considered at some length in *Watts* v. *Manchester Corporation*, (1917) W. C. & I. 151. Both are concerned primarily with the question whether the right to participate in benefits from a pension fund contributed to by the employers is within clause 3. As a rule all payments pending incapacity should be considered. It enables an employer to assist at once an injured man, knowing he has this qualified right to be indemnified. The parties agreed to settle for 10*l.*, which was paid. Though the court would not pass the agreement, it was held that regard would have to be had to this sum paid (*Horsman* v. *Glasgow Navigation Co.*, 3 B. 27). It is immaterial that the workman's application for compensation relates only to a period subsequent to the time when the payment, allowance, or benefit was received (*Porter* v. *Whitbread & Co.*, (1914) W. C. & Ins. Rep. 59). Amounts received *aliunde*, as in poor relief, do not fall within the provision (*Gilroy* v. *Mackie*, 46 S. L. R. 325). So under the Merchant Shipping Act, 1894, whilst a seaman is not to receive overlapping benefits, yet this paragraph does not operate to deprive him of compensation on a mere

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technicality (*McDermott* v. *Tintoretto*, (1911) A. C. 35). Overpayments made prior to the commencement of the proceedings should not be taken into account (*Doyle* v. *Cork Steam Packet Co.*, (1912) W. C. Rep. 203; *Flynn* v. *Burgess and Others*, (1914) W. C. & Ins. Rep. 238).

Earning or is able to earn.]—**Circumstances at the time of review** are to be considered. Under the old Act, the only questions were: What was the man earning? What is he earning? (*James* v. *Ocean Coal Co.*, (1904) 2 K. B. 213); now the words, *shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper*, have been added to this Act. These necessitate an inquiry into other facts. In *Bevan* v. *Enerylyn Collieries*, (1912) W. C. Rep. 126, a miner had been earning 2*l.* 19*s.* 1*d.*, and at the time of review was earning only 1*l.* 16*s.* The arbitrator awarded him 11*s.* 7*d.* as compensation. This made his total receipts 2*l.* 7*s.* 7*d.* for the week. But owing to the Eight Hours Act, had he been in full work, and had never been injured, he could only have earned 2*l.* Thus it was held that though an arbitrator is bound by the difference between the two limits, yet when he determines what proportion of that difference to give, viz., 10, 20, 40, 60 per cent. or even the whole, he must consider all the circumstances of the case, of which such change in a scale of wages would be one. Compare *Woodilee Coal and Coke Co., Ltd.* v. *M'Neill*, (1917) W. C. & I. 129, where a general *rise* in wages was taken into account.

If an injured man is employed, he will get the benefit or otherwise of a general rise or fall in wages (*Merry* v. *Cunningham*, 46 S. L. R. 812). So where a man goes into business, the measure of his earnings will be not his profits nor losses, but what he would have to pay another as a servant to do his work (*Paterson* v. *Moore*, 47 S. L. R. 30; *Duberly* v. *Mace*, (1913) W. C. Rep. 199).

Heathcote v. *Haunchwood Colliery, Ltd.*, (1917) W. C. & I. 140, lays down the following proposition:—The weekly payment to be awarded must be arrived at by ascertaining *the difference between the workman's average weekly earnings before the accident and the average weekly amount he is able to earn in a suitable employment after the accident*. It matters not at all that he is in fact earning less than before if he *is able to earn* as much.

Able to Earn.—Generally.]—"If he would have got work but for the accident, but cannot otherwise, it is because of the accident" (Kennedy, L.J., in *Dobby* v. *Pease*, 2 B. 370). This failure may be due to (*a*) physical incapacity; (*b*) want of suitable employment; (*c*) disability created by the Act itself. As to (*a*), physical capacity is a pure question of fact; as to (*b*), it is not necessary the employment should be the same as before done by the man, and the one test is: is a man reasonable or not in wanting or refusing a certain class of work? He has lost an eye. It may be reasonable to refuse work to imperil his remaining eye; it may not. Cases are both ways, and it is solely for the arbitrator to decide. His discretion is practically unlimited. See *e.g.*, *Housley* v. *Hadfields, Ltd.*, (1915) W. C. & Ins. Rep. 456; *Penman* v. *Smith's Dry Dock Co., Ltd.*, *ibid.*, 452. In *Radcliffe* v. *Pacific Navigation Co.*, (1910) 1 K. B. 685, a ship's butcher, two years after losing his first finger, had his full compensation restored because there was no suitable employment for such an unfortunate. In *Hargreave* v. *Haughhead Coal Co.*, (1912) A. C. 319, a man had a right eye destroyed by accident, and was refused a suspensory order. Presumably the loss of his eye would never affect his obtaining suitable employment. Compare *Hart* v. *Cory Brothers*, (1915) W. C. & Ins. Rep. 522. (*c*) Disability due to the Act is responsible for half the anomalies and most of the difficulties in administering this part of the Act. Men can do work, and but for the Act would get work, and employers with two men to choose from choose the one least likely to make a claim. This is a real and serious disability due to the accident. It would be met by allowing such to contract out of the Act. *Ball* v. *Hunt*, (1912) A. C. 496, is a striking case of incapacity caused by the Act. A man lost the sight of an eye, its appearance being unchanged. He got his work

and did his work. An accident to this sightless eye necessitated its removal, and he could get work no more. But for the Act employers would not mind whether a man had one eye or two, so long as he did his work.

Physical Incapacity.]—What steps must a man take to get well? Every rule reduces to one. He must act reasonably, and of what is reasonable the arbitrator is sole judge. It may be reasonable for him to undergo an operation; it may not. The arbitrator must decide reasonably. See, *e.g.*, *Joseph Dolan & Sons* v. *Ward*, (1915) W. C. & Ins. Rep. 274. So if through idleness and loafing a man lets his muscles get soft so that he cannot work, an arbitrator may find his incapacity is no longer due to the accident (*David* v. *Windsor Steam Coal Co.*, 4 B. 177). But an arbitrator may not anticipate and reduce an award from a future date. Such award will be bad (*Baker* v. *Jewell*, (1910) 2 K. B. 673—which however, does not invalidate awards made before the determination of that case (*Evans* v. *Barrow Hæmatite Steel Co.*, (1914) W. C. & Ins. Rep. 355)). He can, however, effect the same thing by making an order for the time being and adjourning the hearing. This is useful in cases of neurasthenia, where a man will take no steps for his recovery. Neurasthenia may be as much the result of the accident as any other injury. Still existent, an arbitrator cannot end the award. But he can direct the man to take reasonable steps for his recovery, as indicated by evidence—he is not a doctor to say what in particular—and if on the adjournment, he has not done so, he can then end or reduce the payments. As a rule, following the advice of one's doctor is strong evidence of such reasonable conduct, but it is not conclusive (*O'Neil* v. *John Brown & Co.*, (1913) W. C. Rep. 235). See sect. 1, sub-s. 1, "Consequent Results due to Unreasonable Conduct, etc." A man may be suffering from incapacity and entitled to an award though his old employers offer him his old work at his old wages (*Jackson* v. *Hunslet Engine Co.*, (1915) W. C. & Ins. Rep. 389).

Suitable Employment.]—See under Schedule I. (16), "Review."

(4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place. Medical examination.

Medical Examination.]—See sect. 10; also pars. (14), (15), and (20), and Schedule II. (5) and (15).

The one rule is a workman must be reasonable: an employer must be reasonable, and it does not follow that what is reasonable in one case will be reasonable even in a similar case. Of what is reasonable, the arbitrator is sole judge (*Morgan* v. *Dixon*, (1912) A. C. 74). He may decide it is reasonable for a workman to have his own doctor present when examined by his employer's doctor—though he cannot order the employer to pay such doctor's fees (*Osborn* v. *Vickers Maxim*, 2 W. C. C. 130); he may decide it is not. Both parties should do their utmost to facilitate a fair examination, and with as much regard for the convenience of each other as the nature of the case permits of. This par. (4) is not limited to one examination if a further one is reasonably required (*Mayor* v. *South Kirkby, etc., Collieries*, (1913) W. C. Rep. 305), even where the first examination took place after the dispute arose (*Smith* v. *D. Davis and Sons, Ltd.*, (1915) W. C. & Ins. Rep. 299), and provides for effective examination before an award is made; whilst par. (14) similarly provides for examination afterwards, when compensation is being paid.

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The workman, besides submitting to examination, should place no difficulties in the employer's way to hinder him from seeing the medical notes relating to the treatment of the injuries. *Per* Swinfen Eady, L.J., in *Booth & Sons* v. *Carter*, (1915) W. C. & Ins. Rep. 59.

A workman who enlists and is sent abroad and cannot therefore be medically examined in England cannot be deemed to have obstructed medical examination (*J. & C. Harrison, Ltd.* v. *Dowling*, (1915) W. C. & Ins. Rep. 351).

Practice, Rules 55—58. Regulations, Appendix BB; CC.

On death—payment into court.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the county court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in :

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

Practice, Rules 51, 58, 55, 60—62.

As to payment in with denial of liability, see *Johnston* v. *Oceanic Steam Navigation Co.*, (1912) W. C. Rep. 162; and Rule 60 as to payment in, generally; Rule 61, with admission of liability; and Rule 62, with denial of liability. As to dependants, see sect. 13, under definition, and as to their rights *inter se*, Schedule I. (8). The amount payable to each dependant must be apportioned (*Daniels* v. *Ocean Coal Co.*, (1900) 2 Q. B. 250), though in the case of the death of one participant, her share does not go to her estate, but so far as unappropriated, remains as part of the original fund to be for the benefit of the remaining dependants (*Ivey* v. *Ivey*, (1912) 2 K. B. 118). See also par. (9).

The following statement, which has been approved by the Association of County Court Registrars, may be found of assistance :—

(1) Where the amount payable has been decided by arbitration—
The employer may at once pay the money into court with form 54 (Rule 60 (4)) No duty is thrown on the registrar to consider its adequacy, but form 58 (i.) is at once sent, (Rule 60 (5)).

(2) Where the amount payable has been decided by agreement—
A memorandum and annexed statement (form 37) must be filed (Rule 51 (1)). Form 41a with form 38 are then sent, and the registrar must inquire into the genuineness of the memorandum and the adequacy of the amount (Rules 51 (2) and 45). When the agreement has been approved by him, the money can be paid into court with form 54 (Rule 60 (4)). When it has been so received form 58 (i.) is sent.

(3) Where the amount payable has not been decided either by arbitration or agreement—
The employer may at once pay the amount he deems to be payable into court with form 55 (Rule 61 (1) and (2)). The

registrar must then inquire into its adequacy, making such inquiries and obtaining such information as he may think necessary (Rule 61 (3)), but no special forms are provided for the purpose. If he considers i tadequate form 58 (ii.) is sent; if he considers it inadequate he reports to the Judge.

(4) Where liability is denied, but an amount has been accepted in settlement by such of the dependants as are not under disability, but no formal agreement has been signed—

The employer may pay into court the amount he is willing to pay with form 56 (Rule 62 (1) and (2)), and the subsequent proceedings are the same as in the last preceding case.

(5) Where the amount payable has been settled by agreement, the registrar's approval of an amount as adequate is final, but in the last two above-mentioned cases, after the registrar's approval has been given, it is still open to any party interested to raise the question of adequacy (Rule 61 (8) (a)).

(6) The question of adequacy and all questions as to who are dependants, and the amount payable to each, must be settled by arbitration; but if no question of adequacy arises, and all the persons interested agree to leave the application of the amount to the court, it can be dealt with in a summary way without the necessity of arbitration proceedings (Rule 61 (8) (a), (b), and Rule 60 (8) to (11), (13) and (14)).

Transfer of money in court.

(6) Rules of court may provide for the transfer of money paid into court under this Act from one court to another, whether or not the court from which it is to be transferred is in the same part of the United Kingdom as the court to which it is to be transferred.

Practice, Rule 91.

Legal disability—payment into court.

(7) Where a weekly payment is payable under this Act to a person under any legal disability, a county court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.

Practice, Rule 63.

Rights of dependants *inter se*.

(8) Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependant shall be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, by the county court. Where there are both total and partial dependants nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

As to the rights of dependants, see *ante*, under sect. 13. "Any reference," etc. Application by dependants (Rule 4 (1)); when conflict *inter se* (Rules

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4 (2) and (5)); as to excluding certain dependants (*Manchester* v. *Carlton Iron Co.*, 20 T. L. R. 155). See also notes to (9).

Variation of awards in case of widows and dependants.

(9) Where, on application being made in accordance with rules of court, it appears to a county court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

Practice, Rules 64, 64A.

The sum awarded must be apportioned between the *dependants*. The arbitrator has no power under the Act to deprive its statutory guardian of the custody of an infant (*Fleming* v. *Roburite Co., Ltd.*, (1917) W. C. & I. 82).

In *Ivey* v. *Ivey*, (1912) 2 K. B. 118, money was in court for the benefit of a widow and four dependent children. On her death, such children asked that the unspent portion of her share might be appropriated for their benefit under this paragraph. This was opposed by other children, but without success. See now Rule 64A. See also *supra*, par. (5).

Investment.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

Investment.

(11) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums.

Money in court—payment out.

(12) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or, subject to regulations of the Treasury, by the judge or registrar of the county court.

As to duplicate accounts in savings bank.

(13) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in

respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

Medical examination.

(14) Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

See under Schedule I. (4).

Paragraph (14) applies only to the case of a workman who is actually at the time receiving weekly payments under the Act (*Smith* v. *Davis & Sons, Ltd.*, (1915) W. C. & Ins. Rep. 299).

Reference by mutual agreement.

(15) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the Secretary of State, or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties, may, on payment by the applicants of such fee not exceeding one pound as may be prescribed, refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Secretary of State, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Secretary of State, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter

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has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and, subject to the consent of the Treasury, as to the fee to be paid under this paragraph.

A Reference by Mutual Agreement under this paragraph (otherwise Schedule II. par. (15)), is final as to physical condition. But the extent of earning capacity may still remain for decision (*Cruden* v. *Wemyss Coal Co.*, (1913) W. C. Rep. 188). If the certificate is ambiguous, an arbitrator may rightly ask for an explanation (*Kennedy* v. *Dixon*, (1913) W. C. Rep. 333). See under sect. 10; also pars. (4), (14) and (20), and Schedule II. (5) and (15).

Review.

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act:

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound.

Practice.]—Suspension of compensation pending review (Rule 59 (new)); execution (Rules 82—84).

A Review is not a re-hearing, nor available as a new trial, though in *The Tyne-Tees S. Co.* v. *Whitlock*, (1913) W. C. Rep. 579, it was held that an outstanding question was not a condition precedent to giving jurisdiction on review, though absolutely necessary on an original application (see sect. 3). Save as to this, so completely is a review regarded as fresh proceedings, that in *Rex* v. *Templer; Howarth, Ex parte*, (1912) 2 K. B. 444, it was held that a workman who had consented to an original application being determined by a committee could yet seek review by the county court judge. Had the matter been regarded as a continuing one, jurisdiction once established could not have been ousted. At the same time, at such hearing it will be *res judicata* that the original applicant is a "workman" and the respondent an "employer," that the workman has been injured by accident arising out of and in the course of the employment, that his original wages were so much, and his average weekly earnings were so much. See, *e.g.*, *Linthorpe* v. *Dinsdale Smelting Co., Ltd.*, (1917) W. C. & I. 212. But the Act contemplates incapacity varying from time to time, therefore no finding as to incapacity at one date, whether as to physical condition or ability to earn, is *res judicata* as to a subsequent date; nor generally are inferences of fact, especially when actual developments may prove such inferences to be or

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not to be correct. The existence of a prior application to redeem (see Sched. I. (17)) does not deprive the arbitrator of jurisdiction to review on a workman's application (*Moreland & Sons* v. *Eley*, (1915) W. C. & Ins. Rep. 554).

Review may operate from the date of application (*Morton* v. *Woodward*, (1902) 2 K. B. 276), or from a date prior to the application where incapacity alters prior to that date (*George Gibson & Co.* v. *Wishart*, (1914) W. C. & Ins. Rep. 202, overruling *Donaldson Bros.* v. *Cowan*, (1909) S. C. 1292, and considering *Morton* v. *Woodward*, *supra* ; *Upper Forest and Western Steel and Tinplate Co., Ltd.* v. *Thomas*, (1909) 78 L. J. K. B. 1113 ; *Charing Cross, etc.* v. *Boots*, (1909) 78 L. J. K. B. 1115 ; *Hosegood and Sons* v. *Wilson*, (1911) 80 L. J. K. B. 519). See also *Bagley* v. *Furness, Withy & Co.*, (1914) W. C. & Ins. Rep. 518 ; 83 L. J. K. B. 1546, where it was held that the arbitrator had jurisdiction to terminate the award as from the antecedent date, the issue of incapacity as from that date having been raised. In *Williams* v. *Bwllfa and Merthyr Dare Steam Colliery, Ltd.*, (1914) W. C. & Ins. Rep. 527, where a minor applied to review, it was held that the arbitrator could not award an increase of compensation as from a date prior to the date of the application to review. An award cannot be terminated as from a future date (*Baker* v. *Jewell*, (1910) 2 K. B. 673).

If a memorandum of a disputed agreement be recorded, the order should be appealed against and not review asked. On the other hand, if an order be made, the parties may not subsequently commence fresh proceedings, they should apply for a review (*Watts* v. *Logan and Hemingway*, (1914) W. C. & Ins. Rep. 47). The proper way to end one order is to apply for another (see further Schedule II. (9) ; cf. Schedule I. (3)).

Review acts on facts as then existent, but in case of ending compensation provision should be made for the future if a recrudescence of incapacity due to the accident may reasonably be anticipated. It can be done either by suspensory order, reducing the amount to 1*d.* a week, or by ending the order with leave to apply. If not done, the award cannot be re-opened. In *Wheeler* v. *Dawson*, (1913) W. C. Rep. 59, after compensation had been ended, the arbitrator thought the man a malingerer ; X rays showed he still suffered from a piece of broken bone in his arm, but yet the award as made was final. A suspensory award ought not to be made where the man has completely recovered and there is no reasonable probability of a recurrence of incapacity (*Leverington* v. *A. Dodman & Co., Ltd.*, (1916) W. C. & Ins. Rep. 109), but, in the words of Lord Moulton (then Fletcher Moulton L.J.), "no judge is entitled to treat the fact that a man can at the moment earn just as much as he could before his accident as being a justification for terminating the compensation ("*The Tynron*" (*Owners*) v. *Morgan*, (1909) 2 K. B. 66). The test is—Is incapacity reasonably likely to supervene ?" (*Chapman* v. *Sage & Co.*, (1915) W. C. & Ins. Rep. 472).

Receipt of full wages is not conclusive of restored capacity, but is only an element to be considered ; combined with restored physical capacity it may be a good cause for finally ending payments. So if there be permanent outstanding physical injury, yet if on the evidence such does not interfere with present earnings, nor is likely to affect future ones, an arbitrator may equally refuse a suspensory order. Although the workman is earning his old wages the arbitrator has no jurisdiction to terminate a declaration of liability where, in the employers' answer to the workman's application for review, the employers simply denied incapacity (*Henshaw* v. *Fielding and Son*, (1914) W. C. & Ins. Rep. 326).

A Condition Precedent to Review is that some change shall have taken place since the previous hearing. If a man be comparatively slightly injured but, by agreement, is paid full compensation, and then the injury develops so that he becomes really totally disabled, that is not a change of circumstances which could justify a review (*Scott* v. *Long Meg Plaster Co.*, (1914) W. C. & Ins. Rep. 258). The *onus* of proving such change is on the

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party seeking a review, and once proved the question of "*onus*" is no longer involved. Each side must give evidence, and on such evidence, together with a note of matter already *res judicata*, an arbitrator must decide *de novo*. If a party does not prove any change he should practically be non-suited; if he does prove a change the matter is at large, and an arbitrator must decide on the evidence before him. Nor can he appeal to "*onus*" to eke out scanty evidence. The question of "*onus*" no longer exists when once the party claiming review has established a right to be heard. "The question of *onus* of proof is only a rule for deciding on whom the obligation of going further, if he wishes to win, rests. It is not a rule to enable the jury to decide on the value of conflicting evidence. So soon as a conflict of evidence arises, it ceases to be a question of *onus* of proof" (Bowen, L.J., in *Abrath* v. *N. E. Rail. Co.*, 1 Q. B. D. p. 456).

One of the most perplexing of questions an arbitrator has to decide is under Schedule I. (3), whether there is any suitable employment the man can do and what it will bring him in. If suitable employment be offered and refused full compensation cannot be awarded. Consider *Jenkinson* v. *F. Steiner & Co.*, (1917) W. C. & I. 104. He may supplement this evidence by his own local knowledge (*Silcock & Sons* v. *Golightly*, (1915) W. C. & Ins. Rep. 164). As regards the man, what will impress him most will be the endeavour he has made to get work. Persistent attempts coupled with failure would usually satisfy him no suitable employment was available. This is practically the result of *Proctor* v. *Robinson*, (1911) 1 K. B. 1004; a rider to this is the decision in *Cardiff Corporation* v. *Hall*, *ib.* 1009, that a man's accident may be such that whilst it incapacitates him from doing his old work of a special kind, say that of a skilled fitter, it still leaves open to him the whole market of work of an inferior grade which he can be reasonably asked to do. In this case a master does not guarantee the labour market, and attempts and failure to get work by no means conclude the matter. And as to the master, though it is open to him to prove a man will not seek suitable employment, or that there is a market for such class of worker, yet in practice the only effective evidence to rebut a workman's evidence he cannot get suitable work is proof that he himself has offered it. If he can prove the case in any other way, it is perfectly open to him to do so, he is not bound to offer work, but the difficulty is to prove it without doing so. If an arbitrator finds on the evidence there is no suitable employment available, he can continue the compensation as for total incapacity, and that, notwithstanding the employer has proved improvement in the physical condition—to have got a hearing at all implies that an employer must have proved so much—for though *primâ facie* this establishes a presumptive right for the compensation to be reduced (*Moore* v. *Pryde*, (1913) W. C. Rep. p. 105), it is not conclusive. Whilst *Roberts & Ruthven, Ltd.* v. *Hall*, (1912) W. C. Rep. 269, carries these principles no further, still it is a most valuable case for the clear judgment in it on the point by Cozens-Hardy, M.R. (see *ante*, Schedule I. (3), "Able to earn"). Service in the army is not "suitable employment" (*Thomson* v. *John Watson, Ltd.*, (1915) W. C. & Ins. Rep. 498).

Reduction of Payments to Nominal Sum.]—Usually resorted to where workman earning full wages at his old work, but handicapped if competing in the open labour markets, or where fresh symptoms may subsequently develop. It is now settled that the arbitrator has power to make it (*Taylor* v. *L. & N. W. Rail.*, (1912) W. C. Rep. 95). A suspensory award may be made on an original application for arbitration (*Grigor* v. *S.S Harelda*, (1910) 26 T. L. R. 272; *Green* v. *Cammell Laird*, (1913) W. C. & Ins. Rep. 707). If not asked for at the hearing before the arbitrator it will not be granted on appeal (*Harlock* v. *S.S.* "*Coquet*" (*Owners*), (1914) W. C. & Ins. Rep. 73).

Termination of Payments.]—It is a question of fact for the arbitrator

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whether incapacity has ended or is continuing, or, in other words, whether payment should be terminated or not (*Cranfield* v. *Ansell*, (1910) 4 B. 57; *Edmondsons, Ltd.* v. *Parker*, (1911) 5 B. 70; *Wheeler, Ridley & Co.* v. *Dawson*, (1912) W. C. Rep. 410; *Simpson* v. *Byrne*, (1913) W. C. & Ins. Rep. 240; *Maunder* v. *Hancock*, (1914) W. C. & Ins. Rep. 327). The mere fact that the workman is permanently maimed does not prevent the payments being terminated if his wage-earning capacity be not reduced (*Watson* v. *William Beardmore & Co., Ltd.*, (1914) W. C. & Ins. Rep. 240). If the payments be once terminated, that is final (*Nicholson* v. *Piper* (*No.* 1), (1907) A. C. 215; *Codenhead* v. *Ailsa Shipbuilding Co.*, (1910) S. C. 1129). Consequently payments should not be terminated if there be evidence that future incapacity may supervene (*Braithwaite and Kirk* v. *Cox*, (1911) 5 B. 877).

Review of Unrecorded Agreement.]—An application to review may be made where there is only a verbal agreement (*Southbook Fireclay Co.* v. *Laughland*, (1908) S. C. 831).

Review in the Case of Infants.]—This proviso does not mean that whilst infancy continues the amount may be reviewed and increased to the full amount that might possibly have been earned by the infant. In *Ambridge* v. *Good*, a minor earning 6*s.* when injured received the full amount as compensation. Later on, still a minor, she proved that if in work she would be receiving 10*s.* a week and asked for an increase to that amount. But such increase is obviously limited to *one half* of the wages that such workman might then be earning.

The fact that the workman (minor) had attained full earning capacity at the date of the accident does not *per se* deprive him of the benefit of the proviso (*Quinn* v. *John Watson, Ltd.*, (1917) W. C. & I. 57).

In *Malcolm* v. *Spowart & Co.*, (1913) W. C. Rep. 523 (Sc.), a minor was injured, and twelve months after his estimated wages were agreed at 25*s.*, giving 12*s.* 6*d.* as compensation. He claimed to take this 25*s.* as a datum line, and there being a general rise in wages, he asked for his compensation to be proportionately increased. The arbitrator rightly said, his duty was to inquire into all the facts to determine what he would then probably be earning, which he did, and found 25*s.* was enough. Reference may also be made to *Thompson* v. *Newton & Co.*, (1914) W. C. & Ins. Rep. 413; *Marshall, Sons & Co., Ltd.* v. *Prince*, (1914) W. C. & Ins. Rep. 559.

Redemption of weekly payment.

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

Practice, Rules 53, 65.

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If applications to redeem and review are in the list for the same day relating to the same workman, the arbitrator should hear both together, and should deal first with the question whether the compensation should be increased and then with the application to redeem (*Moreland & Sons* v. *Eley*, (1915) W. C. & Ins. Rep. 554).

Assurance Companies Act, 1909.]—Schedule 8, D. (2), of the Assurance Companies Act, 1909, provides that "Where the person insured [against workmen's compensation risks] by any policy issued by an underwriter is liable to make a weekly payment to any workman during the incapacity of the workman, and this weekly payment has continued for more than six months, the liability therefor shall before the expiration of twelve months from the commencement of the incapacity be redeemed by the payment of a lump sum in accordance with paragraph (17) of the First Schedule of the Workmen's Compensation Act, 1906, and the underwriter shall pay the lump sum into the county court, and shall inform the court that the redemption has been effected in pursuance of the provisions of this schedule." Sect. 33 (1) (*f*) of the same Act provides that where money is so paid into a county court "the court shall (unless the court for special reasons sees fit to direct otherwise) order the lump sum to be invested or applied in the purchase of an annuity or otherwise, in such manner that the duration of the benefit thereof may, as far as possible, correspond with the probable duration of the incapacity." It should be noted that the Act does not apply to certain cases of mutual insurance societies or to marine offices issuing marine policies which *inter alia* cover workmen's compensation risks. See Assurance Companies Act, 1909, section 33 (1), (*a*), (*b*).

If an employer applies to redeem under this paragraph his right is absolute (*Kendall and Gent* v. *Pennington*, (1912) W. C. Rep. 144), and at the hearing the arbitrator must fix the amount to be paid; if the incapacity, partial or total, is permanent, he must fix it at the sum settled by the Act as stated; if the incapacity is not permanent, at such an amount as he may assess on the evidence. The arbitrator must satisfy himself as to whether the physical condition of the injured workman is stable. If the incapacity is permanent an infant is in no better position than an adult. If the incapacity is not permanent the amount is in the discretion of the arbitrator (*Marshall, Sons & Co. Ltd.* v. *Prince*, (1914) W. C. & Ins. Rep. 559).

The arbitrator's award must be definite and one that can be enforced by either party. In *Booth* v. *Calico Printers Association*, (1913) W. C. Rep. 540, where employers filed an application for review and redemption, the arbitrator found the incapacity permanent, and assessed a weekly sum of which the annuity value was 613*l*. At the same time he said he considered 300*l*. would be an ample amount under the circumstances. Before making his award he said he was bound to give the larger amount having no discretion in cases of permanent incapacity, and asked the employers if they wished to withdraw their application (*Dixon* v. *Patten*, 120 L. T. 170, where Irish Court of Appeal held they were so entitled). This not being done, he made his award practically in the terms of the paragraph:—the employers may redeem on payment of 613*l*.—leaving it optional with them to so redeem or continue the weekly payment.

The Court of Appeal held this was not correct; that they were bound by *The Castle Spinning Co.* v. *Atkinson*, (1905) 1 K. B. 336; that awards had to be definite and that speculative applications were not within the purview of this section.

There was a cross appeal that the incapacity (partial) was not permanent. The man had lost his left hand, but the stump was well healed. As regards the permanence of the physical incapacity there was no doubt, but the employers argued it could not be said a stage of finality had been reached in the case of his earning powers. The arbitrator found that as far as he could determine, there was evidence that the weekly payment he was likely

to earn had arrived at a point of stability. There is no doubt he had most carefully considered all the facts and was fully alive to all the legal niceties involved, and the Court of Appeal held there was evidence to support his finding. Seeing, then, the danger of a general application to redeem, can an employer make one conditional on the arbitrator finding the incapacity not permanent? It would seem not. The *Castle Spinning Co. Case* is clear; speculative applications are not permissible. Here the employer applied to redeem if the amount assessed did not exceed 150*l*. Does this differ in principle from applying to redeem if the incapacity is not permanent? Apparently the only course open is to apply to redeem, and on the arbitrator expressing his opinion the incapacity is permanent, to withdraw the application before the award is made.

In the case of assessing an amount where the incapacity is not permanent, an arbitrator's discretion is almost unlimited, provided he only has regard to facts actually existing at the time of the application to redeem. He cannot say, "I would at the date of the accident have given so much," and then deduct intermediate payments (*Victor Mill, Ltd.* v. *Shackleton*, (1912) W. C. Rep. 33), but short of this it is for him and him only to arrive at the amount. To assess an amount on the basis of incapacity being permanent without first deciding whether it is so or not is a misdirection (*Swannick* v. *Congested Board of Ireland*, (1913) W. C. Rep. 96). An order for redemption by consent cannot be appealed against (*Howell* v. *Blackwell's Executors*, 5 B. 293).

Provided.]—Binding agreements can be made under this proviso. If a weekly sum be agreed and compounded and registered under Schedule II. (9), it cannot afterwards be impeached (*M'Guire* v. *Paterson*, (1913) W. C. Rep. 107; see also sect. 3).

Workman leaving United Kingdom.

(18) If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

Practice, Rules 66, 67.

Compensation not to be charged.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

This clause does not bar a claim by a legal personal representative to enforce a deceased workman's right against his employer (*Price* v. *Westminster Brymbo Coal and Coke Co., Ltd.*, (1915) W. C. & Ins. Rep. 245).

This clause also applies to the 25 per cent. increase established by the Workmen's Compensation (War Addition) Act, 1917. See *ibid.*, s. 1 (2) (*c*), *infra*, p. 1460.

Overpayment of Compensation.]—In *Hosegood* v. *Wilson*, (1911) 1 K. B. 30, a workman had been overpaid compensation. Although his employer could recover this amount by action, or, at least, get judgment for it—not

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quite the same thing—yet he could not treat such overpayments as payments on account of future weekly payments, and to stop payment of compensation until the balance was wiped off was decided to be wrong. As to effect of National Insurance Act, 1911, see sect. 11.

Suspension of compensation.

(20) Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

See *supra*, sect. 10; Schedule I. (4), (14), (15).

Certified schemes.

59 & 60 Vict. c. 25.

(21) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

Application to Ireland.

40 & 41 Vict. c. 56.

(22) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

SECOND SCHEDULE.

Arbitration, etc.

Procedure Special to the Act.]—Sect. 1, sub-sect. 3 directs that the procedure under the Act is to be by arbitration, in accordance with Schedule II. and the rules made by its authority (see par. (12)).

Subject to modifications thus made, the ordinary practice of the county courts is to be in force (Rules 29 and 95).

Arbitration by committee, etc.

(1) For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as herein-after provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

(3) In England the matter, instead of being settled by the judge of the county court, may, if the Lord Chancellor so autho-

rises, be settled according to the like procedure, by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purpose of this Act, have all the powers of that judge. Sched. II.

Primarily other procedure than that before the county court judge is contemplated. In fact, the original promise of the Act was that it should be so simple that there would be no intervention of the lawyer at all.

Arbitration by Committee.]—In *Mulholland* v. *Whitehaven Colliery Co.*, 3 B. 319, a boy lost part of two of his fingers. His case was decided by a committee, who awarded him a lump sum of 100*l.*, and who then sent a memorandum of the agreement to the county court for registration (under Schedule II. par. (9); see also Rules 41—48). This was refused on the ground the sum was inadequate, but it was held the jurisdiction was entirely independent. In the same case it was held that a committee no more than an arbitrator could give a lump sum in the first instance. The only compensation contemplated is a weekly payment.

Though original applications be to a committee, subsequent proceedings for review may be to the county court (*Rex* v. *Templer; Howarth, Ex parte*, (1912) 2 K. B. 444; see also under "Review." Schedule I. (6)). Schedule II. (9), Rules 43—49, provide for registration in the county court.

As to the further powers which may be conferred on such committee, see *infra*, par. (16).

Nothing in the Act prescribes the procedure on arbitration by committee or arbitrator appointed by the parties; but pars. (4) (the first part), (6), (7), (9), (14), and (15) of Schedule II. appear to apply generally.

As to a judge appointed arbitrator, see Rules 31—34 and 42.

Arbitration by the judge of the county court or by such arbitrator is to be **according to the procedure prescribed by rules of court**, and his power to procure the attendance of witnesses and the production of documents is given by the latter clause of par. (4).

Rule 29, supplemented by Rule 96, requires the proceedings as far as possible to be those of an ordinary county court action.

Parties to arbitration, Rules 2—7; Rule 7 (2) provides for infants appearing as if of full age. Appearance of parties (Rule 35); application and particulars (Rules 8—12); security for costs (Rule 13); service (Rule 16); date, place and notice of arbitration (Rules 14—15); stay of proceedings (Rule 17); respondents, answer by (Rule 18); submission to award (Rule 19); claim for indemnity (Rules 20—28); judge's award (Rule 30); service documents (Rule 92); substituted service, etc. (Rule 93).

As regards matters preliminary to trial, no order for discovery either by affidavit of document or discovery can be made (*Sutton* v. *G. N. Rail. Co.*, (1909) 2 K. B. 791).

The county court judge has no power to order the evidence of the applicant to be taken on commission before an examiner, or to delegate the taking of evidence to any person other than the arbitrator (*Taylor* v. *Cripps*, (1914) W. C. & Ins. Rep. 515; 83 L. J. K. B. 1538).

At the trial the arbitrator is limited to the question raised in the application (*Proprietors of Hays Wharf* v. *Brown*, 3 B. 84), but short of allowing an entirely new question to be raised the discretion as to amending is almost unlimited. If he does admit new matter, he should be careful the other side have a reasonable opportunity of dealing with it and are not entirely taken by surprise.

If the application shows no case on the evidence for a reason not taken in the answer the court may dismiss the application without granting an adjournment to enable the respondent to raise the point formally in his answer (see *Miles* v. *Dawe*, (1915) W. C. & Ins. Rep. 29).

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Further, where an arbitrator could reasonably have amended, and deals with the question as if he had amended, then his not having actually amended is hardly a ground for appeal.

If an employer does not appear, he still must hear the case *in extenso* (*United Collieries* v. *Gavin*, 37 S. L. R. 47); and if a preliminary objection is taken and sustained, *e.g.*, want of notice, still he must hear the whole case.

Arbitrators should not determine cases on preliminary objections, *e.g.*, want of notice, but should hear the whole case (*Ellis* v. *Fairfield S. Co.*, (1913) W. C. Rep. 88).

"He arrived at these findings from what had been proved before him in other cases." If merely a reference to his general knowledge, correct. If a reliance on details heard in any particular case, a misdirection (*Gray, Dawes & Co.* v. *Reed*, (1913) W. C. Rep. 128).

Rule 36 requires him to take a note whether asked or not. This is a rule of doubtful utility and results in many questionable appeals which could never take place if the point in dispute, whether of law or fact, had been definitely formulated in the first instance.

Where matters are in his discretion he must exercise such discretion in every case and not adopt a general rule (*Webster* v. *Sharp*, (1904) 1 K. B. 218).

Jurisdiction cannot be enlarged by estoppel. Employers in *Standing* v. *Eastwood*, (1912) W. C. Rep. 200, had paid a man compensation, but on his demanding a higher rate they disputed his having been "in their employ" at all. The arbitrator found them estopped from taking the point, and to the argument there had been an admission of liability **Buckley, L.J.,** replied: "Even so you would have to sue under the agreement and not under the Act."

The result of the proceedings being by way of arbitration is that on the award being signed, the arbitrator becomes *functus officio*. Thus no order for a new trial can be made by him (*Mountain* v. *Parr*, (1899) 1 Q. B. 805), and the evidence as taken is closed. Of course, in the case of misdirection, the Court of Appeal may direct a re-hearing, and so the misdirection may extend to the improper rejection or reception of evidence, but the parties cannot add new evidence after award (*Miller* v. *North British Locomotive Co.*, 46 S. L. R. 755).

In *Wheeler* v. *Dawson*, 5 B. 645, an arbitrator evidently thinking the man a malingerer ended compensation. On appeal his counsel tried hard to get in the fact that since the trial a subsequent examination by X rays discovered a broken bone which more than bore out that his evidence was right and that of the experts was wrong. But the court could not hear anything that had arisen subsequent to the trial. Of course, if an arbitrator goes wrong before or during the hearing it is otherwise. In *Jessop* v. *Maclay*, 5 B. 139, owners owing to the sailing of their ship were unable to take their evidence, and as the arbitrator after several adjournments refused another, a new trial was ordered. So in *S. E. & C. Rail. Co.* v. *Ewell*, 5 B. 39, the company, thinking one of their witnesses was going to "sell" them, told him to go without knowing the other side had subpœnaed him. This he did, he could not be called, and a new trial was agreed upon.

An arbitrator, even after commencing to deliver his judgment, may hear further evidence (*Peters* v. *Owners of S.S. Argol*, 5 B. 414); and prior to signing, an arbitrator may alter his award, even though contrary to what he has verbally stated in court, but not afterwards (*Moulem* v. *Dunne*, (1912) 2 K. B. 136). It will be seen that par. (9) (c), *infra*, and Rule 30 provide for rectifying the register and for correcting clerical errors or slips, but this does not empower substantial alterations on merits. If the register does not accord with either an agreement or award in fact made, it may be altered to bring it into line but not to vary the agreement or award itself (*Schofield* v. *Clough*, (1912) W. C. Rep. 301).

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Provisions as to appeal.

52 & 53 Vict. c. 49.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but a *committee* or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the county court, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, or where he gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the county court.

Submit any Question of Law.]—Appeals from an arbitrator appointed by the parties or by the judge, will be by way of case stated to the judge (see Rule 34; *Pumpherston Oil Co., Ltd.* v. *Cavaney*, 40 S. L. R. 466). There is a duty on the arbitrator to so state a case for the judge. The permission *may state a case* is more or less imperative, as enabling words are always compulsory when they are words to effectuate a legal right (*Julius* v. *Bishop of Oxford*, 5 A. C. 214). But he must be asked before making his award; afterwards, as in *Gibson* v. *Wormald*, (1904) 2 K. B. 40, he becomes *functus officio* and has no power, nor can he order a new trial.

Questions of Law.]—This paragraph provides for appeal on questions o law only (*Moffat* v. *Armstrong*, 41 Ir. L. T. R. 219). On questions of fact the finding of an arbitrator, as of a jury, is final; *i.e.*, if there is evidence—legal evidence—in support of such facts (*Johnson* v. *Marshall*, (1906) A. C. 409; *Fenn* v. *Miller*, (1900) 1 Q. B., Collins, L.J., p. 792), and what is legal evidence is a matter of law. Further, though the finding of facts may be final, the conclusion in law to be deduced or the fact to be inferred from them is not (*Gane* v. *Norton Hill Colliery Co.*, (1909) 2 K. B. 539).

A Court of Appeal cannot interfere because the finding is against the weight of evidence and because they themselves might have found differently, but only if *no* evidence. But further it is not sufficient that there should have been some evidence on which an arbitrator could have found a fact, unless it is also shown that he did in fact apply his mind to such evidence and did so find (*Lee* v. "*Bessie*," (1912) 1 K. B. 83; *Flynn* v. *Burgess and Others*, (1914) W. C. & Ins. Rep. 238). Acting on inadmissible evidence is the same as acting on no evidence, and the admission of wrongful evidence, *e.g.*, using the certificate of a doctor, instead of calling him, resulting in the case being sent back to be re-heard, as it was clear such evidence must have had weight with him (*Richards* v. *Sanders*, 5 B. 352).

Although there had been an irregularity at the hearing before the arbitrator, the court refused to order a new trial in *Trigg* v. *Vauxhall Motors, Ltd.*, (1914) W. C. & Ins. Rep. 25, there having been no miscarriage of justice.

Only points taken before the arbitrator can be taken on appeal (*Payne* v. *Clifton*, 3 B. 439; *Stevens* v. *Thorn & Co.*, (1916) W. C. & Ins. Rep. 143).

Practice, Rules 86, 87.

Some Miscellaneous Points of Evidence.]—In the case of death, the statement of the deceased as to how the injury was received is inadmissible (*Shea* v. *Wilson & Co., Barnsley, Ltd.*, (1916) W. C. & Ins. Rep. 197). Evidence of the habits of the deceased throwing light on the cause of death is admissible (*Joy* v. *Phillips, Mills & Co.*, (1916) W. C. & Ins. Rep. 69). A doctor may give evidence a man was ill and from what he was suffering,

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e.g., blood poisoning caused by the sting of a wasp (*Amys* v. *Barton*, 5 B. 117), but he cannot state why he was ill. On the former evidence he can be cross-examined, on the latter he cannot; he may simply be handing on the tale of the man, which possibly may have been directly concocted to mislead (*Wolsey* v. *Pethick*, 1 B. 411; *Gilbey* v. *G. W. Rail. Co.*, 102 L. T. 202). In *Tucker* v. *Oldbury Urban Council*, (1912) 2 K. B. 317, the dependants tried to get out of this rule in *Gilbey's Case*, by showing the statement was against interest; whilst again in *Smith* v. *Hardman*, (1913) W. C. Rep. 459, such evidence was objected to and the objection was upheld, but the arbitrator took it in case he might be wrong. The Court of Appeal said he ought not even to have heard it, it had coloured the whole proceedings, and sent the case back to be re-heard by another judge. It has been decided in Ireland that fresh evidence may be admitted in such a re-hearing (*Shea's Case*, *supra*).

In the case of posthumous illegitimate children a promise to marry by deceased is not admissible as against interest (*Ward* v. *Pett*, (1913) W. C. Rep. 355).

The presumption is against crime and therefore against suicide (Farwell, L.J., in *Furnival* v. *Johnson*, 5 B. 43).

Consent orders are not the subject of appeal (*Howell* v. *Blackwell's Executors*, (1912) W. C. Rep. 186).

Court of Appeal.]—Ordinarily appeals from the county court, by sect. 120 of the County Court Act, are to a divisional court, but now, if once the Act applies all appeals arising in connection with it are to be direct to the Court of Appeal. But there may be a difference of opinion whether the Act itself does or does not apply. To settle this, appeal seems to be to a divisional court. In *Homer* v. *Gough*, (1912) 2 K. B. 303, an arbitrator entertained a matter he should not have done, and in *Howarth* v. *Samuelson*, 4 B. 287, he declined to entertain a matter which it was alleged he should have done. In *Moss* v. *G. E. Rail. Co.*, (1909) 2 K. B. 274, where the question was had a workman contracted out of the Act under sect. 3, a decision he had or had not would be a decision upon the Act, and an appeal, therefore, would lie to the Court of Appeal. In *Taylor* v. *Cripps*, (1914) W. C. & Ins. Rep. 515; 83 L. J. K. B. 1538, it was decided that an appeal from an order of a county court judge that evidence should be taken on commission lies to the Court of Appeal and not to a Divisional Court. In *Panagotis* v. *Pontiac*, (1902) 1 K. B. 74, on the mere allegation of a right to compensation any judge of a court of record in England or Ireland could make an order under sect. 11 detaining a ship; a county court judge making such an order, makes it in the character of any judge and not in that of his special position under the Act, and therefore it was held an appeal from his decision must be to a divisional court. Farwell, L.J., dissented, as it is clear that apart from the Act a right, still less a mere alleged right, to compensation would not justify detention, and the decision in whatever character the judge made it was a decision under the Act. This case was distinguished in *Bonney* v. *Hoyle*, (1914) W. C. & Ins. Rep. 565; (1914) 2 K. B. 257.

Where the point in dispute arises under a certified scheme (sect. 3 of the Act) the appeal would lie, of course, to a Divisional Court as in *Leaf* v. *Furze*, (1914) W. C. & Ins. Rep. 601.

For procedure, see **Rules 86 and 87.** Appeals must be made within twenty-one days as therein stated, but cause shown, the Court of Appeal may extend the time for appealing (see *Codling* v. *Mowlem & Co.* (*No.* 2), (1914) W. C. & Ins. Rep. 25; *Wheeler* v. *Dawson*, 5 B. 645; *Fox* v. *Battersea Borough Council*, 4 B. 261; *Heneberry* v. *Doyle*, (1912) W. C. Rep. 145, where extension granted).

Security for Costs.]—As to giving security for the costs of appeal, the practice is governed by Order LVIII. r. 15, of the High Court Rules, and is the same as in other cases, viz. :—"Whenever the respondent could

show that the appellant was a person from whom the respondent would be unable to get the costs of the appeal if unsuccessful the court will order security for the costs of the appeal" (*Hall* v. *Snowden*, (1899) 1 Q. B. 593). The amount fixed is usually 15*l.* (*ib.*); and the appellant should be asked for security for this amount before applying to the court (*Stanlow* v. *N. E. Steel Co.*, 23 T. L. R. 1). The Irish courts have a different practice, and poverty alone is not a sufficient reason for making such order (*Stormont* v. *Workman*, 33 Ir. L. T. 165; *Hutchinson* v. *New Northern Spinning and Weaving Co.*, (1914) W. C. & Ins. Rep. 155).

The fact that the case is being run by a trade union will not affect the rule even if they have paid the costs below (*Haddock* v. *Humphrey*, 1 W. C. C. 117), but just a possible exception may be made if the poverty of the applicant has been caused by the accident, the subject of the appeal (*Skeggs* v. *Keen*, 1 W. C. C. 119); or if the county court judge himself, by staying execution, suggests the desirability of appealing (*Hubball* v. *Everitt*, 16 T. L. R. 168), but this is not to be taken as a general rule of practice (*Shea* v. *Drolenvaux*, 88 L. T. 679).

Where security is ordered and a party obtains leave to sue *in formâ pauperis* he must be careful to serve his order to this effect within the time limited for giving security or an appeal will be struck out and if struck out is not likely to be restored (*Perry* v. *Lacy*, 5 B. 1). Money in court may be paid out notwithstanding order to sue *in formâ pauperis* (*Bines* v. *Gueret*, (1913) W. C. Rep. 158).

Before obtaining leave to appeal *in formâ pauperis* an appellant has not only to make an affidavit as to means but must also obtain the certificate of counsel it is proper for him to so proceed. A respondent to an appeal is entitled on proof of means only (*Handford* v. *Clarke*, (1907) 1 K. B. 181).

Hearing in Court of Appeal.]—Appellants should remember there are three judges on appeal, *each* of whom wants a copy of *all* material documents.

The correct evidence in the Court of Appeal is the judges' note. When this has not been made the court may accept a statement of counsel present at the trial, and in *Lee* v. *Bessie*, (1912) 1 K. B. 83, a newspaper report was read, not as admitting such as evidence but as a statement of counsel adopted as his own. See also *Durrant* v. *Smith*, (1914) W. C. & Ins. Rep. 282. In *Turner* v. *Bell*, 4 B. 63, there being no note—the arbitrator regarded the matter as *res judicata*—the court read an affidavit of the solicitor on what had taken place. This was most exceptional as notes and affidavits by solicitors are almost invariably refused a hearing. In *Polled* v. *G. N. Rail.*, (1912) W. C. Rep. 379, a case was sent back to be reheard. The arbitrator took no note. The applicant asked for a new trial. The company objected. They had a shorthand note of what took place. Of this they gave a copy to the other side, and a copy was also sent to the arbitrator to sign and adopt as his note if correct. No costs of the day were given, as it was not the company's fault no proper note was taken. Shorthand reports are not admissible without consent, but where an arbitrator's note is defective a copy is not infrequently sent back to the arbitrator to approve and sign. When an arbitrator's note is correct on the face of it supplementary statements are rarely received. In *Taylor* v. *Ward & Co.*, (1914) W. C. & Ins. Rep. 255, where the county court judge failed to make a proper note upon which the court could act, a new trial was ordered, costs of the first trial to abide the result of the second.

(5) A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.

See *supra*, sect. 10, and Rules 55, 98; also Schedule I. (4), (14), (15), and (20), and Schedule II. (15); and Regulation, Appendix BB.

If either party desires a referee he must apply under these rules, and if the judge approve an assessor will be summoned, when his fees will be provided for by the Treasury (sect. 10).

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The medical assessor must confine himself to assisting the arbitrator with his expert medical knowledge (*Earwicker* v. *London Graving Dock Co., Ltd.*, (1916) W. C. & Ins. Rep. 137).

A medical referee who on an appeal under sect. 8 had expressed the opinion that the workman had recovered ought not to sit as a medical assessor at a subsequent hearing of an application for compensation. See *Wallis* v. *A. G. Soutter & Co., Ltd.*, (1915) W. C. & Ins. Rep. 113.

The arbitrator may act upon the advice of the medical assessor on matters of medical opinion or inference although there be no such opinion or inference expressed or drawn by the medical witnesses (*Woods* v. *Wilson, Sons & Co., Ltd.*, (1915) W. C. & Ins. Rep. 285). The opinion of the medical assessor is not binding (*Connelly* v. *Alex. Cross & Sons*, (1917) W. C. & I. at p. 121).

(6) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

This paragraph apparently applies to any arbitrator or committee, and not only to judges and judge-appointed arbitrators (see Rules 35, 93; as to parties to arbitration generally, Rules 2—7; application for medical or burial expenses, Rule 6).

(7) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or judge of the county court, subject as respects such judge and an arbitrator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules, and such taxation may be reviewed by the judge of the county court.

Practice, Rules 76—81.

An arbitrator's discretion within judicial limits is absolute. He may refuse all costs to a successful applicant (*Skeggs* v. *Keen*, 1 W. C. R. 35). But see *Patterson* v. *Biggrigg Mining Co., Ltd.*, (1915) W. C. & Ins. Rep. 570; *Golbourne* v. *Port of London Authority*, (1917) W. C. & I. 333. He may direct issues to be separated and set off one against the other (*Evans* v. *Gwauncaegurwen Colliery Co.*, 5 B. 441), but he may not give costs against a successful party (*ib.*). *Cf. Higgins* v. *L. Higgins & Co.*, (1915) W. C. & Ins. Rep. 605. See also *Reed and Reed* v. *S.S. "Wyneric" Co., Ltd.*, (1914) W. C. & Ins. Rep. 263; *Derbyshire* v. *John Hetherington and Sons, Ltd.*, (1914) W. C. & Ins. Rep. 265; *Port of London Authority* v. *Wallace*, (1917) W. C. & I. 331. If a plaintiff fail in the action, and apply for compensation under sect. 1, sub-s. 4, he may give him all his costs (*Cattermole* v. *Atlantic Transport Co.*, (1902) 1 K. B. 204) or set off the costs of the action against those of the application (*Keene* v. *Nash*, 5 W. C. C. 53).

The general rule is that he can only give costs, to be taxed, and not a lump sum (*Beadle* v. "*Nicholas*," 3 B. 102), but in *Welland* v. *G. W. Rail.*, 2 W. C. C. 145, a strong court (A. L. Smith, Collins and Romer, L.JJ.) held that the arbitrator was right in giving a small lump sum, 5*l.*, having regard to Rule 33 (3), now Rule 76 (5), which directs that any offer made by the employer shall be considered.

Whilst costs and other matters are in the discretion of the arbitrator, yet he must exercise his discretion in every case, nor may he lay down any general rule to fetter his own discretion in the future. To do so is a misdirection, as where a judge made it a rule that all applications to "review" compensation should be taxed as interlocutory proceedings (*Rigby* v. *Cox*, No. 2, (1904) 2 K. B. 208).

A qualifying fee may be allowed in certain circumstances, even where the medical examination took place before the request for arbitration was made (*Jones* v. *Davies and Sons, Ltd.*, (1914) W. C. & Ins. Rep. 509; 83 L. J. K. B. 1531).

When costs are directed by the arbitrator to be taxed on the higher equity scale the expenses allowed to any one witness must not exceed £5 (*Blake* v. *Ramsey* (Ireland), (1917) W. C. & I. 84).

Schedule II. (14) is machinery for recovering costs from a solicitor's own client.

General provisions as to costs (Rule 76). Schedule I. (19) directs that weekly payments are not to be charged, etc. Rule 19 (7) provides for costs being deducted from such payment on original applications where liability is admitted, but this cannot be done on application to reduce the compensation (*Rosewell Gas Coal Co.* v. *McVicar*, 42 S. L. R. 233). Schedule I. (19) does not apply to costs, and one set may be set off against another, *e.g.*, the costs of assessing compensation against the costs of an unsuccessful appeal (*Case* v. *Colonial Wharves, Ltd.*, 8 W. C. C. 114). For some reason not appearing in the report it appears this is not so in the case of interlocutory proceedings unless the costs are given in any event (*Sutton* v. *G. N. Rail.*, 3 B. 160). Where employers admitted liability, and were given costs to be deducted 5*s.* weekly from the compensation, the man appealed against the deduction, but took the compensation. Held the award was a whole, and that he could not approbate and reprobate (*Johnson* v. *Newton Fire Extinguisher Co.*, (1913) W. C. Rep. 352; *Jones* v. *Winder*, (1914) W. C. & Ins. Rep. 37; *Strange* v. *Davis Gas Stove Co., Ltd.*, (1915) W. C. & Ins. Rep. 539; *Josey* v. *Vincent*, (1917) W. C. & I. 223). Generally, "activity in making costs" is to be reprehended (Farwell, L.J., in *Smith* v. *Abbey Park, etc.*, 2 B. 142, and Stirling, L.J., in *Field* v. *Longden*, 4 W. C. C. 20).

As to solicitor and client costs, see *infra*, par. (14).

The form of order for costs against an approved society taking proceedings on behalf of an insured workman, and not being parties to the proceedings, under sect. 11, sub-s. 2 of the National Insurance Act, 1911, was settled in *Clapp* v. *Carter*, (1914) W. C. & Ins. Rep. 80.

Insurers stand in the shoes of their insured (*Cornish* v. *Lynch*, 3 B. 345). General provisions (Rule 76); offers of compensation to be considered (Rule 76 (5)); taxation of costs awarded by committee or arbitrators appointed by the parties (Rule 77); review of taxation by judge (Rule 78); solicitor's authority to receive costs (Rule 79); costs under Schedule II., par. (14) (Rule 80); payment and lien, etc. (Rule 81); costs when submission to award (Rule 19 (6), (e), (d), (7), (8)); costs between third parties and others (Rules 23, 24 (4), (6) (c)); costs of special case (Rule 34 (7)); cost of detention of ship (Rule 39 (12)); industrial diseases (Rule 41 (4) (d)); costs appointing arbitrator under Schedule II., par. (8) (Rule 42 (9)); reference to judge of agreement under Schedule II., par. (9), proviso (d) (Rule 49 (10)); application for medical referee, costs of (Rule 57 (9)).

Appointment of new arbitrator.

(8) In the case of the death, or refusal or inability to act, of an arbitrator, the judge of the county court may, on the application of any party, appoint a new arbitrator.

As to arbitrator appointed by judge (Rule 31 (e)); by parties (Rule 42 (1)).

Recording of memorandum.

(9) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the county court who shall, subject to such rules, on being satisfied

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as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment.

Provided that—

(*a*) no such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested; and

(*b*) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just; and

(*c*) the judge of the county court may at any time rectify the register; and

(*d*) where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just; and

(*e*) the judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

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Practice.]—Record memorandum (Rules 43—49); rectification (Rule 50); proviso (*d*) (Rule 51); proviso (*e*) (Rule 52); execution (Rule 82); setting aside award (Rule 85); enforcing memorandum in another court (Rule 89).

"Parties Interested."]—Where the workman is a member of an approved society under the National Insurance Act, 1911, the approved society is not a "party interested" for the purposes of clause 9 and has no *locus standi* to appear and object to the recording of a memorandum of agreement as to redemption (*Bonney* v. *Hoyle*, (1914) W. C. & Ins. Rep. 565; (1914) 2 K. B. 257).

When the parties come to an Agreement, under the Act, sect. 1, sub-s. 3, either party may apply for it to be recorded under this paragraph as provided by above rules. There must, however, be "agreement" (*Madden* v. *Guest's Executors*, (1915) W. C. & Ins. Rep. 559). And this application may be made at any time, provided meanwhile it has not become spent or worked out. But only a memorandum of the actual agreement entered into can be recorded. It can neither be added to nor modified. If not satisfactory, *some question may arise* (see sect. 1, sub-sect. 3); but if accepted at all, the very terms agreed must be recorded. Agreements may be verbal. What has been agreed will be a question of fact to be decided by evidence, but no implied term can be introduced into the agreement so formed. An agreement may be implied from payment of compensation, and in *Hartshorne* v. *Coppice Colliery Co.*, (1912) W. C. Rep. 256, it was powerfully argued the agreement to be implied was to bear the full burden of the Act. Contrast, however, *Madden* v. *Guest's Executors*, *supra*. The court could by no means agree with the proposition that from payment in one class of circumstances—during total incapacity—there could be implied a quite different term, *e.g.*, to pay during partial incapacity. See also *Godbold* v. *L.C.C.*, (1914) W. C. & Ins. Rep. 336. Payment is evidence of admission of liability, may justify no notice being given or claim being made, but how far it can be registered as an agreement must be entirely governed by the surrounding circumstances (*Phillips* v. *Vickers, Maxim*, (1912) 1 K. B. 16).

Where there is an agreement the terms of which neither disputes, but under which the amount of compensation payable is doubtful, the proper course is to deal with the matter under Rule 82 (4). See *Moake's Case* quoted in the notes to that rule.

In registering an agreement, except in cases of compounding, and under sub-par. (*d*), the functions of the court are ministerial only. Its duty is to inquire: Does the agreement submitted for registration express in fact the agreement actually made? If so, and only if so, it should be registered (*Hudson* v. *Camberwell Borough Council*, (1917) W. C. & I. 144). If by mistake an agreement as registered does not record the agreement as made, the register may be rectified (sub-par. (*c*)). But rectification of the register cannot be used to modify or vary the agreement itself. If through mistake or error an agreement has been entered into and registered, steps must be taken for rectification of the agreement made before any alteration can be made in the register (*Schofield* v. *Clough*, (1912) W. C. Rep. 301). Rule 85 provides for agreements, etc., obtained by fraud, though not for mistake. The arbitrator has no right to find fraud if no allegation of fraud is made (*Hudson's Case, supra*).

Inconsistent Applications.]—The applicants applied to register an agreement; the employers objected; without withdrawing application to register the applicants then applied for arbitration as if no agreement. Not allowed to be heard as one case (*Armston Coal Co.* v. *King*, (1913) W. C. Rep. 388 (Sc.)).

Workman's Death.]—For the position where the workman died from a cause unconnected with the accident after a redemption agreement had been sent to the registrar to record but before the time for sending in notices of objection had elapsed, see *Price* v. *Westminster Brymbo Coal and Coke Co., Ltd.*, (1915) W. C. & Ins. Rep. 245. It was there held that

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the registrar and employer having no knowledge of the death the memorandum was duly recorded and was enforceable.

Spent Agreement.]—If at the time of applying for registration the agreement has worked itself out, is in fact *spent*, it should not be recorded. This par. (9) only applies to where compensation is payable, and not to where as a matter of history it has been payable (*Popple* v. *Frodingham Iron and Steel Co.*, (1912) 2 K. B. 141; an important decision of most extensive application which, however, has been limited considerably by the decision in *Rex* v. *Thetford C. C. Registrar*, (1915) W. C. & Ins. Rep. 136). The case of *Rex* v. *Thetford C. C. Registrar* decides that even where the agreement gives to the workman all he could possibly claim and gives it him in the form of a lump sum so that there can be no future payments, the *employer* can still insist on registration in order to gain the benefits of sub-sect. 11, *infra*. Whether an agreement is in fact spent will have to be found on the evidence. Not unusually, the practice is to decide whether an "agreement" is spent and hear an application to review (Schedule I. (16)) at one and the same time. A memorandum must be recorded before it can be basis of proceedings (*Colville* v. *Tigue*, 43 S. L. R. 129).

Infants, Dependants, &c.]—Under sub-par. (*d*) a registrar has a discretionary power as to registering agreements. This does not apply where an award has been made by a committee under Schedule II. (1), which may have power to bind infants (*Mulholland* v. *Whitehaven Colliery Co.*, 3 B. 317).

Following the decision of the Court of Appeal in *Rhodes* v. *The Soothill Colliery Co.*, (1909) 1 K. B. 191, elaborate rules (60, 61, and 62) have been made, enabling employers to pay money into court where there are infants, and providing for registrars approving of agreements on their behalf under this paragraph. Rule 60 (12) makes an employer liable for costs prior to payment in, but relieves him from them thereafter.

Persons under Legal Disability.]—See Rule 63.

Memorandum enforceable on a County Court Judgment.]—A workman must obtain leave before issuing execution. Rule 82 is even more stringent than the old rule for which it is substituted, and not only must he show default in payment of a weekly sum, but also that default has been made in complying with the agreement (*Ibrahim Said* v. *Welsford*, 3 B. 233), and the employers are entitled to be heard that this is not the case (*ib.*). *Cf. McDowell* v. *McGladdery*, (1916) W. C. & Ins. Rep. 228. A registrar is not entitled to give leave to issue for execution when the incapacity is in dispute (*Warren* v. *Roxburgh*, (1912) W. C. Rep. 306); this seems to be the result of this case, though it is really difficult to see where the registrar went wrong.

Probably the practice will now be governed by sub-rule 5 of Rule 82. It will be noted many difficult points of practice are cleared up by rules actually made *ad hoc*, and old decisions should be closely scanned in the light of recent rules.

An agreement for compensation can only be enforced by a memorandum being registered and not by action (*Cochrane* v. *Trail*, 37 S. L. R. 662).

For circumstances where an administratrix was held capable of enforcing a recorded agreement, see *Price* v. *Westminster Brymbo Coal and Coke Co., Ltd.*, (1915) W. C. & Ins. Rep. 245.

Variation of Agreement.]—The prudent rule that one order should be varied by another order equally applies to a recorded agreement, and if such be varied it is not usually wise to leave it on the register without also recording the varying agreement (*Fife Coal Co.* v. *Lindsay*, 45 S. L. R. 317). The effect of returning to work is to impliedly vary an agreement. A workman having returned to work for six months sought to recover on an agreement the whole of the compensation accrued for the same time, but his claim was disallowed (*Baird* v. *McWhinnie*, 45 S. L. R. 338). Compensation that has so accrued on a recorded agreement is usually recoverable on simple proof it is outstanding, without inquiry into the incapacity subsisting or otherwise, but if there is no record the whole circumstances must be inquired into.

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The analogy is much that of payments under an award. Till challenged it stands, and payments then due or paid cannot be taken exception to, though it be otherwise when once review is demanded.

Redemption of a Weekly Payment, Sub-par. (*d*).]—Under this sub-par. (*d*) a registrar must inquire into the adequacy of the amount (*Segura* v. *Blampiea*, 4 B. 192), but he cannot fix it (*Mortimer* v. *Secretan*, (1909) 2 K. B. 77). In *O'Niell* v. *The Anglo-American Oil Co.*, 2 B. 434, the arbitrator held 175*l.* was inadequate to redeem 17*s.* 3*d.* a week. The parties and their advisers wished to close at this sum, and on it appearing on appeal that the arbitrator had seemingly misdirected himself by regarding the incapacity as permanent, the court approved the transaction. In two cases a judge has found the amount inadequate, and on subsequent proceedings has correctly found for the employer altogether (*Beech* v. *Bradford Corporation*, 4 B. 236; *Marriott* v. *Brett*, 5 B. 144). The scope of this sub-par. is considerably extended by sect. 11 (1) (*c*) of the National Insurance Act, 1911, in cases where the workman is an insured person.

Redemption of weekly payments.

(10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

By far the most important decision affecting this paragraph is that of *Ryan* v. *Hartley*, (1912) 2 K. B. 150, approving of a settlement for a lump sum without an agreement being registered if entered into before any weekly payment has been made (see the somewhat special circumstances of the case under sect. 3 as to contracting out).

Rule 19 (1) (a) (ii.) seems clearly *ultra vires*, because compensation in the first instance must be a weekly payment (*Mulholland* v. *Whitehaven Colliery Co.*, (1910) 2 K. B. 228).

Court in which proceedings to be taken.

(11) Where any matter under this Act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or if they reside in different districts the district prescribed by rules of court, without prejudice to any transfer in manner provided by rules of court.

Where respondent is in Ireland see *Haddock* v. *Fisher*, 2 W. C. C. 43, but now by *Rex* v. *Judge, C. C. Newport*, 87 L. T. 298, this paragraph includes all respondents within United Kingdom, and service may be by registered letter (see also *Rex* v. *Owen*, (1902) 2 K. B. 436).

As to court in which proceedings are to be taken (Rule 88); stay of proceedings when several applications for arbitration (Rule 17); transfer of proceedings (Rule 90); proceedings subsequent to award (*e.g.*, execution)

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in a court other than that in which award was made (Rule 89); service and substituted service (Rules 16, 92 and 93).

Duties of a judge of county courts; power to make rules.

(12) The duty of a judge of county courts under this Act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

Rules are the machinery by which an Act is reduced to practice; if they fall short in this respect they are defective, if they do more than this, they are *ultra vires*, as far as they do this, they have statutory effect.

As to procedure generally (Rule 29); anything not covered by special rules to follow practice in county court as far as possible (Rule 96).

Court fees.

(13) No court fee, except such as may be prescribed under paragraph (15) of the first schedule to this Act, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the court prior to the award.

The Treasury Order, dated May 30th, 1907, regulates fees (see Appendix GG).

Compensation only to be paid on receipt of person entitled.

(14) Any sum awarded as compensation shall unless paid into court under this Act be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

See Schedule I. (19), as to compensation not being assignable, etc.; and Schedule II. (9), as to costs generally. Under this paragraph Rules 80, 81.

Schedule I. (7) provides for payment to persons under disability.

In case of the death of the person to whom compensation is payable before claim made, and before award given, the right to such compensation is vested and the benefit of such right passes to the estate of such person

(*Darlington* v. *Roscoe*, (1906) 23 T. L. R. 167; *United Collieries* v. *Hendry*, (1909) A. C. 383); but if one of a class the principle in *Ivey* v. *Ivey* (see *ante*, Schedule I. (9)) may apply.

Power to refer to medical referee for report.

(15) Any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

In general, when difficult medical questions may arise, it is better to have an assessor under Schedule II. (5). The arbitrator has no power, before hearing evidence on either side, to refer the matter under this clause (unless by consent (*Renshall's Case, infra*)). Should he do so the resulting report is not admissible in evidence on the hearing of the application (*Peill & Sons* v. *Payne*, (1915) W. C. & Ins. Rep. 205). The report, when made, is not conclusive, still less binding on the arbitrator. In *Scotstoun Est. Co.* v. *Jackson*, 48 S. L. R. 440, an arbitrator referred to a referee and then found the exact opposite of his report. It was held he could so find. But the arbitrator may accept it as conclusive of the point at issue and refuse to hear evidence to the contrary (*Renshall* v. *Spencer*, (1917) W. C. & I. 233). For regulations referred to, see Appendix BB. These regulations, like rules, are to work out the paragraph (see Schedule II. (12)). On the face of them they seem to contemplate a living person, one who can be examined, but in *Carolan* v. *Harrington*, (1911) 2 K. B. 733, it was held they did not so cut down the paragraph, and that a reference as to the cause of death was within its purview. The regulations equally contemplate a conflict of evidence before such reference is made, and if no medical evidence be given, such reference should not be made (*Carroll* v. *Gray*, 47 S. L. R. 646). But see *Renshall's Case, supra.*

See under sect. 10: Rules 56 (1) and 98, as to appointment of referee; Rule 56 (2), as to examination of workman; Rule 76 (6), as to costs; and by Rule 43 (2), a copy of the report must be annexed to the memorandum filed under Schedule II. (9). See also Schedule I. (4), (14), (15), and (20), and Schedule II. (5).

Further powers to be given representative committee.

(16) The Secretary of State may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on county courts or judges of county courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisoes (*d*) and (*e*) of paragraph (9) of this schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the Secretary of State to be necessary or proper for the purposes of the order.

Application to Scotland.

(17) In the application of this schedule to Scotland—

(*a*) "County court judgment" as used in paragraph (9) of this schedule means a recorded decree arbitral:

(*b*) Any application to the sheriff as arbitrator shall be heard,

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tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords :

(*c*) Paragraphs (3), (4), and (8) shall not apply.

Application to Ireland.

(18) In the application of this schedule to Ireland the expression "judge of the county court" shall include the recorder of any city or town, and an appeal shall lie from the Court of Appeal to the House of Lords.

Application of the Act to industrial diseases.

THIRD SCHEDULE.

Description of Disease.	Description of Process.
Anthrax.	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis	Mining.

Where regulations or special rules made under any Act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this schedule to that industry, the expression "process" shall, unless the Secretary of State otherwise directs, include only the processes so specified.

In pursuance of powers given him by sub-sect. (6) of sect. 8, this list, by Orders of the Secretary of State, dated May 22nd, 1907, and December 2nd,

1908, was extended to include other diseases. These Orders are now superseded by the Order of the Secretary of State, dated July 30th, 1913, which provides as follows :—

(1) Subject to the modifications hereinafter specified, the provisions of section 8 of the Workmen's Compensation Act, 1906, shall extend and apply to the diseases, injuries, and processes, specified in the first and second columns of the Schedule annexed to this Order, as if the said diseases and injuries were included in the first column of the Third Schedule to the Act, and as if the said processes were set opposite in the second column of that Schedule to the diseases or injuries to which they are set opposite in the second column of the Schedule annexed hereto.

(2) A glass worker suffering from cataract shall be entitled to compensation under the provisions of the said section, as applied by this Order, for not more than six months in all, and for not more than four months unless he has undergone an operation for cataract.

(3) A person suffering from writer's cramp shall be entitled to compensation under the provisions of the said section, as applied by this Order, for not more than 12 months.

(4) In the application of the provisions of sect. 8 to telegraphist's cramp, so far as regards a workman employed by the Postmaster-General, the Post Office Medical Officer under whose charge the workman is placed shall, if authorised to act for the purposes of the said section by the Postmaster-General, be substituted for the certifying surgeon.

(5) The Orders of the 22nd May, 1907, and the 2nd December, 1908, made under sect. 8, sub-s. 6, of the Workmen's Compensation Act, 1906, are hereby revoked, except as regards cases arising before the date of this Order.

SCHEDULE.

Description of Disease or Injury.	Description of Process.
1. *Poisoning by nitro- and amido-derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelæ.*	*Any process involving the use of a nitro- or amido-derivative of benzene or its preparations or compounds.*
2. Poisoning by carbon bisulphide or its sequelæ.	Any process involving the use of carbon bisulphide or its preparations or compounds.
3. Poisoning by nitrous fumes or its sequelæ.	Any process in which nitrous fumes are evolved.
4. Poisoning by nickel carbonyl or sequelæ.	Any process in which nickel carbonyl gas is evolved.
5. Arsenic poisoning or its sequelæ .	Handling of arsenic or its preparations or compounds.
6. Lead poisoning or its sequelæ .	Handling of lead or its prepara tions or compounds.
7. Poisoning by *Gonioma Kamassi* (African boxwood) or its sequelæ.	Any process in the manufacture of articles from *Gonioma Kamassi* (African boxwood).
8. Chrome ulceration or its sequelæ	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium, or their preparations.
9. *Eczematous ulceration of the skin produced by dust or liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.*	

Sched. III. SCHEDULE—*continued.*

Description of Disease or Injury.	Description of Process.
10. *Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to pitch, tar, or tarry compounds.*	*Handling or use of pitch, tar, or tarry compounds.*
11. Scrotal epithelioma (chimney-sweep's cancer).	Chimney-sweeping.
12. The disease known as Miner's Nystagmus, whether occurring in miners or others, and whether the symptom of oscillation of the eyeballs be present or not.	Mining.
13. Glanders	Care of any equine animal suffering from glanders; handling the carcase of such animal.
14. Compressed air illness or its sequelæ.	Any process carried on in compressed air.
15. Subcutaneous cellulitis of the hand (beat hand).	Mining.
16. Subcutaneous cellulitis over the patella (miners' beat knee).	Mining.
17. Acute bursitis over the elbow (miners' beat elbow).	Mining.
18. Inflammation of the synovial lining of the wrist joint and tendon sheaths.	Mining.
19. Cataract in glassworkers . .	Processes in the manufacture of glass involving exposure to the glare of molten glass.
20. Telegraphists' cramp . .	Use of telegraphic instruments.
21. Writer's cramp . . .	——

By Order dated May 6th, 1916, the parts of the above order relating to diseases 1 and 9 are revoked except as regards cases arising before May 6th, 1916, and the following provisions substituted:—

(1) The provisions of section 8 of the Workmen's Compensation Act, 1906, shall extend and apply to the diseases, injuries, and processes, specified in the first and second columns of the Schedule annexed to this Order, as if the said diseases and injuries were included in the first column of the Third Schedule to the Act, and (where processes are specified in the second column of the annexed Schedule) as if the said processes were specified in the Schedule to the Act and were set opposite to the diseases or injuries to which they are set opposite in the second column of the Schedule annexed hereto.

(2) A person suffering from any of the diseases described in the Schedule as ulceration of the skin, or any dermatitis, produced by dust or liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust, shall not be entitled to compensation under the provisions of the said section on account of the said disease if he is disabled only for employment in the particular process in which the disease has been contracted.

Schedule. Sched. III.

Description of Disease or Injury.	Description of Process.
Poisoning by nitro- and amido-derivatives of benzene and its homologues (trinitrotoluene, anilin, and others), or the sequelæ.	Any process in the manufacture, or involving the use, of any nitro- or amido-derivative of benzene or any of its homologues.
Ulceration of the skin, or any dermatitis, produced by dust or liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.	

By Order dated July 1st, 1914, the part of the above Order relating to diseases 10 (Epitheliomatous cancer, etc.) is revoked, and the following provision substituted :—

Description of Disease or Injury.	Description of Process.
Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.	Handling or use of tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.

By Order dated July 7th, 1915, another disease or injury was added to the above list, viz. :—

Description of Disease or Injury.	Description of Process.
Dope poisoning; that is, poisoning by tetrachlorethane or any other substance used as or in conjunction with a solvent for acetate of cellulose or its sequelæ.	Any process in the manufacture of aircraft.

As regards the word sequelæ used in the above Order and Schedule, T. Luson, M.D., thus well writes :—" ' Sequelæ ' is the plural form of sequela, which in medicine means a morbid phenomenon left as the result of a disease. Thus paralysis is the sequela or after effect of lead poisoning."

WORKMEN'S COMPENSATION (WAR ADDITION) ACT, 1917.

AN ACT TO PROVIDE FOR AN ADDITION DURING THE PRESENT WAR AND A PERIOD OF SIX MONTHS THEREAFTER TO THE AMOUNT OF THE COMPENSATION PAYABLE UNDER THE WORKMEN'S COMPENSATION ACT, 1906, IN CASES OF TOTAL INCAPACITY.

[21st August, 1917.]

Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and

Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Temporary increase of amount of compensation in cases of total incapacity. 6 Edw. 7, c. 58.

1.—(1) Where any workman is at any time during the period for which this Act continues in force entitled during total incapacity to a weekly payment by way of compensation under the Workmen's Compensation Act, 1906, he shall, whether the incapacity arose before or after the commencement of this Act, be entitled to receive from the person liable to pay the compensation, by way of addition to each such weekly payment payable in respect of any week within the said period, a sum equal to one-fourth of the amount of that payment.

(2) The additional weekly sum payable under this Act shall be deemed to be part of the weekly payment under the Workmen's Compensation Act, 1906, for the purposes of—

(*a*) The provisions relating to the recovery of weekly payments;

(*b*) Any order made with respect to payment into court of a weekly payment;

(*c*) The provisions of paragraph (19) of the First Schedule to the Workmen's Compensation Act, 1906 (which prohibits the assignment, &c., of weekly payments);

and shall, notwithstanding that the liability to make the said weekly payment is redeemed subsequently to the commencement of this Act, continue to be payable in the same manner as if that liability had not been redeemed.

Provision with respect to certified schemes.

2. Where an employer is liable to pay benefits under a scheme certified by the Registrar of Friendly Societies under section three of the Workmen's Compensation Act, 1906, the Registrar may direct that workmen, who are at any time during the period for which this Act continues in force entitled to benefits under the scheme as on account of total incapacity, shall receive such additional benefit as is specified by the Registrar in the direction as being in his opinion of equivalent value to the additional sum payable under the foregoing provisions of this Act.

Commencement and short title.

3.—(1) This Act shall come into operation on the first day of September nineteen hundred and seventeen, and shall continue in force during the continuance of the present war and for a period of six months thereafter.

(2) This Act may be cited as the Workmen's Compensation (War Addition) Act, 1917.

THE CONSOLIDATED WORKMEN'S COMPENSATION RULES, JULY, 1913, DATED MAY 6, 1913, AND WORKMEN'S COMPENSATION RULES, 1914, DATED JULY 23, 1914.

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PRELIMINARY.

Effect, short title, commencement, and construction of Rules. 6 Edw. VII. c. 58.

1.—(1) The following rules shall have effect under the Workmen's Compensation Act, 1906 (in these rules referred to as the Act), with reference to any matter or proceeding for the regulation of which rules of court may be made under the Act, and generally for carrying the Act into effect so far as it affects the county court or an arbitrator appointed by the judge of the

county court, and proceedings in the county court or before any such arbitrator. Rule 1.

(2) These rules may be cited as the Consolidated Workmen's Compensation Rules, July, 1913, and shall come into operation on the first day of July, one thousand nine hundred and thirteen. They shall apply to all proceedings taken in cases pending on that day where the accident happened after the thirtieth day of June, one thousand nine hundred and seven; but they shall not, except so far as they relate to references to medical referees and proceedings consequential thereon, apply to any case where the accident happened before the first day of July, one thousand nine hundred and seven; and the Workmen's Compensation Rules, 1898, the Workmen's Compensation Rules, 1899, and the Workmen's Compensation Rules, 1900, shall continue to apply to any such case, except to the extent to which these rules apply thereto.

(3) The Workmen's Compensation Rules, 1907, and all Workmen's Compensation Rules of subsequent date, are hereby annulled.

(4) Expressions used in these rules shall have the same meaning as the same expressions used in the Act.

(5) The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these rules as it applies for the purpose of the interpretation of an Act of Parliament. 52 & 53 Vict. c. 63.

(6) These rules shall also be read and construed with the County Court Rules, 1903, and the County Court Rules of subsequent date amending the same; and any order and rule referred to by number in these rules shall mean the order and rule so numbered in the County Court Rules, 1903, or in any County Court Rules of subsequent date, as the case may be. [*Old rule* 1.]

Parties to Arbitration before Judge or Arbitrator Appointed by Judge.

2.—(1) Where application is made for the settlement by the judge, or by an arbitrator appointed by the judge, of any matter which under the Act is to be settled by arbitration, the party making such application shall be called "the applicant"; and subject to these rules, all other persons whose presence at the arbitration may be necessary to enable the judge or arbitrator effectively and completely to adjudicate upon and settle all the questions involved shall be made parties to the application, and shall be called "the respondents." Parties to arbitration.

(2) In any case in which both the principal as defined by the Act and a contractor with him are alleged to be liable to pay Order III., rule 2.

Rule 2.

compensation under the Act, Order III., rule 2, as to joinder of parties, shall apply. [*Old rule* 2.]

Joinder of applicants. Order III., rule 1. Order XLIV., rules 18, 19.

3. More persons than one may be joined as applicants in one arbitration, in any case in which such persons might be joined in one action as plaintiffs under Order III., rule 1 ; and that rule, and rules 18 and 19 of Order XLIV., shall, with the necessary modifications, apply to any such arbitration. [*Old rule* 3.]

Application by dependants.

4.—(1) An application on behalf of the dependants of a deceased workman for the settlement by arbitration of the amount payable as compensation to such dependants may be made by the legal personal representative, if any, of the deceased workman on behalf of such dependants, or by the dependants themselves ; and in either case the particulars to be filed as hereinafter mentioned shall contain particulars as to the dependants on whose behalf the application is made.

(2) Provided, that if there is any conflict of interest between the dependants themselves, or if any dependants neglect or refuse to join in an application, the application may be made by or on behalf of some only of such dependants, the other dependants in either case being named as respondents.

There may be circumstances when others cannot be joined, as where a father was either dead or had deserted his wife, who claimed as dependent on a son (*Bevan* v. *Crawshay*, (1902) 1 K. B. 25).

(3) In the construction of this rule the term "dependants" shall include persons who claim or may be entitled to claim to be dependants, but as to whose claim to rank as dependants any question arises. [*Old rule* 4.]

Application by dependants under Act, Sched. I. par. 8, where amount of compensation agreed or ascertained.

5.—(1) In any case in which the amount payable as compensation to the dependants of a deceased workman has been agreed upon or ascertained, but any question arises as to who are dependants, or as to the amount payable to each dependant, an application for the settlement of such question by arbitration may be made either by the legal personal representative, if any, of the deceased workman on behalf of the dependants or any of them, or by such dependants or any of them, against the other dependants, and the persons claiming or who may be entitled to claim to be dependants, but as to whose claim to rank as such a question arises ; or such application may be made by the persons claiming to be dependants, but as to whose claim to rank as such a question arises, or any of them, against the legal personal representative, if any, of the deceased workman, and the dependants, and such of the persons claiming or who may be entitled to claim to be dependants as are not applicants.

Rule 5.

(2) In any such case, if the employer has paid the agreed or ascertained amount of compensation, it shall not be necessary to make him a respondent, but if such compensation or any part thereof is still in his hands he shall be made a respondent.

(3) The employer, if made a respondent, may pay the amount of compensation in his hands into court, to be dealt with as the judge or arbitrator shall direct, and thereupon further proceedings against him shall be stayed.

This obviates the necessity for letters of administration (*Clatworthy* v. *Green*, 4 W. C. C. 152).

(4) The registrar shall within twenty-four hours from the time of payment made pursuant to the last preceding paragraph send notice thereof to the applicant and to the other respondents (if any), and the employer shall not be liable to any costs otherwise than in accordance with paragraph 6 (*c*) of rule 19. [*Old rule* 5.]

Parties to arbitration as to sum payable for medical attendance and burial. Act, Sched. I., par. 1 (*a*) (iii.).

6.—(1) An application for the settlement by arbitration of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants shall be made by the legal personal representative, if any, of the deceased workman. If there is no such legal personal representative, the application may be made by any person to whom any such expenses are due. In the latter case any other person known to the applicant as a person to whom any such expenses are due shall be joined in the application either as applicant or respondent.

Apportionment of such sum.

(2) In any case in which application is made for the settlement by arbitration of such amount, the amount awarded, if insufficient for the payment of such expenses in full, shall be apportioned between the persons to whom such expenses are due in such manner as the judge or arbitrator shall direct. [*Old rule* 6.]

Parties under disability and partners; representation of parties having the same interest.

7.—(1) The provisions of rules 7 and 8 of Order III., as to parties suing or defending on behalf of other persons having the same interest, and the provisions of the County Court Rules as to persons under disability and partners suing and being sued, shall, with the necessary modifications, apply to proceedings by way of arbitration under the Act.

Judge may direct infant to appear as if he were of full age.

(2) Provided that the judge may at any time direct that an infant shall appear either as applicant or respondent in the same manner as if he were of full age. [*Old rule* 7.]

Sub-paragraph (2) is new. As to appearing by next friend, see Order V. r. 16 and Form 15.

Application for Arbitration.

Request for arbitration.

8.—(1) An application for the settlement of any matter by arbitration shall not be made unless and until some question has

Rule 8.

arisen between the parties, and such question has not been settled by agreement.

This rule gives effect to the decision in *Field* v. *Longden*, (1902) 1 K. B. 47, that arbitration is not to be requested unless a question has arisen, and requires the question to be stated in the request. The question must be a real question (*Jones* v. *Great Central Rail.*, 4 W. C. C. 23), and an employer must be given a fair opportunity of admitting or disputing liability (*Caledon, etc. Co.* v. *Kennedy*, (1906) 43 S. L. R. 430, 637). NOTE.—This rule does not apply on proceedings for review.

(2) Where any question has arisen and has not been settled by agreement, an application for the settlement of the matter by arbitration shall be made by the applicant filing with the registrar a request for arbitration, intituled in the matter of the Act and in the matter of the arbitration, which request shall state concisely the question which has arisen, and shall, with the subsequent proceedings thereon, be recorded in the special register hereinafter mentioned.

The question thus stated is the only question which an arbitrator may consider. Nor should he amend the particulars at the hearing so as to substantially raise a new issue (*Proprietors of Hay's Wharf* v. *Brown*, 3 B. W. C. C. 84).

Particulars.

(3) Particulars shall be appended or annexed to the request, containing—

(*a*) a concise statement of the circumstances under which the application is made, and the relief or order which the applicant claims ;

(*b*) the date of service of notice of the accident on the employer, or, if such notice has not been served, the reason for such omission ; and

(*c*) the full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor. [*Old rule* 8.]

Forms of request and particulars. Forms 1 to 11.

9.—(1) The request and particulars shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case may require.

If not complete, fuller and better ones may be demanded (*Hay's Wharf* v. *Brown*, 3 B. 92).

(2) A copy of the notice of the accident shall be appended or annexed to the particulars. If this rule cannot be complied with, the reason for the omission shall be stated in the particulars. [*Old rule* 9.]

Application by employer.

10.—(1) Where an employer on whom a claim for compensation has been made desires to make an application for the settlement

of any matter by arbitration, he shall file a request for arbitration in accordance with rule 8, to which the workman, or the legal personal representative, if any, and the persons claiming or who may be entitled to claim to be dependants of a deceased workman, or the other persons (as the case may be) on whose behalf the claim was made, shall be respondents. Rule 10.

(2) Particulars shall be appended or annexed to the request, containing—

(*a*) a concise statement of the circumstances under which the application is made;

(*b*) a statement whether the applicant admits his liability to pay compensation, or denies such liability, wholly or partially, with (in the latter case) a statement of the grounds on and extent to which he denies liability;

(*c*) a statement of the matters which the applicant desires to have settled by arbitration; and

(*d*) the full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor. [*Old rule* 10.]

11. The applicant shall deliver to the registrar with the request and particulars a copy thereof for the judge or arbitrator, and a copy for each respondent to be served. [*Old rule* 11.] Copies for judge and respondents.

12. Where the applicant is illiterate and unable to furnish the required information in writing, the request and particulars and copies shall be filled up by the registrar's clerk. [*Old rule* 12.] Where applicant is illiterate.

13. Order V., rules 10 and 11, and Order XII., rule 9, of the County Court Rules, as to security for costs, shall not apply to proceedings under the Act and these Rules. [*New.*] County Court Rules as to security for costs not to apply.

Proceedings on Arbitration before Judge.

Fixing Day and Place for Arbitration.

14.—(1) On the filing of a request for arbitration, the registrar shall transmit a copy of the request and particulars to the judge, who shall as soon as conveniently may be (if he decides to settle the matter himself) appoint a day and hour for proceeding with the arbitration. Such day shall, subject to the provisions of rule 28, be so fixed as to allow the copies of the request and particulars to be served on the respondents at least twenty clear days before the day so fixed. Fixing day and place for arbitration.

(2) The arbitration shall, subject as hereinafter mentioned, be held at the place at which the court is held.

Rule 14.

(3) Provided, that the judge may direct that the arbitration shall be held at any other place within the district of the court, on application in that behalf made by any party to the arbitration, and on such party filing an undertaking to provide at his own expense a place to the satisfaction of the judge in which the arbitration may be held, and to pay the necessary expenses of the judge and officers of the court attending at such place.

(4) If such direction is given before the notices mentioned in the next following rule are issued, the registrar shall insert in such notices the place at which the arbitration has been so directed to be held.

(5) If such direction is given after such notices have been issued, the registrar shall forthwith send notice by post to the parties of the place at which the arbitration has been so directed to be held. [*Old rule* 13.]

Notice of Day Fixed.

Notice to parties.

15.—(1) On the day for proceeding with an arbitration being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and shall issue the copies of the request and particulars, under the seal of the court, for service on the respondents, together with notices under the seal of the court, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

Forms 12, 13.

Notice where employer is applicant. Form 13.

(2) Where the request is filed by an employer, the notices to be served on the respondents shall be modified by the omission of the words therein relating to the denial or admission of liability to pay compensation. [*Old rule* 14.]

Service on Respondents.

Service on respondents.

16.—(1) The copies and notices mentioned in the last preceding rule shall, subject to the provisions of rule 28, be served on the respondents at least twenty clear days before the day fixed for proceeding with the arbitration.

This is to allow sufficient time for proceedings between service and hearing, especially third party proceedings.

(2) The copies and notices mentioned in the last preceding rule may be served—

(*a*) By a bailiff of a court;

or, at the request of the applicant or his solicitor, Rule 16.

(*b*) By the applicant, or some clerk or servant in his permanent and exclusive employ; or

(*c*) By the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve such copies and notices, who might be so employed to serve a writ in an action in the High Court.

(3) Service may be effected either in accordance with the rules as to service of default summonses (*a*), or by registered post in accordance with the provisions of sub-sections 3 and 4 of section 2 of the Act with reference to service of notice in respect of an injury, and the provisions of those sub-sections shall apply to such service. Act, sect. 2, sub-sects. 3, 4.

(*a*) Order VII. rr. 30—34.

(4) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service indorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant. The applicant shall also (unless the respondent files an answer) after the time limited for filing an answer, deliver or transmit to the registrar an affidavit of the service of such document, according to Form 37 in the Appendix to the County Court Rules, with such variations as the circumstances of the case may require. Where service effected otherwise than by bailiff.

(5) Where a document is served by post it shall, unless the contrary be proved, be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such document it shall be sufficient to prove that the same was properly addressed and registered. Service by post.

(6) Where the accident occurred in England, and any respondent resides in Scotland or Ireland, service on such respondent may be effected in accordance with this rule, and service so effected shall be deemed to be sufficient. [*Old rule* 15.] Service on respondent in Scotland or Ireland.

Par. 6 has been framed on the lines of the decision in *Rex* v. *Owen*, (1902) L. R. 2 K. B. 436. It was there held that where an accident occurs in England, but the employer resides in Scotland or Ireland, proceedings may be taken in the county court in England; and in reply to the argument that there were no provisions for the service out of the jurisdiction, the court held that the rule as to service by registered post met the difficulty. Channell, J., pointed out that this was probably by accident, and that the words were not intended to meet such a case; but it was held that they did in fact meet it. It is now effected by this rule in express terms.

Stay of Proceedings.

Rule 17.

Stay of proceedings in other arbitrations to abide decision as to liability in selected arbitration. Order VIII., rules 2—6.

17. Where several requests for arbitration are filed by different applicants against the same respondent in the same court in respect of matters arising out of the same circumstances, the respondent may, on filing an undertaking to be bound, so far as his liability to pay compensation is concerned, by the award in such one of the said arbitrations as may be selected by the judge, apply to the judge under Order VIII., rule 2, for an order to stay proceedings in the arbitrations other than the one so selected until an award is made in such selected arbitration; and rules 2 to 6 of Order VIII. shall, with the necessary modifications, apply accordingly. [*Old rule* 16.]

Answer by Respondent.

Answer by respondent.

18.—(1) If any respondent desires to disclaim any interest in the subject matter of an arbitration, or considers that the applicant's particulars are in any respect inaccurate or incomplete, or desires to bring any fact or document to the notice of the judge, or intends to rely on the fact that notice of the accident, or of death, disablement, or suspension, was not given as required by the Act, or that the claim for compensation was not made within the time limited by the Act, or intends to deny (wholly or partially) his liability to pay compensation under the Act, he shall, ten clear days at least before the day fixed for proceeding with the arbitration, or if the time is abridged pursuant to rule 28, then within the time fixed by the order, file with the registrar an answer, stating his name and address, and the name and address of his solicitor (if any), and stating that he disclaims any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which he desires to bring to the notice of the judge, or on which he intends to rely, or the grounds on and extent to which he denies liability.

Form 14.

(2) The respondent shall with such answer file copies thereof for the applicant and the judge, and one copy for each of the other respondents; and the registrar shall within twenty-four hours after receiving such copies transmit the same by post to the applicant and the judge and the other respondents respectively.

(3) Subject to any answer so filed, and to the provisions of the next following paragraph, the applicant's particulars, and, in the case of a claim for compensation, the liability to pay compensation under the Act, shall be taken to be admitted.

(4) Provided, that in case of non-compliance with this rule, and of the applicant's not consenting at the arbitration to permit

a respondent to avail himself of any matter of which he should pursuant to this rule have given notice by filing an answer, the judge may, on such terms as he shall think fit, either proceed with the arbitration and allow the respondent to avail himself of such matter, or adjourn the arbitration to enable the respondent to file such answer. Rule 18.

The arbitrator's discretion on such matters is very great (*Silvester* v. *Cude*, 1 W. C. C. 120); but he should not allow new matter to be sprung on either party without adjourning as a rule.

The arbitrator has jurisdiction to consider an application to terminate a suspensory award which is made by the answer (*Paulizky* v. *Wandsworth, Wimbledon, & Epsom Gas Co.*, (1916) W. C. & Ins. Rep. 127.

(5) The provisions of this rule shall, with the necessary modifications, apply to a case in which a request for arbitration is filed by an employer; but a respondent who fails to file an answer shall not be taken to admit the truth of any statement in the applicant's particulars in which he denies, wholly or partially, his liability to pay compensation. [*Old rule* 17.] Answer where employer is applicant.

Submission to Award or Payment into Court by Respondent.

19.—(1) A respondent who admits liability may at any time before the day fixed for proceeding with the arbitration, Submission to award or payment into court with admission of liability. Form 15.

(*a*) Where the application is made by an injured workman,

(i.) file with the registrar a notice that he submits to an award for the payment of a weekly sum, to be specified in such notice; or

(ii.) file with the registrar a notice that he submits to an award for the payment of a lump sum, to be specified in the notice, which he considers to be sufficient to cover his liability in the circumstances of the case, and pay such sum into court; or

This rule is probably *ultra vires* (see under sect. 3 of the Act).

(*b*) Where the application is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants, file with the registrar a notice that he admits liability, and pay into court such sum of money as he considers sufficient to cover his liability in the circumstances of the case.

In any such case the respondent shall file as many copies of the notice as there are parties to whom notice of submission to an award or of payment into court is to be sent.

(2) A respondent who denies liability may at any time before the day fixed for proceeding with the arbitration file a notice of submission to an award or pay money into court in accordance Submission to award or payment into court

Rule 19.

with denial of liability.

Form 15.

with this rule, accompanied by a notice stating his name and address, and further stating that notwithstanding such submission or payment he denies his liability, together with as many copies of such notice as there are parties to whom notice of such submission or payment is to be sent.

Forms 16, 17.

(3) The registrar shall within twenty-four hours from the time of any notice filed or payment made pursuant to either of the two last preceding paragraphs send notice thereof (with a copy of the notice filed by the respondent) to the applicant, and to the other respondents (if any).

Acceptance of weekly payment as lump sum by workman.

Form 18.

(4) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment or the lump sum specified in the respondent's notice, he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice according to the form in the Appendix, stating such acceptance, within such reasonable time before the day fixed for proceeding with the arbitration as the time of filing of notice of submission by the respondent has permitted.

Acceptance by dependants of sum paid into court.

Form 18.

(5) If the application for arbitration is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance and burial as aforesaid, and the applicant is willing to accept the sum paid into court in satisfaction of the compensation payable to the dependants, or in respect of such medical attendance and burial (as the case may be), he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice of such willingness, according to the form in the Appendix, within such reasonable time before the day fixed for proceeding with the arbitration as the time of payment into court by the respondent has permitted.

If there are any other respondents, the applicant shall in like manner give notice of such willingness to such respondents ; and if any of such respondents are willing to accept the sum paid into court in satisfaction of such compensation as aforesaid, they shall in like manner give notice of such willingness to the registrar and to the applicant and the other respondents.

Procedure if weekly payment offered or sum paid in is accepted.

(6) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment submitted to or the lump sum paid into court by the respondent, or if in any other case the applicant and all the respondents give notice of their willingness to accept the sum paid into court, the following provisions shall apply :—

(*a*) Where the applicant is a workman and accepts the weekly

payment submitted to or the lump sum paid into court by the respondent, the judge may, on application made to him in or out of court, forthwith make an award directing payment of such weekly sum accordingly, or directing payment of such lump sum to or applying the same for the benefit of the workman ; Rule 19.

(*b*) Where in the case of death the respondent has paid money into court, further proceedings against such respondent shall be stayed, except as hereinafter mentioned ; and

(i.) If the applicant and the other respondents agree as to the apportionment and application of such sum, the judge may, on application made to him in or out of court on behalf of or with the consent of all such parties, forthwith make an award for such apportionment and application ;

(ii.) In any other case the arbitration may proceed as between the applicant and the other respondents.

(*c*) In any such case the judge may, in his discretion, by his award order the respondent filing notice of submission to an award or paying money into court to pay such costs as the applicant and the other respondents, or any of them, may have properly incurred before the receipt of notice of submission to an award or payment into court, and his or their costs properly incurred in relation to the notice of submission to an award or payment into court, and to the notice of acceptance, including, if the judge on consideration of the facts of the case shall so order, any items which might have been allowed by order of the judge at the hearing of the arbitration. Costs payable by respondent.

(*d*) If the applicant or any respondent intends to apply for any such costs, he shall give notice of his intention in his notice of acceptance, according to the form in the Appendix ; or where the time of filing notice of submission to an award or the time of payment into court by the respondent does not permit of notice of acceptance being given, the applicant or any respondent may apply for such costs without giving such notice. Form 18.

(7) Where any party has not given notice of acceptance in accordance with this rule, he may nevertheless accept the weekly payment which the respondent has submitted to pay, or the sum paid into court, at any time before the arbitration is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the respondent since the date of filing notice of submission or the date of payment into court, and which may be allowed by the judge ; and the judge may order Acceptance at any time before arbitration opened. Costs.

Rule 19.

any costs so allowed to be paid by the party so accepting, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party.

Procedure and costs if weekly sum offered or sum paid in is not accepted.

(8) In default of notice of acceptance by the applicant and all the respondents, the arbitration may proceed; but if no greater weekly payment or compensation is awarded than that which the respondent has submitted to pay or has paid into court, such respondent shall not be liable to pay any further costs than such as he might have been ordered to pay if the weekly payment offered or sum paid into court had been accepted; and the judge may order any costs incurred by such respondent after notice of submission to an award or payment into court to be paid by any party who has not given notice of acceptance of such weekly payment or sum, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party. The judge may also order any costs incurred after notice of payment into court by any party who has given notice of acceptance to be paid by any other party who has not given such notice, and to be deducted from any compensation awarded to such last-mentioned party.

Submission to award or payment into court where employer is applicant.

(9) The provisions of this rule shall, with the necessary modifications, apply to a case in which an employer has filed a request for arbitration. [*Old rule* 18.]

This rule is rearranged and modified to provide for payment into court with a denial of liability.

Notice to Parties against whom Indemnity claimed under section 4.

Notice of claim to indemnity under sect. 4.

20. Where a respondent claims to be entitled under section 4 of the Act to indemnity against any person not a party to the arbitration, he shall, ten clear days at least before the day fixed for proceeding with the arbitration, or if the time is abridged pursuant to rule 28, then within the time fixed by the order, file a notice of his claim according to the form in the Appendix; and the registrar shall seal such notice and deliver it to the respondent, who shall serve the same, together with a copy of the applicant's request and particulars, and of the notice served on the respondent under rules 15 and 16, upon the person against whom such claim is made; and the provisions of paragraphs 2 to 6 of rule 16 shall apply to such service. [*Old rule* 19.]

Form.

Sect. 4 of the Act now definitely requires questions arising under such section to be settled by arbitration, and not by action. This rule, and Rules 21—24, apply the county court procedure to such cases. So also Rule 28 gives the court discretion as to time of service.

Rule 21.

Appearance by third party.

21. If any person served with a notice under the last preceding rule (herein-after called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, or his own liability to such respondent, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise, and his own liability to indemnify the respondent to the extent claimed in the notice served on him by the respondent.

Where notice not served in due time.

Provided, that if it appears to the judge before or at the arbitration that the notice of claim has not been served on the third party in time to enable him to appear on the day hereinbefore mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the judge may adjourn the proceedings in the arbitration on such terms, as to costs and otherwise, as may be just. [*Old rule* 20.]

Order XI. r. 2.

Proceedings on default of appearance by third party.

22. If the third party fails to appear on the day mentioned in rule 21, or, if the proceedings are adjourned under that rule, on the day to which the proceedings are adjourned, then if the arbitration results in an award in favour of the applicant, or the arbitration is finally decided in favour of the applicant otherwise than by an award, the judge may on the application of the respondent make such award as the nature of the case may require in favour of the respondent against the third party: but execution thereon shall not issue without leave of the judge until after satisfaction by the respondent of the award against him, or the amount recovered against him.

Provided, that the judge may set aside or vary any award made against the third party under this rule upon such terms as may be just. [*Old rule* 21.]

Order XI. r. 3.

Application for directions. What directions may be given.

23. The third party or the respondent may apply before or at the arbitration to the judge for directions: and the judge, upon the hearing of the application, may, if satisfied that there is a question proper to be determined as to the liability of the third party to make the indemnity claimed, in whole or in part, order the question of such liability as between the third party and the respondent giving the notice to be determined at or after the

Rule 23.

arbitration, and if not so satisfied may make such award as the nature of the case may require in favour of the respondent giving the notice against the third party : or the judge may, if it appears desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he may think proper for having the question most conveniently determined, and as to the mode or extent in or to which the third party shall be bound or made liable by the award in the arbitration. [*Old rule* 22.]

Order XI. r. 4.

Costs.

24. The judge may decide all questions of costs as between a third party and the other parties to the arbitration, and may order any one or more to pay the costs of any other or others, or give such directions as to costs as the justice of the case may require.

Order XI. r. 5.

Notice to Parties against whom Indemnity claimed under section 6, or otherwise.

Notice of claim to indemnity under sect. 6, or otherwise than under sect. 4. Form 23.

25.—(1) Where a respondent claims that if compensation is recovered against him he will be entitled under section 6 of the Act, or otherwise than under section 4, to indemnity against any person not a party to the arbitration, he may, if he desires that such person shall be bound by the proceedings in the arbitration to the extent in this rule provided, file and serve a notice of his claim in accordance with rule 20.

If person served makes default in appearing, he is to be deemed to admit validity of award against respondent.

(2) If any person served with a notice under the last preceding paragraph (herein-after called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed ; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise.

Where notice not served in due time.

Provided, that if it appears to the judge before or at the arbitration that the notice of claim has not been served on the third party in time to enable him to appear on the day hereinbefore mentioned, or that for any other sufficient cause the third

party is unable to appear on such day, the judge may adjourn the proceedings in the arbitration on such terms, as to costs or otherwise, as may be just. Rule 25.

This rule has been slightly modified to bring into accord with *Nettleingham* v. *Powell*, (1913) W. C. Rep. 22 (see under sect. 6). In *G. N. Rail.* v. *Whitehead*, 18 T. L. R. 816, the plaintiff recovered 78*l.* 11*s.* 3*d.*, the amount of the award, and 10*l.* 17*s.* 2*d.* for costs paid to the applicant. The rule precisely states the law and the extent to which such third party is liable.

(3) The third party or the respondent may apply before or at the arbitration to the judge for directions; and the judge, upon the hearing of the application, may, if it appears desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he shall think proper. Application to judge for directions as to conduct of arbitration.

(3) If the third party obtains leave to resist the claim of the applicant against the respondent, the provisions of rule 24 as to costs shall apply. Costs.

(5) Nothing in this rule shall empower the judge to decide (otherwise than by consent) any question as to the liability of the third party to indemnify the respondent, or to make any award in favour of the respondent against the third party, or to make any further or other order than that the third party shall not be entitled in any future proceedings between the respondent and such third party to dispute the validity of the award as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent. Judge how far empowered to decide questions as to liability of third party.

(6) Provided, that with the consent of the respondent and the third party,

(*a*) If the arbitration results in an award in favour of the applicant, or is finally decided in favour of the applicant otherwise than by an award, and the third party admits his liability to indemnify the respondent, the judge may, on application made to him at or after the hearing of the arbitration or the final decision thereof, make such award as the nature of the case may require in favour of the respondent against the third party; but execution thereon shall not issue without leave of the judge until after satisfaction by the respondent of the award against him, or the amount recovered against him; or

(*b*) The judge may, on an application for directions, order any question as to the liability of the third party to make the indemnity claimed to be settled, as between the respondent and the third party, by arbitration after the

Rule 25.

arbitration between the applicant and the respondent, and may on such subsequent arbitration make such award as the nature of the case may require in favour of either party against the other.

c) In any such case the judge may decide all questions of costs as between the respondent and the third party, and may order either of such parties to pay the costs of the other (including any costs payable by such party to any other party to the arbitration), or give such directions as to such costs as the justice of the case may require.

[*Old rule* 24.]

Third Party Procedure where Employer is Applicant.

Third party procedure where employer is applicant.

26. The provisions of rules 20 to 25 shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration claims to be entitled to indemnity against any person not a party to the arbitration. [*Old rule* 25.]

Claim to Indemnity as between Respondents.

Claim to indemnity as between respondents.

27.—(1) Where a respondent claims to be entitled to indemnity against any other respondent, a like notice shall be issued and the like procedure shall thereupon be adopted for the determination of questions between the respondents as might be issued and adopted against such other respondent if such last-mentioned respondent were a third party.

(2) Nothing herein contained shall prejudice the rights of the applicant against any respondent. [*Old rule* 26.]

When indemnity is claimed by one respondent against another, he must give notice (*Appleby* v. *Horseley and Lovett*, (1899) 2 Q. B. 521).

Abridgment of Time for Service, &c.

Abridgment of time for service, answer, &c.

28. The judge or registrar may for good cause shown abridge the time for service of a request for arbitration on any respondent, or the time for filing an answer or serving a third party notice under these rules; and if an order is made to that effect a copy of the order shall be annexed to and served with the notice to be served on the respondent. [*Old rule* 25A.]

Procedure on Arbitration.

Procedure arbitration.

29.—(1) Subject to the special provisions of these rules, the procedure in an arbitration shall be the same as the procedure in an action commenced in the county court by plaint and summons in the ordinary way, and determined by the judge without a jury, in so far as such procedure is applicable to proceedings by way of arbitration; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary

modifications, apply to such arbitration accordingly; and in the application of such provisions and rules the applicant's request for arbitration shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the arbitration shall be deemed to be the return day, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively. Rule 29.

(2) Provided, that the burden of proof of any facts which are not admitted shall be the same, whoever the party may be by whom the request for arbitration is filed. [*Old rule* 27.] Burden of proof of facts not admitted.

Award.

30.—(1) The award of the judge on any arbitration shall be prepared and settled by the registrar, and shall be signed by the judge, and shall be sealed and filed, and sealed copies thereof shall be served on all persons affected thereby in accordance with rule 7 of Order XXIII.; and such award shall be enforceable in the same manner as a judgment or order of the court. Award. Form 24. Order XXIII. rule 7.

(2) The judge shall have power at any time to correct any clerical mistake or error in such award arising from any accidental slip or omission. [*Old rule* 28.]

Save as thus provided, an award once signed cannot be altered. Up to signing, it can (*Mowlem* v. *Dunne*, (1912) 2 K. B. 136).

PROCEEDINGS BEFORE ARBITRATOR APPOINTED BY JUDGE.

Appointment of Arbitrator by Judge.

31. With respect to the appointment of an arbitrator by the judge, the following provisions shall apply :— Appointment of arbitrator by judge.

(*a*) If with respect to any court the Lord Chancellor, by general order, authorises the settlement by an arbitrator appointed by the judge of matters which, in default of such authorisation, would be settled by the judge, the judge may from time to time, on an application being made for the settlement of any matter, either settle the same himself, or he may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the court, an arbitrator to settle such matter.

(*b*) If with respect to any court the Lord Chancellor makes no such general order as aforesaid, then, on an application being made for the settlement of any matter, the judge may (if from the state of business in the court, or for any other reason, he is unable to settle such matter within a reasonable time) apply to the Lord Chancellor to authorise the settlement of such matter by an arbitrator appointed by the judge.

Rule 31.

(*c*) If the Lord Chancellor does not grant such authority, the judge shall proceed to settle the matter in accordance with the Act and these rules.

(*d*) If the Lord Chancellor grants such authority, the judge may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the court, an arbitrator to settle such matter.

(*e*) In case of the death or refusal or inability to act of an arbitrator appointed under this rule, the judge may, on the application of any party, appoint a new arbitrator in accordance with this rule.

[*Old rule* 29.]

Fixing Day for Arbitration.

Fixing day and place for proceedings before arbitrator.

32. Where any matter is to be settled by an arbitrator, the judge shall return the copy of the request for arbitration to the registrar, with the appointment of such arbitrator, to be transmitted to the arbitrator; and the registrar shall transmit the copy of the request and a copy of the appointment to the arbitrator, who shall, as soon as conveniently may be, appoint a day and hour for proceeding with the arbitration, in accordance with rule 14, and the provisions of that rule as to the place where an arbitration shall be held shall apply. Provided, that where the arbitration is to be held at the place where the court is held, the day appointed for the arbitration shall, if possible, be one on which the court or other suitable accommodation in the court-house will be available for the arbitration. [*Old rule* 30.]

Procedure before Arbitrator.

Procedure before arbitrator.

33.—(1) On the day for proceeding with an arbitration being fixed the registrar shall proceed according to rule 15, and thenceforward the arbitration shall proceed in the same manner as an arbitration before the judge; and these rules shall apply and the officers of the court shall act accordingly, with the substitution of the arbitrator for the judge.

(2) Provided that—

(*a*) In any case coming within the provisions of paragraph 6 (*a*) or paragraph 6 (*b*) (i.) of rule 19, or in any other case in which, after an arbitrator has been appointed, but before the day fixed for proceeding with the arbitration, the parties agree upon an award, the judge may, on application made to him in or out of court on behalf of or with the consent of all parties, settle the matter himself; and thereupon the functions of the arbitrator as to such matter shall cease, and the registrar shall forthwith inform him that the matter has been settled; and

(*b*) Any application for the enforcement of or for staying proceedings on an award, which would in the case of an award made by the judge be required to be made to the judge, shall, in the case of an award made by an arbitrator, be in like manner made to the judge. [*Old rule* 31.] Rule 33.

Submission of Question of Law by Committee or Arbitrator to Judge.

34.—(1) Where a committee or an arbitrator (whether agreed on by the parties or appointed by the judge) submits any question of law for the decision of the judge under paragraph 4 of the second schedule to the Act, such submission shall be in the form of a special case. Submission of question of law by committee or arbitrator to judge. Act, Sched. II. par. 4.

(2) The case shall be intituled in the matter of the Act and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of the case the judge and the parties shall be at liberty to refer to the whole contents of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the hearing of an arbitration. Statement of case.

(3) The case shall be signed by the chairman and secretary of the committee or by the arbitrator, and sent to the registrar, who shall transmit the same to the judge, and the judge shall as soon as conveniently may be appoint a day and hour for hearing the case, and instruct the registrar to give notice thereof forthwith to the parties. The day shall be so fixed as to allow notice to be given ten days at least before the day fixed for the hearing, unless the judge shall, with the consent of all parties, fix an earlier day. Fixing day for hearing. Form 25.

(4) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case. Copies of case.

(5) On the hearing of the case the judge may, after deciding the question submitted to him, remit the case with a memorandum of his decision to the committee or arbitrator, for them or him to proceed thereon in accordance with the decision; or if the decision of the judge on the question submitted to him disposes of the whole matter, he may himself make an award in the arbitration in accordance with such decision. Power of judge on hearing of case.

(6) The judge may remit the case to the committee or arbitrator for re-statement or further statement. Re-statement.

(7) The judge shall have the same power over the costs of a special case as he has over the costs of an arbitration, or he may Costs of special case.

Rule 34.

direct that such costs shall be dealt with as costs attending the arbitration; and the provisions of the Act and these rules as to such costs shall apply accordingly.

Appearance of Parties in Arbitration.

Appearance of parties.

35.—(1) A party to any arbitration under the Act, whether before a committee or an agreed arbitrator, or before a judge or an arbitrator appointed by a judge, may appear—

(*a*) In person:

(*b*) By any solicitor who would be entitled to appear for such party in an action in the county court:

N.B.—It is within the discretion of the county court judge to refuse to hear an admitted solicitor who is managing clerk to the solicitor on the record (*Rogers* v. *Metropolitan Borough of Holborn*, (1914) W. C. & Ins. Rep. 262).

(*c*) By counsel:

Or, by leave of the committee, agreed arbitrator, judge or arbitrator, a party may appear—

(*d*) By a member of his family:

(*e*) By a person in the permanent and exclusive employment of such party:

(*f*) In the case of a company or corporation, by any director of the company or corporation, or by the secretary or any other officer or any person in the permanent and exclusive employment of the company or corporation:

(*g*) By any officer or member of any society or other body of persons of which such party is a member or with which he is connected, or, where death results from the injury, by any officer or member of any society or other body of persons of which the deceased workman was a member or with which he was connected; or

(*h*) Under special circumstances, by any other person.

(2) No person other than a solicitor who appears or acts on behalf of any party in any arbitration under the Act shall be entitled to have or recover any fee or reward for so appearing or acting, other than such travelling expenses and (in the case of a workman or a member of his family) allowance for time (if any) as may be allowed by the committee, agreed arbitrator, judge or arbitrator: Provided that nothing in these rules contained shall affect the right of counsel to appear or act in any arbitration, or the right of any solicitor to recover costs in respect of his employment of counsel to appear or act as aforesaid. [*Old rule* 33.]

Duty of Judge as to taking Notes.

Note to be taken of question of

36. At the hearing of any arbitration or special case the judge shall make a note of any question of law raised, and of the facts

in evidence in relation thereto, and of his decision thereon, and of his decision in the arbitration or on the hearing of the case: and he shall, at the expense of any party to such arbitration or case, furnish a copy of the note so taken to or allow a copy of the same to be taken by or on behalf of such party, and shall sign such copy, whether a notice of motion by way of appeal has been served or not. [*Old rule* 34.] Rule 36. law raised, &c., and copy furnished.

The county court judge ought to take a note, for the assistance of the Court of Appeal, of every point which in any reasonable aspect of the case can come before the Court of Appeal, even though his attention is not called by the representatives of either side to the necessity of so doing. The parties ought not to have the burden of taking shorthand notes, the use of which on appeal is discouraged (Practice Note, *Times Newspaper*, Dec. 18th, 1908). But a shorthand writer's note, if certified by the arbitrator, may be substituted for the arbitrator's note. *Earwicker* v. *London Graving Dock Co., Ltd.*, (1916) W. C. & Ins. Rep. 137. See also *Brine* v. *Corry*, (1905) 7 W. C. C. 130; *Rayman* v. *Fields* (No. 1), (1910) 102 L. T. 154; *Wright* v. *Sneyd Collieries, Ltd.*, (1915) W. C. & Ins. Rep. 354.

A point appealed upon in the Court of Appeal is, of course, all important in such court. Before the arbitrator it may have been one of many, and perhaps the least important. Unless then definitely formulated, it is impossible for the note to be as full and as clear as is desirable when it has to be argued. Hence the innumerable difficulties on appeal as to what the facts material to a decision really are. A defective note may result in a re-hearing being necessary (*Griffiths* v. *Wynnstay Coll.*, (1909) 2 B. 450; *Gellyceidrim Colliery* v. *Rogers*, 3 B. 62). On the other hand the mere fact that the note is unsatisfactory will not result in a new trial if there appears to be evidence to support the finding. See *Creighton* v. *Lowry*, (1915) W. C. & Ins. Rep. 69). In *Leeds and Liverpool Canal Co.* v. *Hesketh*, (1910) 3 B. 301, the Court of Appeal permitted an affidavit of a doctor and of the solicitor engaged in the arbitration proceedings to be read for the purpose of supplementing the county court judge's notes.

Proceedings against Insurers under Section 5.

37.—(1) Where under section 5 of the Act the rights of an employer against any insurers under a contract entered into by the employer with the insurers in respect of any liability under the Act to any workman are transferred to and vest in the workman, the following provisions shall have effect. Where rights of bankrupt, &c., employer against insurers vest in workman under sect. 5.

(2) Where a workman who is or claims to be entitled to compensation from an employer to whom section 5 of the Act applies is unable to ascertain whether such employer has entered into a contract with insurers in respect of his liability, he may apply to the court on affidavit intituled in the matter of the Act, and setting forth the facts on which the application is made, for an order for the examination of the employer, and the court may make an order accordingly; and the provisions of Order XXV. rules 71 and 72 shall apply in the same manner as if the employer were a debtor liable under a judgment or order. Examination of employer as to insurance. Order XXV. rules 71, 72.

(3) Subject to the provisions of the contract between the employer and the insurers as to the settlement of differences or Arbitration between

Rule 37.
workmen and insurers. Form II.

disputes between the employer and the insurers, the provisions of the Act and these rules as to the settlement of matters by arbitration shall with the necessary modifications apply to the settlement by arbitration, as between the workman and the insurers, of any question as to the liability of the insurers to the workman or the amount of their liability, and of any other question which would under the Act be the subject of arbitration between the workman and the employer if the rights, remedies, and liability of the employer had not been transferred to the insurers. [*Old rule* 35.]

A workman has no rights against the insurers but what his employers would have had (*King* v. *Phœnix Assurance Co.*, (1910) 2 K. B. 666).

MASTERS, SEAMEN, APPRENTICES, AND PILOTS. SECTION 7.

Masters, seamen, apprentices, and pilots.

38.—(1) In the application of the Act and these rules in the case of masters, seamen, and apprentices to the sea-service and apprentices in the sea-fishing service, who are workmen within the meaning of the Act, and who are members of the crew of any such ship as in section 7 of the Act mentioned, and to pilots when employed on any such ship, the following provisions shall have effect.

Claim for compensation in case of death.

(2) In the case of the death of a master, seaman, apprentice, or pilot, the claim for compensation shall state the date at which news of the death was received by the claimant.

Where master, &c., lost with ship.

(3) The claim for compensation on behalf of dependants of a master, seaman, apprentice, or pilot lost with his ship, and the particulars appended or annexed to the request for arbitration, shall state the date at which the ship was lost or is deemed to have been lost.

Forms of request for arbitration. Forms 6, 7.

(4) A request for arbitration shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case shall require.

Description of owners in documents and proceedings.

(5) In any document, notice, or proceeding it shall be sufficient to describe the owners of the ship as "the owners of the ship ' ' "; and the provisions of the County Court Rules as to disclosure of the names of partners shall with the necessary modifications apply to the disclosure of the names of such owners.

Service of documents and proceedings. Merchant Shipping Act, 1894, ss. 59, 696.

(6) Subject to the provisions of paragraph (*a*) of section 7 of the Act as to service of the notice of accident and the claim for compensation, any document, notice, or proceeding to be served on the owners of a ship shall be deemed to be sufficiently served if served on the managing owner or manager for the time being of the ship, or (except where the master is claiming compensation) on the master of the ship; and section 696 of the Merchant Shipping Act, 1894, sub-section (1), shall apply to service on the

master of the ship, and where the master is claiming compensation, and there is no managing owner of the ship, service may be effected in accordance with paragraph (*c*) of the said sub-section. [*Old rule* 36.] Rule 38.

DETENTION OF SHIPS. SECTION 11.

39.—(1) An application for an order for the detention of a ship under section 11 of the Act shall be made in accordance with the rules for the time being in force under the Shipowners' Negligence (Remedies) Act, 1905; and those rules, with the necessary modifications, shall apply accordingly. Application for detention of ship. Act, s. 11. 5 Edw. VII. c. 10.

(2) Subject to any such rules as in the last preceding paragraph mentioned, an application for an order for detention shall be made in accordance with the following rules.

(3) The application may (subject to the provisions of paragraph 9 of this rule) be made *ex parte* either in or out of court, according to the form in the Appendix, and shall be supported by affidavit or other evidence showing, to the satisfaction of the judge, the grounds on which the application is made. Application and evidence. Form 26.

(4) The judge may, before granting the application, require the applicant to give or procure an undertaking, to the satisfaction of the judge, to abide by any order as to damages and costs which may be thereafter made, in case any person affected by the order for detention shall sustain any damages by reason of the order which the applicant ought to pay. Undertaking as to damages. Form 27.

(5) An order for detention shall specify the amount for which security shall be given, and shall be according to the form in the Appendix, and shall be issued in triplicate; one copy shall be delivered to the applicant, and the other two copies to the officer named by the judge; and one of such last-mentioned copies shall be delivered by the officer to the person who is at the time of the execution of the order apparently in charge of the ship, or shall be nailed or affixed on the main mast or on the single mast of the ship; and the other copy shall be retained by the officer. Order, and execution thereof. Form 28.

(6) The judge may at any time on good cause shown rescind any order for detention made by him. Rescission of order.

(7) The provisions of sections one hundred and eight and one hundred and nine of the County Courts Act, 1888, and of Order XXIX., as to security, shall with the necessary modifications apply to the giving of security; and the approval by the judge of any security shall be signified in writing signed by him. Where security is given by bond such bond shall be according to the form in the Appendix. Security. County Courts Act, 1888, ss. 108, 109. Order XXIX. Form 29.

(8) If the judge rescinds any order for detention, or is satisfied that satisfaction has been made, or when security has been given and approved, or in any other case if the applicant so requires, Release.

Rule 39. Form 30.

the judge shall deliver to the party applying for the same an order according to the form in the Appendix, directed to the officer named in the order for detention, authorising and directing him, upon payment of all costs, charges, and expenses attending the custody of the ship, to release it forthwith.

Notice of application to agent or solicitor of owners.

(9) (*a*) With respect to notices of applications for orders for detention, and to undertakings to give security, the following provisions shall have effect.

(*b*) Notwithstanding anything in this rule contained, a person intending to apply for an order for detention shall, if the name and address of an agent in England for the owners of the ship, or of a solicitor in England authorised to act for the owners, agent, master, or consignee of the ship, are known to him, give to such agent or solicitor, by post, telegram, or otherwise, such notice of the time and place at which the application for an order for detention is intended to be made as may be practicable in the circumstances of the case.

Undertaking by solicitor. Form 30A.

(*c*) If a solicitor in England represents that he is authorised to act for the owners, agent, master, or consignee of the ship, and signs an undertaking according to the form in the Appendix, to put in or give security for an amount agreed on between the parties or fixed by the judge, then, on such undertaking being filed in court,

(i.) the judge may in his discretion refuse to make an order for detention; or

(ii.) if an order for detention has been made, but not executed, the judge may rescind it; or

(iii.) if an order for detention has been made and executed, the judge may deliver to the party applying for the same an order of release in accordance with paragraph 8 of this rule.

Filing of undertaking.

(*d*) An undertaking given in accordance with the last preceding paragraph shall be filed in the court to which the application for an order for detention is made or is intended to be made.

Attachment for non-compliance with undertaking.

(*e*) A solicitor who fails to put in or give security in pursuance of his undertaking to do so shall be liable to attachment.

Order XXXIX. rr. 6 and 7.

Particulars to state circumstances under which persons giving security are made respondents. Form 8.

(10) Where proceedings by way of arbitration for the recovery of compensation are taken against the persons giving security, the request for arbitration and particulars shall state concisely the circumstances under which the persons giving security are made respondents.

(11) Where proceedings are commenced in any court in England, Scotland, or Ireland other than that in which the

order for detention was made or applied for, the registrar of the court in which the order was made or applied for shall on request transmit by registered post to the registrar of the court in which the proceedings are commenced all original documents filed in the matter, and a certified copy of all records made with reference to the matter, and any bond by way of security given in the matter, and shall transfer to such last-mentioned court any money paid into court by way of security in the matter; and the provisions of Order VIII. rule 9, as to the costs of copies and the costs of transmission shall apply to any transmission under this paragraph.

Transmission of documents, &c., where proceedings commenced in court other than that in which order for detention made or applied for.

(12) The costs incurred by any party in relation to an application for an order of detention and any proceedings consequent thereon may in any subsequent proceedings by way of arbitration be allowed as costs of the arbitration. [*Old rule* 37.]

Costs of application for order for detention.

PROCEEDINGS WHERE EMPLOYER WHO HAS PAID COMPENSATION OR FROM WHOM COMPENSATION IS CLAIMED, DESIRES TO OBTAIN ORDER FOR DETENTION OF SHIP. 5 Edw. VII. c. 10.

40. Where an employer who has paid compensation or against whom a claim for compensation has been made under the Act desires to make an application for the detention of a ship under the Shipowners Negligence (Remedies) Act, 1905, the provisions of the last preceding rule shall apply, subject to the rules for the time being in force under the last-mentioned Act, and to the following modifications, viz.:

Application by employer for detention of ship. 5 Edw. VII. c. 10.

(i.) An application for an order for detention, an order for detention, and a bond given by way of security, shall be according to the forms in the Appendix.

Forms 31, 32, 33.

(ii.) Where proceedings by way of arbitration for the recovery of compensation are taken against the employer, he may bring in the persons giving security as third parties in accordance with rule 25, and the provisions of that rule shall apply accordingly.

Form 23.

(iii.) Where such proceedings are taken against the employer in any court other than that in which the order for detention was made or applied for, and the employer brings in the persons giving security as third parties, the provisions of paragraphs 11 and 12 of the last preceding rule shall apply

(iv.) Where the employer has paid compensation in respect of the injury, all questions as to his right to indemnity against the persons giving security, and as to the amount of such indemnity, shall in default of agreement be settled by action, or, by consent of the parties, by arbitration in accordance with the Act and these rules; and if such

Rule 40.

questions are settled by arbitration, the provisions of paragraphs 10 to 12 of the last preceding rule shall apply. [*Old rule* 38.]

Industrial Diseases.

Application of Act and rules to cases of industrial diseases.

41.—(1) In the application of the Act and these rules in the case of a workman disabled by or suspended on account of his having contracted any disease mentioned in section 8 of and the third schedule to the Act, or in any order of the Secretary of State made under sub-section 6 of the said section, or disabled by or suspended on account of his having sustained any injury due to the nature of any employment specified in any such order, not being an injury by accident, or in the case of a workman whose death has been caused by any such disease or injury as above mentioned, the following provisions shall have effect.

Notice of disablement.

(2) The notice required by section 2 of the Act shall state the date and cause of the disablement or suspension; and where a certificate of disablement or a certificate of or relating to suspension has been given, a copy thereof shall on demand be furnished to the employer.

Forms of request for arbitration. Forms 9, 10.

(3) A request for arbitration shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case may require.

Adding respondent under Act, s. 8 (1) (*c*) (ii.). Forms 19, 20.

(4) (*a*) If the employer desires to add any other employer as a party to the arbitration, pursuant to proviso (ii.) to paragraph (*c*) of sub-section (1) of section 8 of the Act, he shall file with the registrar in duplicate a notice according to the form in the Appendix: and thereupon the registrar shall make an order adding such other employer as a respondent, and may if necessary adjourn the hearing of the arbitration for such time as may be necessary to enable such other employer to be duly served.

Notice of order, and service on added respondent.

(*b*) Where a respondent is added under the last preceding paragraph, copies of the notice pursuant to which he is so added, and of the order, shall be sent by post to the applicant and the original respondent; and the like copies, together with a copy of the applicant's request and particulars, and of the notice served on the original respondent under rules 15 and 16, and a notice according to the form in the Appendix as to the place at which and the day and hour on and at which the arbitration will be proceeded with, shall be issued by the registrar for service on the added respondent; and such copies and notices shall be served on the added respondent in accordance with rule 16, with the substitution of the original respondent for the applicant.

Forms 21, 22.

Application of rules to

(*c*) The provisions of these rules as to respondents shall apply

to the added respondent from the date of service on him as if he had been originally made a respondent. Rule 41.

added respondent.

(*d*) At the hearing of the arbitration the judge or arbitrator shall decide all questions as between the applicant and the original and added respondents, and may make such award as may be necessary effectively and complete to adjudicate upon and settle all the questions involved in the arbitration, and may make such order as to costs as between the applicant and the repondents, and as between the respondents themselves, as may be just. Procedure at arbitration. Costs.

(5) Where the employer claims under proviso (iii.) to paragraph (*c*) of sub-section (1) of section 8 of the Act to be entitled to contribution from any other employer, he may bring in such other employer as a third party in accordance with rules 20 to 24, 26 and 27 ; and the provisions of those rules shall with the necessary modifications apply to any such claim to contribution in like manner as they apply to claims to indemnity. [*Old rule* 39.] Claim to contribution under Act, s. 8 (1) (*c*) (iii.). Form 23.

APPOINTMENT OF ARBITRATOR BY JUDGE IN PLACE OF ARBITRATOR AGREED ON BY THE PARTIES UNDER SCHEDULE II. PARAGRAPH 8.

42.—(1) In case of the death or refusal or inability to act of an arbitrator agreed on by the parties, any party to the arbitration who desires to make an application to the judge to appoint a new arbitrator shall apply in writing to the registrar to fix a time and place for the hearing of such application. Application for appointment. Form 34.

(2) The registrar shall fix the hearing of the application before the judge for any court appointed to be held within fourteen days from the date of the application to the registrar, but so that he shall not, except by consent, fix the hearing for a day less than seven days from the date of the application. Fixing of hearing by registrar.

(3) If there is no available court, the registrar shall send notice of the intended application to the judge, who shall as soon as conveniently may be fix a time and place for the hearing of the application. Such time shall not, except by consent, be less than seven days from the date of the application to the registrar. Fixing of hearing by judge.

(4) On the time and place for the hearing of the application being fixed, the registrar shall issue to the applicant a summons under the seal of the court according to the form in the Appendix, addressed to the other party to the arbitration, and requiring him to attend on the hearing of the application. Summons to other party. Form 35.

(5) Such summons shall be served by the applicant on the other party in accordance with rule 16 of these rules not less than four clear days before the day fixed for the hearing, unless such party agrees to accept shorter service. Service of summons.

Rule 42.

Hearing of application.

(6) On the day fixed for the hearing the judge shall dispose of the application on hearing the parties, or on hearing the applicant and on proof of service of the summons on the other party, if such other party does not appear.

Ascertainment of willingness to act.

(7) Before appointing any person to act as arbitrator, the judge shall ascertain that such person is willing to serve if appointed.

Order.

(8) The appointment may be made by indorsement on the summons, or by a separate order.

Costs.

(9) The costs of the application shall be in the discretion of the judge, who may order the same to be paid by one party to the other, or to be dealt with as costs attending the arbitration. Such costs, if allowed, shall be taxed on such scale as the judge shall direct. [*Old rule* 40.]

MEMORANDUM UNDER SCHEDULE II. PARAGRAPH 9.

Memorandum to be sent to registrar. Act, Sched. II. par. 9. Form 36.

43.—(1) The memorandum as to any matter decided by a committee or by an arbitrator or by agreement, which is by paragraph 9 of the second schedule to the Act required to be sent to the registrar, shall be according to such one of the forms in the Appendix as is applicable to the circumstances of the case, and shall be left at the office of the registrar, or sent by post by registered letter addressed to the registrar at his office, as soon as may be after the matter has been decided.

(2) Where the matter is decided after a medical referee has been appointed to report on any matter under paragraph 15 of the second schedule to the Act, a copy of the report of the referee shall be annexed to the memorandum and recorded therewith; and if the referee attended any proceeding in the arbitration, it shall be so stated in the memorandum.

Form 37.

(3) In the case of an agreement as to any matter referred to in paragraph 1 of rule 51, a separate statement as required by that paragraph shall be left or sent with the memorandum of the agreement. [*Old rule* 41.]

This rule, in conjunction with Rule 51, has been the subject of considerable amendment. By the Rules 1908 (No. 2) it ran :—"(3) Where the matter is decided by agreement, there shall be added to the memorandum a paragraph according to the Form 36A in the Appendix, containing a statement of such of the particulars mentioned in that form as are applicable to the circumstances of the case."

Owing to its wording in this form, the question was raised whether the information required to be supplied by it, and under Form (then) 36A, were to be taken as part of the memorandum, and if not at once challenged, if wrong, to be held binding. This was not intended, but only that the information required by the registrar to enable him to decide whether it should be registered or referred to the judge under Schedule II. par. 9, proviso (d), should be furnished. Hence the further amendment. The origin of the original rule, and the necessity for the present one, was the difficulty experienced by registrars to whom agreements were forwarded for registration under Schedule II. par. 9, in obtaining information to enable

them to judge whether such agreements should properly be recorded; and they provide that the memorandum of an agreement shall contain such information. For this purpose Rule 2 provides that the memorandum shall state, in the case of a workman, his average weekly earnings and his condition as to capacity for work, and in the case of a deceased workman, his average weekly earnings and particulars as to his dependants, so that the registrar may be able to form an opinion as to whether a lump sum agreed to be paid in redemption of a weekly payment, or the amount of compensation agreed to be paid to dependants, is adequate or not. Rules 43 to 49 of the Principal Rules have now been annulled and replaced by the Workmen's Compensation Rules, 1914 (July 23rd).

Rule 43 Notes.

44.—(1) If the matter is decided by a committee or an arbitrator, the memorandum shall be authenticated by the signatures of the chairman and secretary of the committee, or by the signature of the arbitrator; and it shall be the duty of the committee or arbitrator, as soon as may be after the decision, to draw up such memorandum and to sign the same or cause it to be signed as aforesaid, and to leave or send the same as aforesaid, or to deliver the same to some party interested, to be by him so left or sent.

Authentication of memorandum of decision of committee or arbitrator.

(2) If the matter is decided by agreement, the memorandum shall be authenticated by the signatures or signature of the parties to the agreement or one of them, or, in the case of employers, by the signature of some official or other person in their employ duly authorised to sign on their behalf, or of an agent duly authorised to sign on their behalf, or, in the case of persons under disability, by the signature of their next friend on their behalf.

Authentication of memorandum of agreement.

This paragraph is in this form—

(*a*) Because the Master of the Rolls in *Rhodes* v. *Soothill Colliery Co., Ltd.*, (1909) 1 K. B. 191, at p. 195, observed that in his opinion it was improper that agreements should be signed by solicitors for dependants; and

(*b*) To provide for the authentication of memoranda by the signatures of duly authorised officials on behalf of employers, or of next friends on behalf of persons under disability.

(3) [*The old rule* 44 (3) *has now been deleted from the new Rules dated July* 23*rd*, 1914, *in consequence of the decision in* Bonney *v.* Hoyle, (1914) 2 *K. B.* 257; (1914) *W. C. & Ins. Rep.* 565. *For the new rule* 2 (3) *see infra* (6).]

(4) There shall be left or sent with the memorandum a copy thereof for every party interested.

Copies.

This par. 4 is framed so that a memorandum may be recorded of a verbal or even an implied agreement (*Mercer* v. *Hilton*, 3 B. 6). It has been shortened in the Rules of 1914 above referred to.

(5) Where the matter is decided by agreement, the registrar may, if the original agreement is in writing, and is not left or sent to be recorded, require such original agreement to be produced; but he shall not be entitled to retain the same where a memorandum thereof is left or sent to be recorded.

Production of original agreement.

Rule 44.

Memorandum may be lodged by insurers.

(6) A memorandum of an agreement may be left with or sent to the registrar by insurers on behalf of the parties interested.

These rules are intended to secure uniformity of practice. Some registrars require the original agreement to be produced when a memorandum is filed, and claim to retain it, a practice to which insurance companies object, as the original agreements are often required as vouchers for payment or for purposes of audit; and to settle the question whether a memorandum of agreement may be lodged by insurers.

The Act only requires a memorandum of an agreement, and not the original agreement, to be recorded, though no doubt the original agreement, which is the best evidence, may be filed. The rule provides that where a memorandum is filed, the registrar may require the original to be produced, to satisfy himself that it has been duly executed; but that where a memorandum is filed, the registrar shall not be entitled to retain the original agreement. It further provides that memoranda of agreements, which are generally entered into by insurers on behalf of the employers, may be filed by insurers on behalf of the parties interested.

The old (6) now appears with slight modification as Rule 2 (3) of the Workmen's Compensation Rules, 1914 (July 23rd).

Agreement on behalf of person under disability.

(7) An agreement made by or on behalf of any person under any legal disability shall be conditional only unless and until a memorandum thereof has been recorded in accordance with the Act and these rules. [*Old rule* 42. *New rule*, 1914, 2 (6).]

Notice to parties interested of memorandum having been received. Form 38.

45. On the receipt of the memorandum [and copies] the registrar shall send one of the copies to every party interested, with a notice according to the form in the Appendix, requesting such party to inform him within seven days from the date of the notice whether the memorandum is genuine, or whether he disputes [its genuineness], and, if so, on what grounds. [*Old rule* 43. *New rule*, 1914 (3).]

Formerly the only question the registrar could inquire into was the memorandum of a genuine agreement. If so, it had to be registered, even though at the time the workman was not entitled to payment of the stipulated compensation (*Blake* v. *M. R.*, (1904) 1 K. B. 503), or even if the agreement were at the time determined (*Keeling* v. *Eastwood*, 116 L. T. J. 595). It was no objection to the registration that the agreement was implied or verbal only (*Webster* v. *L. & N. W. Rail.*, L. T., June 29th, 1901). Now a spent agreement cannot be registered (see Schedule II., par. 9). This rule has been altered and shortened in consequence of the extended meaning given to the word "genuineness" in *Popple* v. *Frodingham Iron Co.*, (1912) 2 K. B. 14, and *Goodsell* v. *Owners of Barge Lloyds*, (1912) W. N. 302.

Recording of memorandum, if genuineness not disputed. 1 & 2 Geo. V. c. 55, s. 11 (1) (*c*).

46. If all the parties interested admit the genuineness of the memorandum, or [if none of such parties] within such period of seven days dispute [its genuineness pursuant to Rule 47, and the employer does not] object to its being recorded [pursuant to the said rule], the registrar shall, subject to proviso (*d*) to paragraph 9 of the second schedule to the Act, as extended by section 11, sub-section 1 (*c*), of the National Insurance Act, 1911, and to [Rules 49A and] 51, record [the memorandum] without further proof. [*Old rule* 44. *New rule*, 1914, 4.]

This rule has been re-drafted in consequence of the new rule 49a.

Rule 47.

47. (*a*) If any party interested disputes the genuineness of the memorandum [(for example, by alleging in the case of a memorandum of an agreement that no such agreement has in fact been entered into, or that the terms of the agreement are not correctly stated in the memorandum, or that the agreement is no longer subsisting or enforceable, or that it is not enforceable by reason of its having been entered into under a mutual mistake, or obtained by fraud or undue influence or other improper means)], or

Where genuineness disputed; or

(*b*) if, where a workman seeks to record a memorandum of agreement between his employer and himself, the employer alleges that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of the memorandum, [the party so disputing] or [the] employer [so objecting] shall within seven days from the date of the notice mentioned in rule 45 file with the registrar a notice according to the form in the Appendix [*Form* 39] [stating the grounds on which] he disputes the genuineness of the memorandum or objects to its being recorded, and shall with such notice file a copy thereof for each of the other parties interested. [*Old rule* 45. *New rule*, 1914, 5.]

(*b*) objection made to memorandum being recorded. Act, Sched. II. par. 9 (*b*).

Form 39.

This rule has been modified, expanded, and made more clear by the new rules of July 23rd, 1914.

48. On the receipt of any such notice as in the last preceding rule mentioned, the registrar shall send a copy thereof to each of the other parties interested, together with a notice according to the form in the Appendix, informing such party that the memorandum will not be recorded except with the consent in writing of the party disputing the [genuineness thereof, or the employer] objecting to the same being recorded, or by order of the judge. [*Old rule* 46. *New rule*, 1914, 6.]

Notice of dispute or objection.

Form 40.

Altered by the rules of 1914 to correspond with the alterations in rule 47.

49.—(1) If the consent mentioned in the last preceding rule is obtained, the registrar shall, subject to proviso (*d*) to paragraph 9 of the second schedule to the Act, as extended by section 11, sub-section 1 (*c*), of the National Insurance Act, 1911, and to rule 51, record the memorandum without further proof.

Subsequent proceedings. 1 & 2 Geo. V. c. 55, s. 11 (1) (*c*).

(2) If such consent cannot be obtained, any party interested may apply to the judge to order the memorandum to be recorded.

(3) Provided that if all parties interested consent in writing to any amendment of the memorandum, and to the recording of the same as so amended, the registrar may amend the memorandum accordingly, and record the same without further proof. [*Old rule* 47. *New rule*, 1914, 7.]

Amendment of memorandum by consent.

Unaltered by the 1914 Rules.

Rule 49A.

Where objection made to adequacy of sum payable or information given as to matters mentioned in Act, Sched. II. par. 9 (*d*). 1 & 2 Geo. V. c. 55, s. 11 (1) (*c*).

49A.—Where a memorandum of an agreement as to any matter referred to in paragraph 1 of Rule 51 is presented for registration, and any party interested, on receipt of the notice mentioned in Rule 45, or the notice mentioned in paragraph 2 of Rule 51, does not file a notice pursuant to Rule 47 disputing the genuineness of the memorandum, but objects to the memorandum being recorded on the ground of the inadequacy of the sum or amount payable, or gives to the registrar any information bearing on the question whether the memorandum may properly be recorded, regard being had to proviso (*d*) to paragraph 9 of the second schedule to the Act, as extended by section 11, sub-section 1 (*c*), of the National Insurance Act, 1911, the registrar shall before recording the memorandum proceed to consider the objection or information in accordance with the said proviso, and with Rule 51.

This rule is new, see Workmen's Compensation Rules, 1914 (July 23rd), r. 8. It gives effect apparently to *R.* v. *Registrar of Bow County Court*, (1914) W. C. & Ins. Rep. 591.

Proceedings for Record of Memorandum or Rectification of Register.

Proceedings on application for record of memorandum or rectification of register. Form 41.

50. The following provisions shall apply to an application for an order that a memorandum be recorded, or an application to the judge to rectify the register pursuant to paragraph 9 of the second schedule to the Act.

(*a*) The application shall be made in court on notice in writing, stating the relief or order which the applicant claims.

(*b*) The notice shall be filed with the registrar, and copies thereof shall be served—

(i.) in the case of an application for an order that a memorandum be recorded, on the party disputing the memorandum or objecting to its being recorded, and on all other parties interested;

(ii.) in the case of an application to rectify the register, on every party who would be affected by such rectification, subject to the provisions of these rules as to the parties to an arbitration;

or on the solicitor of such party, ten clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

(*c*) On the hearing of the application witnesses may be orally examined in the same manner as on the hearing of an action.

(*d*) On the hearing of the application the judge may make such order or give such directions as he may think just, regard

Rule 50.

being had, in the case of an application for an order that a memorandum of an agreement be recorded, to proviso (*d*) to paragraph 9 of the second schedule to the Act, as extended by section 11, sub-section 1 (*c*) of the National Insurance Act, 1911, and to rule 59. 1 & 2 Geo. V. c. 55, s. 11 1) (*c*).

(*e*) The provisions of the Act and these rules as to the costs of an arbitration before the judge shall apply to any such application.

[*Old rule* 48.]

REFERENCE OF AGREEMENT PRESENTED FOR REGISTRATION TO THE JUDGE. SCHEDULE II., PARAGRAPH 9, PROVISO (*d*).

51.—(1) Where a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or as to the amount of compensation payable to a person under any legal disability, or to dependants, or as to the amount of compensation payable in the form of a weekly payment or of a lump sum to a workman who is an insured person within the meaning of the National Insurance Act, 1911, is presented for registration, there shall be left or sent with the memorandum a separate statement according to the form in the Appendix, of such of the particulars mentioned in that form as are applicable to the case. Where a memorandum of an agreement with a workman is presented for registration, there shall be added to Part A. of the said form a paragraph according to the form in the Appendix, stating whether the workman is or is not an insured person within the meaning of the last-mentioned Act, and if he is such an insured person stating also the name and address of the Insurance Commissioners or of the society or committee concerned in the administration of any benefit to which he is entitled under the last-mentioned Act.

Where memorandum of agreement relates to matter within Act, Sched. II. par. 9, proviso (*d*). 1 & 2 Geo. V. c. 55, s. 11 (1) (*c*). Form 37.

Form 37. Part A. (*f*).

(2) In any such case the registrar shall, before recording the memorandum, [in addition to sending the notice mentioned in Rule 45, send a notice to every party interested according to the form in the Appendix, requesting such party to inform him by letter, or by personal interview at his office, of any facts relating to the agreement and the circumstances in which it was arrived at which such party may desire to bring to the notice of the registrar, and which may assist him in deciding whether the memorandum may properly be recorded ; and the registrar shall] make such [further] inquiries and obtain such [further] information as he may think necessary in order to satisfy himself that the memorandum may properly be recorded, regard being had to proviso (*d*) to paragraph 9 of the second schedule

Inquiry by registrar, and proceedings thereon.

Rule 51. to the Act, as extended by section 11, sub-section (1) (*c*), of the National Insurance Act, 1911 : and it shall be the duty of the parties to the agreement to answer such inquiries and give such information accordingly.

Form 41A.

1 & 2 Geo. V. c. 55, s. 11 (1) (*c*).

The parts in square brackets in the above rule have been added by the Workmen's Compensation Rules, 1913 (July 23rd), 9. A new form has been drafted in connection with the amended rule. See Form 41a.

(3) Where [notice disputing the genuineness of the memorandum is not filed pursuant to Rule 47, but] it appears to the registrar [on any information which he considers sufficient,] that the memorandum ought not to be recorded for any reason mentioned in the said proviso as so [extended], he shall make a report to the judge in writing, stating the information he has obtained, and the grounds on which it appears to him that the memorandum ought not to be recorded.

The portions in square brackets are new. See Workmen's Compensation Rules, 1914 (July 23rd), r. 9 (3).

(4) If on consideration of the registrar's report it appears to the judge that the memorandum may properly be recorded, he may so direct, and it shall be recorded accordingly.

(5) If on consideration of the registrar's report it appears to the judge that the memorandum should not be recorded without further inquiry, the registrar shall send notice to the parties interested according to the form in the Appendix, informing them that he has referred the matter to the judge, and requiring them to attend on a day to be named in the notice, when the matter will be inquired into by the judge.

Form 42.

(6) The notices shall be sent to the parties [interested] or their solicitors ten clear days at least before the day fixed for the inquiry, unless the judge directs shorter notice to be given.

The old (6) has gone, this present clause is the same as the (7) of the 1913 rules. See Workmen's Compensation Rules, 1914 (July 23rd), 9.

(7) At the inquiry witnesses may be orally examined in the same manner as on the hearing of an action.

(8) At the inquiry the judge may make such order or give such directions as he may think just.

(9) The provisions of the Act and these rules as to the costs of an arbitration before the judge shall apply to any such inquiry ; and in particular, if it appears that a report of the registrar has been rendered necessary by the neglect or refusal of any party to an agreement to furnish any information reasonably required of him by the registrar, such party may be ordered to pay the costs of the inquiry. [*Old rule* 49. *New rule*, 1914, 9.]

PROCEEDINGS FOR REMOVAL OF RECORD OF MEMORANDUM OF AGREEMENT FROM REGISTER UNDER SCHEDULE II. PARAGRAPH 9, PROVISO (*e*).

Rule 52.

Application for removal of agreement from register. Act, Sched. II. par. 9, proviso (*e*). Form 43.

52.—(1) An application to the judge by or on behalf of any party for the removal from the register of the record of a memorandum of agreement under proviso (*e*) to paragraph 9 of the second schedule to the Act shall be made in court on notice in writing: and the provisions of rule 50 shall apply to the proceedings on such application.

Notice where inquiry directed by judge. Form 44.

(2) If it appears to the judge on a report by the registrar without such application as in the last preceding paragraph mentioned that the record of a memorandum of an agreement should be removed from the register pursuant to the said proviso, the registrar shall send notice to the parties to the agreement according to the form in the Appendix, requiring them to attend on a day to be named in the notice, when the matter will be inquired into by the judge.

(3) Such notice shall be sent and the inquiry held in accordance with the provisions of the last preceding rule, and the provisions of that rule shall apply to any such inquiry. [*Old rule* 50.]

PAYMENT INTO COURT AND APPLICATION OF LUMP SUM PAYABLE BY AGREEMENT IN LIEU OF OR FOR REDEMPTION OF WEEKLY PAYMENT PAYABLE TO A PERSON UNDER LEGAL DISABILITY.

Payment into court and investment and application of lump sum payable under agreement in lieu of or for redemption of weekly payment to person under disability. Act, Sched. I. pars. 5, 17.

53. Where an agreement is made for the payment of a lump sum in lieu of a weekly payment to a person under any legal disability, or for the redemption by a lump sum of a weekly payment payable to a person under any legal disability, and a memorandum thereof has been recorded in accordance with the Act and these rules, such sum shall be paid into court, and shall be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the person entitled thereto, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in: and the provisions of paragraph 5 of the first schedule to the Act and of rule 60 shall apply to the payment into court and the investment and application of such lump sum. [*Old rule* 50A.]

CERTIFICATE UNDER SECTION 1, SUB-SECTION 4.

Certificate under Act, sect. 1, sub-sect. 4. Form 45.

54.—(1) Where an action is brought in the county court to recover damages independently of the Act for injury caused by any accident, and the court proceeds under sub-section 4 of

Rule 54.

section 1 of the Act, the certificate given by the court shall be according to the form in the Appendix.

(2) The registrar shall, on receiving a certificate given by any other court under the said sub-section, record the same in like manner as if such certificate were an award made by the judge. [*Old rule* 51.]

Summoning Medical Referee as Assessor under Schedule II. Paragraph 5.

Application for assessor. Act, Sched. II. par. 5. Form 46.

55.—(1) Any party to an arbitration may eight clear days at least before the day fixed for proceeding with the arbitration file with the registrar an application according to the form in the Appendix, requesting the judge to summon a medical referee to sit with him as an assessor under paragraph 5 of the second schedule to the Act.

Assessor to be summoned if judge approves.

(2) On the receipt of an application for an assessor the registrar shall forward a copy of the same to the judge, who if he thinks fit shall return the same with his approval, and thereupon the registrar shall forthwith summon an assessor.

Notice where judge does not approve. Form 47.

(3) If the judge does not think fit that an assessor shall be summoned, notice thereof shall be given by the registrar to the applicant, according to the form in the Appendix.

Summoning of assessor if judge approves or so directs. Form 48.

(4) If the judge thinks fit, either on the application of any party to an arbitration or on his own motion, to summon a medical referee to sit with him as an assessor, the registrar shall forthwith summon a medical referee by sending to him by post a summons according to the form in the Appendix.

Where assessor fails to attend.

(5) If at the time and place appointed for the arbitration the medical referee summoned does not attend, the judge may either proceed with the arbitration without the assistance of an assessor, or he may adjourn the hearing. [*Old rule* 52.]

Appointment of Medical Referee to Report under Schedule II. Paragraph 15.

Appointment of medical referee to report under Act, Sched. II. par. 15.

56.—(1) Subject to and in accordance with the regulations made by the Secretary of State and the Treasury under paragraph 15 of the second schedule to the Act, the judge may submit to a medical referee for report any matter which seems material to any question arising in an arbitration.

(2) When any matter is submitted as aforesaid, the judge may, subject to and in accordance with such regulations, order the injured workman to submit himself for examination by the medical referee; and it shall be the duty of the workman, on

being served with such order, to submit himself for examination accordingly. [*Old rule* 53.] Rule 56.

Application for Reference to Medical Referee under Schedule I. Paragraph 15.

57.—(1) With respect to applications to the registrar pursuant to paragraph 15 of the first schedule to the Act to refer any matter to a medical referee, the following provisions shall have effect. Application for reference to a medical referee under Act, Sched. I. par. 15.

(2) An application to the registrar to refer any matter to a medical referee shall be made in writing, and shall contain a statement of the facts which render the application necessary, according to the form in the Appendix, and shall be accompanied by a copy of the report of every medical practitioner who has examined the workman either on behalf of the employer or on the selection of the workman. The application shall be signed by or on behalf of both parties; and the applicant shall file copies of the application and reports for the use of the medical referee. Form 49.

(3) On the hearing of the application the registrar shall refer the matter to a medical referee; and shall forward to such medical referee by registered post one of the filed copies of the application and reports, with an order of reference according to the form in the Appendix. Form 50.

(4) The registrar shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State. Form 51.

(5) Before making such order the registrar shall inquire whether the workman is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition shall by the order direct him to attend at such time and place as the referee may fix, and if satisfied that he is not in a fit condition to travel shall so state in the order of reference; and it shall be the duty of the workman, on being served with the order, to submit himself for examination accordingly.

(6) The registrar shall deliver or send by registered post to each party a copy of the order of reference, and shall send to the workman a copy of the order directing him to submit himself for examination.

(7) The medical referee shall forward his certificate in the matter to the registrar by registered post.

(8) On the receipt of the certificate of the medical referee the registrar shall inform the parties by post that it has been received, and shall permit any party to inspect the same during office Form 52.

Rule 57.

hours, and shall on the application and at the cost of either party furnish him with a copy of the certificate, or allow him to take a copy thereof.

(9) The fee payable by the applicant shall be calculated at the rate of one shilling in the pound on 26 times the amount of the weekly payments claimed by or payable to the workman, so that the total fee shall not exceed one pound.

(10) The costs of any application to the registrar, including the fee paid under the last preceding paragraph, may be allowed as costs in any subsequent arbitration for the settlement of the weekly payment to be made to the workman, or, where the application is made after the weekly payment has been settled, as costs in any subsequent arbitration as to the review of such weekly payment. [*Old rule* 54.]

SUSPENSION OF PROCEEDINGS OR WEEKLY PAYMENTS ON REFUSAL TO SUBMIT TO EXAMINATION UNDER SCHEDULE I. PARAGRAPH 4, PARAGRAPH 14, OR PARAGRAPH 15.

Application to stay proceedings or suspend weekly payments on refusal of workman to submit to examination under Act, Sched. I. par. 4, par. 14, or par. 15.

58.—(1) In any case in which a workman has given notice of an accident, or is receiving weekly payments under the Act, and the employer alleges that the workman refuses to submit himself to medical examination in accordance with paragraph 4, paragraph 14, or paragraph 15 of the first schedule to the Act, or in any way obstructs such examination, the employer may apply for a suspension of the right to compensation and to take or prosecute any proceedings under the Act in relation to compensation, or of the right to the weekly payments, until such examination has taken place, in accordance with this rule.

(2) Where proceedings are pending before a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator.

(3) Where the workman has given notice of an accident, but no proceedings are pending, or proceedings are pending before the judge or an arbitrator appointed by him, the application shall be made to the judge.

(4) Where the workman is receiving weekly payments under an award, memorandum, or certificate, then

(*a*) If proceedings for the review of the weekly payment are pending before a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator;

(*b*) If no proceedings for review are pending, or if proceedings for review are pending before the judge or an arbitrator appointed by him, the application shall be made to the judge.

(5) Where the application is to be made to the judge, it may be made in or out of court in accordance with rule 50; and the provisions of the said rule shall apply to the proceedings on such application, with the following modification;— Rule 58. Form 53.

(a) The notice shall be served on the workman or his solicitor five clear days before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

[*Old rule* 55.]

Suspension of Weekly Payments pending Application for Review.

59.—(1) Where an application is made for an order that a memorandum of an agreement as to a weekly payment be recorded and the employer alleges that incapacity for work has wholly or partially ceased, the judge may, on the hearing of the application, if he orders the memorandum to be recorded, order the weekly payment to be wholly or partially suspended, or to be wholly or partially paid into court, to abide the order of the court, as from the date on which the employer alleges that incapacity wholly or partially ceased, or from any later date, for such time as he may think fit, to enable the employer to file a request for arbitration with respect to the review of the weekly payment. Suspension of weekly payments pending application for review.

(2) Where an employer intends to apply for an order of suspension or payment into court under the preceding paragraph, he shall file with the registrar notice of his intention, specifying the date on which he alleges that incapacity wholly or partially ceased; and copies thereof shall be served in accordance with rule 50 five clear days at least before the hearing of the application to record, unless the judge or registrar gives leave for shorter notice.

(3) The provisions of this rule shall not prejudice the power of the judge to refuse to order a memorandum of an agreement to be recorded.

(4) Where a request is filed for arbitration with respect to the review of a weekly payment, the judge may at any time before the hearing of the arbitration order the weekly payment to be wholly or partially suspended, or to be wholly or partially paid into court, to abide the order of the court as from the date on which the employer alleges in his request that incapacity wholly or partially ceased, or from any later date, until the hearing of the arbitration.

(5) An application for an order for suspension or payment into court under the last preceding paragraph shall be made in court on notice in writing; and the provisions of rule 50 shall apply to the proceedings on such application.

(6) An order for suspension or payment into court under this rule shall be without prejudice to the right of the workman to

Rule 59.

apply to the court, on good cause shown, to discharge the order. Any such application shall be made in court on notice in writing; and the provisions of rule 50 shall apply to the proceedings on such application. [*New.*]

This rule is new, and is valuable as it enables an employer on asking for review to also obtain a stay of execution of so much of the compensation as ought not to be paid (see under sect. 1, sub-s. 3).

PAYMENT INTO COURT AND INVESTMENT AND APPLICATION OF MONEY PAYABLE IN CASE OF DEATH. SCHEDULE I. PARAGRAPH 5.

Payment into court, investment, and application of payment in case of death. Act, Sched. I. par. 5.

60.—(1) Where any payment in the case of death is to be paid into the county court pursuant to paragraph 5 of the first schedule to the Act, the following provisions shall have effect.

(2) Where any money is to be paid into court under an award made by the judge or an arbitrator appointed by him, payment shall be made in accordance with the directions contained in the award.

(3) In any other case payment shall be made into the court in which the memorandum of the decision, award, or agreement under which the money is to be paid, or the certificate under which the money is to be paid, has been or is to be recorded.

Form 54.

(4) Where money is to be paid into court under this rule, the employer shall lodge with the registrar a præcipe in duplicate according to the form in the Appendix, and shall annex to one copy of the præcipe a form of receipt, and the registrar, on receipt of the sum paid in, shall sign the receipt and return the same to the employer; and the employer shall forthwith give notice to the persons interested in the sum paid in of such payment having been made.

(5) On the payment of money into court, the registrar shall forthwith send by post to each of the persons appearing by the award, memorandum, or certificate to be interested in such money a notice of the said payment according to the form in the Appendix. Provided that in the case of infant dependants residing with their mother or guardian it shall be sufficient to send such notice to the mother or guardian only.

Form 58 (i.).

(6) If all questions as to who are dependants and the amount payable to each dependant have been settled by arbitration before payment into court, the sum paid into court shall be allotted between the dependants in accordance with the award, and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act.

(7) If all questions as to who are dependants have been settled by agreement before payment into court, the amount payable to

each dependant shall be settled by the court, and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act. Rule 60.

(8) If any such questions have not been settled before payment into court, then—

(*a*) If all the persons interested in the sum paid into court agree to leave the application thereof to the court, or if no question arises as to who is a dependant or as to the amount payable to any dependant, or otherwise as to the application of the sum paid into court, but any of the persons interested in the said sum are absent or under disability, the amount paid into court shall, on application by or on behalf of the persons interested therein, be allotted, invested, applied, or otherwise dealt with by the court for the benefit of the persons interested therein in accordance with paragraph 5 of the first schedule to the Act.

(*b*) If any question arises as to who is a dependant or as to the amount payable to any dependant, or otherwise as to the application of the sum paid into court, such question shall be settled by arbitration in accordance with the Act and these rules; and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act.

(9) Where any question is settled by the court by arbitration in accordance with the last preceding paragraph, an application for the investment or application of any sum allotted to any person on such arbitration may be made at or immediately after the hearing of the arbitration.

(10) (*a*) Where application is not so made, or in any other case coming within paragraph 5 of the first schedule to the Act, an application for the investment or application of the sum paid into court, or of the amount allotted to any person, may be made in court on notice in writing, stating on whose behalf the application is made, and the order which the applicant asks, according to the form in the Appendix.

(*b*) The notice shall be filed with the registrar, and where the application is made by or on behalf of some only of the persons interested, notice thereof shall be served on all other parties interested, or on their solicitors, five clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice. Form 59.

Rule 60.

(*c*) On the hearing of the application witnesses may be orally examined in the same manner as on the hearing of an action.

(*d*) On the hearing of the application the judge may, after making or directing such inquiries as to the dependants and on such evidence of title and identity as he may think necessary, make such order under paragraph 5 of the first schedule to the Act and this rule as he may think fit.

(*e*) The provisions of the Act and these rules as to the costs of an arbitration shall apply to any such application.

(11) Where any sum paid or to be paid into court is to be invested, applied, or otherwise dealt with by the court, the judge may, at any time before or on the hearing of any application for the investment or application thereof, refer the matter to the registrar for inquiry and report. [*New.*]

(12) An employer paying money into court under this rule shall not be liable to any costs incurred by any person interested in such money after the receipt of notice of payment into court; but the judge may, in his discretion, order such employer to pay the costs of any such person properly incurred before the receipt of such notice.

(13) Every order for the investment or application of money paid into court shall reserve liberty to the parties interested to apply to the court as they may be advised.

(14) Where any sum allotted to any person under paragraph 5 of the first schedule to the Act or this rule is ordered to be paid out to or applied for the benefit of the person entitled thereto by weekly or other periodical payments, such payments may be made to the person entitled to receive the same either at the office of the registrar, or, on the written request of such person, by crossed cheque or postal order addressed to such person and forwarded by registered post letter, payment by post being in all cases at the cost and risk of the person requesting the same. [*Old rule* 56A.]

In *Gill* v. *Fortescue*, (1913) W. C. Rep. 471, it was held that **dependants may sever** their claim, *e.g.*, as in this case, the widow may bring an action at law, and the remaining dependants take out all the money paid into court to them as a class.

It is difficult to see how sect. 1, sub-s. 2 (b) can protect an employer from having to pay both damages and compensation which the Act says he is not to be liable to do as any one dependant can force the hands of all. Therefore an additional rule is here wanted to the effect that where money is paid into court under this rule it shall not be apportioned nor paid out until all the dependants agree to come in, and with the further proviso that on any action outside the Act being taken the money shall be repaid to the employer. As any one dependant can enforce such outside rights against an employer, and so render him liable, it is clear his or her election should be regarded as an effective election for the whole class.

61.—(1) If there is no dispute as to the liability to pay com-

pensation, but the amount payable has not been ascertained or decided either by a committee or by arbitration or by agreement, the employer may pay the amount which he admits to be payable as compensation into the court to which, if an agreement had been come to in the matter, a memorandum of such agreement would be sent to be recorded. Rule 61. Payment into court where liability admitted, but amount not ascertained.

(2) Where money is to be paid into court under this rule, the employer shall lodge with the registrar a præcipe in duplicate according to the form in the Appendix, containing a statement of the particulars mentioned in that form, and stating in what manner the sum admitted to be payable as compensation has been arrived at. The employer shall annex to one copy of the præcipe a form of receipt, according to the said form, and the registrar, on receipt of the sum paid in, shall sign the receipt and return the same to the employer; and the employer shall forthwith give notice to the persons interested in the sum paid in of such payment having been made. Form 55.

(3) On the payment of money into court under this rule the registrar shall make such inquiries and obtain such information as he may think necessary to satisfy himself whether the amount paid in is adequate in the circumstances of the case; and it shall be the duty of the employer and of the persons interested in the money paid in to answer such inquiries and give such information accordingly.

(4) Where it appears to the registrar that the amount paid in is adequate, he shall forthwith send by post to each of the persons appearing by the præcipe to be interested in such money a notice of the said payment according to the form in the Appendix. Form 58 (ii.). Provided that in the case of infant dependants residing with their mother or guardian it shall be sufficient to send such notice to the mother or guardian only.

(5) Where it appears to the registrar that the amount paid in is inadequate, he shall make a report to the judge in writing, stating the information he has obtained and the grounds on which it appears to him that the amount paid in is inadequate.

(6) If on consideration of the registrar's report it appears to the judge that the amount paid in is adequate, he may direct the registrar to send to the parties interested notice of payment in accordance with paragraph 4 of this rule.

(7) If on consideration of the registrar's report it appears to the judge that further inquiry should be made, the registrar shall send notice to the employer and to the parties appearing by the præcipe to be interested in the money paid into court, according to the form in the Appendix, informing them that he has referred the matter to the judge, and requiring them to attend on a day to be named in the notice, when the matter will be inquired into Form 57.

Rule 61.

by the judge. On such inquiry the judge may make such order (including an order as to the money paid into court) as under the circumstances he may think just; and paragraphs 7, 8, and 10 of rule 51 shall apply.

(8) Where notice of payment into court is sent in accordance with paragraph 4 or paragraph 6 of this rule, then—

(*a*) If any question arises as to the adequacy of the amount paid into court, the question as to the amount payable as compensation, and all questions as to who are dependants and the amount payable to each dependant, shall be settled by arbitration in accordance with the Act and these rules; and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act and paragraphs 9 to 11, 13 and 14 of the last preceding rule.

(*b*) If no question arises as to the adequacy of the amount paid into court, the amount paid into court shall be allotted, invested, applied, or otherwise dealt with by the court in accordance with paragraphs 8 to 11, 13 and 14 of the last preceding rule.

(9) An employer paying money into court under this rule shall not (except under paragraph 10 of rule 51, or where a question arises as to the adequacy of the amount paid in, and such question is decided adversely to the employer by arbitration under paragraph 8 of this rule), be liable to any costs incurred by any person interested in such money after receipt of notice of payment into court; but the judge may, in his discretion, order such employer to pay the costs of any such person properly incurred before the receipt of such notice. [*Old rule* 56B.]

These rules provide that where the employer admits his liability to pay compensation, but the amount payable has not been ascertained, he may pay into court the amount which he admits to be payable by him, and so avoid the delay and expense of arbitration.

Where this is done, the procedure will be as follows:—

(*a*) The employer will pay into court the amount which he admits to be payable by him.

(*b*) It will then be the duty of the registrar to make inquiries, which inquiry does not authorise him to see the doctor's evidence obtained by the employer, it being clearly privileged (*Johnson* v. *Oceanic S. N. Co.*, 5 B. 322), in order to satisfy himself that the amount paid in is adequate. If he thinks that it is, notice of payment into court will be given to the dependants. If he is not satisfied as to the adequacy of the amount, he will refer the matter to the judge, who, if he thinks the amount is adequate, will direct notice of payment to be given to the dependants, or if he thinks that further inquiry should be made, will give directions for such further inquiry in accordance with Rule 51.

(*c*) Where notice of payment into court is given to the dependants, then

Rule 61 Notes.

if they are not satisfied with the amount so paid, they will be entitled to have the amount payable settled by arbitration.

(*d*) If they are satisfied with the amount paid in, they will be able to apply to the court in a summary manner for the apportionment and investment, etc., of the amount paid in.

(*e*) The employer will not be liable to costs after notice of the payment into court, otherwise than on an inquiry into the adequacy of the amount (Rule 51, par. 8), or unless the question as to the adequacy of the amount paid into court is decided adversely to him by arbitration.

This rule was introduced and Rule 60 amended in consequence of the decision of the Court of Appeal in *Rhodes* v. *The Soothill Colliery Co., Ltd.*, (1909) 1 K. B. 191.

Here the Master of the Rolls said that though in the case of a person under disability there could be no absolute agreement, there might be, according to the familiar practice in Chancery, a so-called conditional agreement, which was not operative unless and until it was approved by the court on behalf of the infants. An analogous procedure was provided for under the Workmen's Compensation Act, it being the duty of the registrar to look into the matter on behalf of the infants. If he did not express dissent, he must be taken to be satisfied with the fairness of the agreement, and the only event in which it could be reviewed not having happened, it became binding.

Payment into court where liability denied.

62.—(1) Where a claim for compensation has been made by or on behalf of dependants, and the employer denies liability, but is willing to pay an amount in settlement of the claim, and such of the dependants as are not under disability are willing to accept such amount in settlement, the employer may pay such amount into the court to which, if an agreement had been come to in the matter, a memorandum of such agreement would be sent to be recorded.

(2) Where money is to be paid into court under this rule, the employer shall lodge with the registrar a præcipe in duplicate according to the form in the Appendix, containing a statement of the particulars mentioned in that form. The employer shall annex to one copy of the præcipe a form of receipt according to the said form, and the registrar on receipt of the sum paid in shall sign the receipt and return the same to the employer; and the employer shall forthwith give notice to the persons interested in the sum paid in of such payment having been made. Form 56

(3) On the payment of money into court under this rule, the registrar shall proceed according to paragraph 3 of the last preceding rule, and the provisions of that rule shall apply to proceedings subsequent to such payment. [*Old rule* 56C.]

Payment into court by solicitor or agent of employer.

62A. Where money is to be paid into Court under rule 60, rule 61, or rule 62, it may be paid in by the employer or his solicitor, or by an agent of the employer duly authorised on his behalf; and where payment is made by a solicitor or an agent, the præcipe shall state that the money is paid in at the request and by the authority of the employer, and the præcipe shall be signed by the solicitor or agent accordingly.

This rule is entirely new. See Workmen's Compensation Rules, 1914, 10. It is based upon *Ferrard* v. *Thompson*, 6 B. 461.

Payment into Court and Application of Weekly Payments payable to Person under Legal Disability. Schedule I. Paragraph 7.

Rule 63.

Application for payment into court of weekly payment to person under legal disability. Act, Sched. I. par. 7.

63.—(1) An application under paragraph 7 of the first schedule to the Act for an order that a weekly payment payable under the Act to a person under any legal disability shall during the disability be paid into court may be made either by the person liable to make such payment, or by or on behalf of the person entitled to such payment.

(2) If the weekly payment is awarded by the judge, the application may be made at or immediately after the hearing of the arbitration.

Form 60.

(3) In any other case the application may be made in or out of court on notice in writing, which shall be served on the other party or his solicitor five clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice; and the provisions of rule 50 shall apply to any such application.

(4) Where any weekly payment is ordered to be paid into court, the sums paid in shall be paid out by the registrar to or otherwise applied for the benefit of the person entitled thereto in such manner as the judge shall direct; and the provisions of rule 60 as to the payment out or application of sums by weekly or other periodical payments shall apply. [*Old rule* 57.]

Application for Variation of Order under Schedule I. Paragraph 9.

Application for variation of order. Act, Sched. I. par. 9. Form 61.

64.—(1) An application for the variation of an order of the court under paragraph 9 of the first schedule to the Act may be made by or on behalf of any person interested.

See rule 64A.

(2) The application shall be made in court on notice in writing, stating the circumstances under which the application is made, and the relief or order which the applicant claims.

(3) The notice shall be filed with the registrar, and notice thereof shall be served on all persons interested in accordance with rule 50; and the provisions of that rule and of rule 60 shall apply to the proceedings on such application. [*Old rule* 58.]

Application of Amount Allotted to Dependant in case of Death.

Application of amount allotted to

64A.—(1) In the case of the death of a dependant for whose benefit any amount has been ordered to be invested, applied, or

otherwise dealt with by the court, the following provisions shall apply. Rule 64a.

(2) The balance of such amount remaining at the death of the dependant shall be subject to any order which may have been or may be made by the court for the variation of the order or award pursuant to paragraph 9 of the First Schedule, and to rule 64. dependant in case of death.

(3) In default of and subject to any such order, the court may on application made in accordance with paragraphs 2 and 3 of rule 64, without the filing of a petition, order that such balance be paid out or transferred to the legal personal representative of the deceased dependant. [*New rule Nov.* 18*th*, 1915.]

This rule has been made to secure uniformity of practice on applications with respect to amounts allotted to dependants who afterwards die. The rule provides:—

(1) That such amounts shall be subject to any order which may be made varying the original order under paragraph 9 of Schedule I. of the Act; as to this, see *Ivey* v. *Ivey*, (1912) 2 K. B. 118.

(2) That subject to any such order the balance may be paid out to the personal representative of the deceased on application made without a petition on the equity side of the court.

Investment and Application of Lump Sum paid in Redemption of Weekly Payment. Schedule I. Paragraph 17.

65. Where pursuant to paragraph 17 of the first schedule to the Act a lump sum payable for the redemption of any weekly payment is ordered by a committee or an arbitrator, or by the judge, to be invested or applied for the benefit of the person entitled thereto, such sum shall be paid into court; and the provisions of paragraph 5 of the first schedule to the Act and of rule 60 shall apply to the investment and application of such lump sum. [*Old rule* 65.] Investment and application of sums paid in redemption of weekly payments. Act, Sched. I. par. 17.

Investment of Money paid into Court.

65A. Any sum which under the first schedule to the Act and these rules is ordered to be invested may be so invested:— Money paid into court, how to be invested.

(1) In the Post Office Savings Bank or in the purchase of an annuity in accordance with paragraphs 10 and 11 of the said schedule; or

(2) In any of the following Government Stocks, viz.:—Two and a half per cent. Consolidated Stock: Two and three quarters per cent. annuities: Two and a half per cent. annuities: or War Loan Inscribed Stocks: any such investment to be made in the name of the registrar of the court through the Post Office Savings Bank; or

Rule 65a.

(3) With the consent of the Treasury, but not otherwise, in any stocks, funds, or securities (other than mortgages of freehold, copyhold, or leasehold estates) in which cash under the control or subject to the orders of the High Court may be invested, any such investment to be made in the names of the registrar and the Superintendent of the County Courts Department of the Treasury;

and no such sum shall be invested otherwise than in accordance with this rule. [*New rule*, May 24th, 1917.]

PROCEEDINGS WHERE WORKMAN RECEIVING WEEKLY PAYMENT INTENDS TO CEASE TO RESIDE IN UNITED KINGDOM. SCHEDULE I. PARAGRAPH 18.

Where workman receiving weekly payment intends to cease to reside in United Kingdom. Act, Sched. I. par. 18. Form 62.

66.—(1) Where a workman receiving a weekly payment intends to cease to reside in the United Kingdom, the following provisions shall have effect under paragraph 18 of the first schedule to the Act.

(2) The workman may apply to the registrar to refer to a medical referee the question whether the incapacity of the workman resulting from the injury is likely to be of a permanent nature.

(3) The application shall be made on notice in writing, according to the form in the Appendix, which shall be filed with the registrar, and shall be accompanied by a report of a medical practitioner selected by the workman, setting out the nature of the incapacity alleged to be the result of the injury; and a copy of the application and of the report shall be served on the employer or his solicitor in accordance with rule 50; and the applicant shall file a copy of the application and of the report for the use of the medical referee.

(4) The employer may, on being served with notice of the application, require the workman to submit himself for examination by a medical practitioner provided and paid by the employer, in accordance with paragraph 14 of the first schedule to the Act; and if the employer requires the workman to submit himself for such examination he shall before or at the hearing of the application furnish the workman with a copy of the report of that practitioner as to the workman's condition, and file a copy of the report for the use of the medical referee.

(5) The workman and the employer respectively may before or at the hearing of the application submit to the registrar such statements in writing as they may think fit, with copies of such statements for the use of the medical referee.

(6) On the hearing of the application the registrar, on being

satisfied that the applicant has a *bonâ fide* intention of ceasing to reside in the United Kingdom, shall make an order referring the question to a medical referee; and if he is not so satisfied, he may refuse to make an order, but in that case he shall, if so requested by the applicant, refer the matter to the judge, who may make such order or give such directions as he may think fit. Rule 66. Form 63.

(7) If the registrar or the judge makes an order referring the question to a medical referee, he shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State; and the provisions of paragraphs 3 to 6 of rule 57 shall with the necessary modifications apply. Form 51.

(8) The registrar shall with the order of reference forward to the medical referee copies of any statements submitted to him by either party.

(9) The medical referee shall forward his certificate in the matter to the registrar by registered post, specifying therein the nature of the incapacity of the workman resulting from the injury, and whether such incapacity is likely to be of a permanent nature; and the registrar shall thereupon proceed in accordance with paragraph 8 of rule 57. Form 52.

(10) Where the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature, the registrar shall on application furnish the workman

(*a*) with a copy of the certificate of the medical referee, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy; and

(*b*) with a copy of the award, memorandum, or certificate under which the weekly payment is payable, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy; and

(*c*) with a certificate of identity according to the form in the Appendix; and Form 64.

(*d*) with a notice according to the form in the Appendix, annexing thereto forms of certificate and declaration according to the forms in the Appendix; Forms 65, 66, 67.

and shall procure from the workman a specimen of his signature, and file the same for reference.

(11) A workman who desires to have the weekly payments payable to him remitted to him while residing out of the United Kingdom shall at intervals of three months from the date to which such payments were last made submit himself to examination by a medical practitioner in the place where he is residing, and shall produce to him the copy of the certificate of the medical

Rule 66.

referee and the certificate of identity furnished under the last preceding paragraph, and shall obtain from him a certificate in the form in the Appendix that the incapacity of the workman resulting from the injury continues ; and such certificate shall be verified by declaration by the medical practitioner, in the presence of the workman, before a person having authority to administer an oath.

Form 66.

(12) The workman shall also make a declaration of identity according to the form in the Appendix before a person having authority to administer an oath, producing to such person the copy and certificate above mentioned, and the certificate of the medical practitioner by whom he has been examined.

Form 67.

(13) The workman shall forward the certificate and declaration in the two last preceding paragraphs mentioned to the registrar, with a request, according to the form in the Appendix, for the transmission to him of the amount of the weekly payments due to him, specifying the place where and the manner in which the amount is to be remitted, which request shall be signed by the workman in his own handwriting.

Form 68.

(14) On receipt of the certificate, declaration, and request the registrar shall examine the same, and may if not satisfied that the same are in order return the same for correction.

(15) If the registrar is satisfied that the certificate, declaration, and request are in order, or when they are returned to him in order he shall send to the employer a notice according to the form in the Appendix, requesting him to forward the amount due ; and the employer shall thereupon forward the amount to the registrar, who shall remit the same, less any fees payable to the registrar and the costs of transmission, to the workman at the address and in the manner requested by him, such remittance being in all cases at the cost and risk of the workman. [*Old rule* 60.]

Form 69.

Payment of Arrears of Weekly Payments on Death of Workman residing out of United Kingdom.

Payment of arrears of weekly payments on death of workman residing out of United Kingdom.

67.—(1) In the event of the death of a workman in receipt of weekly payments while residing out of the United Kingdom, his representatives shall, for the purpose of obtaining payment of the arrears due to the workman, forward to the registrar a certificate of the death of the workman, and documents showing that they are entitled to such arrears, verified by declaration before a person having authority to administer an oath, with a request for payment of such arrears, specifying the place where and the manner in which the amount is to be remitted to them.

(2) For the purposes of this rule, the expression "representatives" shall mean— Rule 67.

(*a*) if the workman leaves a will, the executors of such will; or

(*b*) if the workman dies intestate, the persons who are according to law entitled to his personal estate, and payment of the arrears may be made to such persons without the production of letters of administration.

(3) On the receipt of the certificate and documents mentioned in this rule the registrar shall examine the same, and may, if not satisfied that the same are in order, return the same for correction.

(4) If the registrar is satisfied that the certificate and documents are in order, or when they are returned to him in order, he shall send to the employer a notice requesting him to forward the amount due, and the employer shall thereupon forward the amount to the registrar, who shall remit the same, less any fees payable to the registrar and the costs of transmission, to the representatives of the workman at the address and in the manner requested by them, such remittance being in all cases at the cost and risk of such representatives. [*Old rule* 60A.]

THE WORKMEN'S COMPENSATION (ANGLO-FRENCH CONVENTION) ACT, 1909, AND ORDER IN COUNCIL (22ND NOVEMBER, 1909).

Special provisions as to French citizens. 9 Edw. VII. c. 16. Order in Council, 22 Nov. 1909.

68. Where a request for arbitration is filed by or on behalf of a workman who is a French citizen, or by or on behalf of the dependants of a deceased workman who was a French citizen, the following provisions shall apply. [*Old rule* 86.]

69. The request and particulars shall state that the workman is or the deceased workman was a French citizen. [*Old rule* 87.] Request and particulars.

70. The court in which proceedings are to be taken shall be determined in accordance with rule 88 of these rules. [*Old rule* 88.] In what court proceedings to be taken.

71. A respondent who intends to rely as a defence on paragraph (1) of the Order in Council dated the 22nd day of November, 1909, made under the Workmen's Compensation (Anglo-French Convention) Act, 1909 (in these rules referred to as "the Order in Council"), shall state the facts on which he intends to rely in his answer in accordance with rule 18. [*Old rule* 89.] Answer where respondent relies on Order in Council, par. (1).

72. Any lump sum payable in redemption of a weekly payment payable to a workman who is a French citizen, which is to be paid into court pursuant to paragraph (3) of the Order in Council, shall when so paid be invested by the registrar in the purchase of two immediate annuities of equal value on the life of and in the name of the workman from the National Debt Commissioners Investment in Post Office annuity of lump sum payable in

Rule 72.

redemption of weekly payment. Order in Council, par. (3). Post Office Regulations, 1888 and 1895.

through the Post Office Savings Bank, the first half-yearly instalment of the first of such annuities to be payable on the second quarterly day of payment next following the day of purchase, and the first half-yearly instalment of the second of such annuities to be payable on the third quarterly day of payment next following the day of purchase.

When applying to the Post Office Savings Bank for the purchase of any such annuities the registrar shall inform the department that the case is one under the Order in Council; and the workman shall sign such documents and furnish such evidence as may be required by the Post Office Annuity and Insurance Regulations, 1888 and 1895, to enable such annuities to be so purchased. [*Old rule* 90.]

Transmission to France of lump sum payable in redemption of weekly payment to French citizen who returns to reside in France. Order in Council, par. (4). Form 70.

73. Where a lump sum payable in redemption of a weekly payment to a workman who is a French citizen has been paid into court, then, if the workman returns to reside in France, such sum (unless the same has been invested in pursuance of the last preceding rule) shall, on the application of the workman, be paid over by the registrar to the "Caisse Nationale Francaise de Retraites pour la Vieillesse" (in these rules referred to as "the Caisse").

Any such sum shall be transmitted by the registrar to the Caisse by registered post letter, inclosing a crossed cheque for the total sum due to the workman, and shall be accompanied by a certificate according to the form in the Appendix, and the registrar shall on the application of the workman forward to him a copy of the certificate. [*Old rule* 91.]

Transmission to France of sum payable as compensation to dependants of French citizen who reside in or return to France. Order in Council, par. (4).

74. Where a sum payable as compensation to the dependants of a deceased workman who was a French citizen has been paid into court, then, if the dependants resided in France at the time of the death of the workman, or subsequently return to reside in France, such sum shall, on the application of the dependants, be paid over to the Caisse.

(2) Any such sum shall be transmitted in accordance with the last preceding rule, and the registrar shall, on the application of the dependants, forward to them a copy of the certificate. [*Old rule* 92.]

Where workman in receipt of weekly payments intends to return to

75.—(1) Where a workman who is a French citizen is in receipt of a weekly payment, and such workman intends to return to reside in France, the following provisions shall have effect under paragraph (5) of the Order in Council.

(2) The payments of the amount of compensation due to the workman shall be made at intervals of three months.

Rule 75.

(3) The workman may apply to the registrar for a certificate of a medical referee as to the nature of the incapacity resulting from the injury.

reside in France.

(4) The application shall be made on notice in writing, according to the form in the Appendix, which shall be filed with the registrar; and a copy of the application shall be served on the employer in accordance with rule 50; and the applicant shall file a copy of the application for the use of the medical referee.

Order in Council, par. (5).

Form 71.

(5) The employer may, on being served with notice of the application, require the workman to submit himself for examination by a medical practitioner provided and paid by the employer, in accordance with paragraph 14 of the first schedule to the Act; and if the employer requires the workman to submit himself for such examination he shall before or at the hearing of the application furnish the workman with a copy of the report of that practitioner as to the workman's condition, and file a copy of the report for the use of the medical referee.

(6) The workman and the employer respectively may before or at the hearing of the application submit to the registrar such statements in writing as they may think fit, with copies of such statements for the use of the medical referee.

(7) On the hearing of the application the registrar shall make an order referring the question to a medical referee. The order of reference shall be according to the form in the Appendix, and shall state the injury in respect of which the award was made, so far as it appears on the records of the court: and the registrar shall forward the order to the medical referee by registered post, accompanied by a copy of the application and of any reports and statements submitted to him by either party.

Form 72.

(8) The registrar shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State; and the provisions of paragraphs 5 and 6 of rule 57 shall apply.

Form 51.

(9) The medical referee shall forward his certificate in the matter to the registrar by registered post, specifying fully therein the nature of the incapacity (if any) of the workman resulting from the injury; and the registrar shall thereupon proceed in accordance with paragraph 8 of rule 57.

Form 52.

(10) Where the medical referee certifies that the workman is suffering from incapacity resulting from the injury, the registrar shall, on the application of the workman, made on notice in writing and served on the employer two clear days at least before the hearing of the application, fix the intervals at which the

Forms 73, 74.

Rule 75. workman shall be bound to produce, in support of his demand for payment of the amount of compensation due to him, a medical certificate that the incapacity resulting from the injury continues. These certificates shall be required at such intervals, not being less than 3 months nor more than 12 months from the date to which payment was last made, as the registrar may determine, having regard to the nature of the incapacity.

Form 74. (11) On the intervals being fixed, the registrar shall send a copy of the order to the workman and to the employer, and shall on application furnish the workman with

(*a*) a copy of the certificate of the medical referee, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy ;

(*b*) a copy of the award under which the weekly payment is payable, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy ;

Form 64. (*c*) a certificate of identity according to the form in the Appendix ; and

Form 75. (*d*) a notice according to the form in the Appendix ;

and shall procure from the workman a specimen of his signature, and file the same for reference.

(12) For the purpose of obtaining payment of the compensation due to him, an injured workman who is a French citizen, and has returned to reside in France, shall at intervals of three months from the date to which such payment was last made produce to the mayor of the commune in which he resides the certificate of identity furnished under the last preceding paragraph, and shall obtain from the mayor a certificate that such workman was alive on the day when the certificate of identity was produced. He shall also, at the intervals fixed by the registrar, obtain from a medical practitioner employed in an official capacity in the department in which the workman resides a certificate that the incapacity specified in the certificate of the medical referee as resulting from the injury still continues.

(13) The certificate of the mayor mentioned in the last preceding paragraph, and, where a certificate of a medical practitioner is required under that paragraph, such certificate (which certificate or certificates must be authenticated by a *vise* of the Prefecture of the department attesting the official status of the mayor and medical practitioner respectively), shall be forwarded, with a request for payment of the amount of the weekly payments due to the workman, to the French consular authority for the district in which the court is situated, to be by him transmitted to the registrar.

(14) In the event of the death of a workman in receipt of

weekly payments who is a French citizen residing in France, his representatives shall, for the purpose of obtaining payment of the arrears due to the workman, forward a certificate of the death of the workman and documents showing that they are entitled to such arrears, with a request for payment of such arrears, to the consular authority, to be by him transmitted to the registrar. Rule 75.

(15) On receipt of the documents mentioned in paragraph 13 or paragraph 14 the registrar shall send to the employer a notice according to the form in the Appendix, requesting him to forward the amount due; and the employer shall thereupon forward the amount to the registrar, who shall remit the same without charge to the consular authority, to be remitted to the workman or his representatives. [*Old rule* 93.] Form 69.

Costs.

76.—(1) Any cost of and incidental to an arbitration and proceedings connected therewith directed by a committee or by an arbitrator (whether agreed on by the parties or appointed by the judge), or by the judge, to be paid by one party to another shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the county court as the committee, arbitrator, or judge shall direct; and in default of such direction such costs shall be taxed according to the scale which would be applicable if the proceeding had been an action in the county court: and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions, and as to objections to and review of taxation by the registrar, shall apply accordingly. Proceedings in an arbitration shall be within Order LIII. rules 7 and 8, and the word "judge" in those rules shall include a committee and an arbitrator. Costs. Act, Sched. II. par. 7. Order LIII. rules 7, 8.

(2) Where costs are directed to be taxed under Column A, a fee for advising on evidence [may be allowed by special order of the committee, arbitrator, or judge, in like manner as if costs had been directed to be taxed under Column B; and allowances may be made for expert and scientific witnesses, or members of the medical profession, and for plans, etc., in accordance with Order LIII. rules 43 and 44; and the word "judge" in those rules shall (except as to the review of taxation) include a committee and an arbitrator]. [*New.*] Allowances where costs taxed under Column A.

The part in brackets is to some extent new, the old rule 76 (2) having been re-drafted by Workmen's Compensation Rules, 1914, 11. The new rule 11 amends the old rule 76 as to special allowances where costs are taxed under Column A, in accordance with a proposed amendment of the County Court Rules, Order LIII., r. 43.

Rule 76.

(3) Where the subject matter of an arbitration is not a capital sum, the committee, arbitrator, or judge shall determine what, for the purpose of the allowance and taxation of costs, shall be considered to be the amount of the subject matter of the arbitration; and in default of such determination the amount shall be fixed by the registrar by whom the costs are to be taxed, subject to review by the judge.

(4) Where proceedings are taken for which no provision is made by these rules or by the scales of costs, reasonable costs may be allowed in respect of such proceedings by the registrar, subject to review by the judge, or by special order of the judge, not exceeding those which may under the scales be allowed in respect of proceedings of a like nature. [*New.*]

(5) The committee, arbitrator, or judge, in dealing with the question of costs, may take into consideration any offer of compensation proved to have been made on behalf of the employer.

(6) Where any workman is examined by a medical referee on a reference under paragraph 15 of the first schedule to the Act, and the certificate of the referee is used in any subsequent arbitration, any reasonable travelling and other expenses incurred by the workman in obtaining such certificate (if not otherwise provided for) may, by order of the committee, arbitrator, or judge, be allowed as costs in the arbitration.

(7) Where a workman is ordered to submit himself for examination by a medical referee appointed to report under paragraph 15 of the second schedule to the Act, any reasonable expenses incurred by such workman in travelling to attend on such referee for examination may, by order of the committee, arbitrator, or judge, be allowed as costs in the arbitration. [*Old rule* 61.]

Taxation of costs awarded by committee or arbitrator agreed on by parties.

77. Where any costs are awarded by a committee or an arbitrator agreed on by the parties, it shall be the duty of the registrar of the court in which a memorandum of the decision of the committee or arbitrator is recorded pursuant to paragraph 9 of the second schedule to the Act, on application made to him, to tax such costs, and to enter in the register the amount of such costs allowed on taxation; and such entry shall be deemed to be part of such memorandum, and shall be enforceable accordingly. [*Old rule* 77.]

Review of Taxation by Judge.

Review of taxation.

78.—(1) An application to the judge to review any taxation of costs shall be made on notice in writing, which shall be served on the opposite party two clear days at least before the hearing of

the application, unless the judge or registrar gives leave for shorter notice. Rule 78.

(2) Such application shall be heard and determined upon the evidence which has been brought in before the registrar, and no further evidence shall be received on the hearing thereof unless the judge otherwise directs.

(3) The costs of and incident to the application shall be in the discretion of the judge.

(4) The result of such review shall be entered in the register.

See Order LIII. r. 47; Order XII. r. 11 (1), (4).

Authority of Solicitor to receive Sum paid in respect of Costs.

79. Where any party to whom costs are awarded acts by a solicitor, such solicitor shall have the same authority to take out of court or receive any sum paid into court or payable in respect of such costs by the party against whom such costs are awarded as he would have if such costs were awarded in an action. [*Old rule* 64.] As to authority of solicitor to receive costs payable by adverse party.

Costs of Solicitor or Agent under Schedule II. Paragraph 14.

80.—(1) The following provisions shall apply to an application under paragraph 14 of the second schedule to the Act for the determination of the amount of costs to be paid to the solicitor or agent of a person claiming compensation under the Act. Application to determine costs payable to solicitor or agent. Act, Sched. II. par. 14.

(2) Where the sum awarded as compensation has been awarded by a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator.

(3) Where the sum awarded as compensation has been awarded by the judge or by an arbitrator appointed by him, the application may be made—

(*a*) to the judge or arbitrator at or immediately after the hearing of the arbitration: or

(*b*) at a subsequent date, but in that case it shall be made only to the judge.

(4) Where a sum has been agreed on as compensation, the application shall be made to the judge.

(5) An application made to the judge, other than an application under paragraph 3 (*a*) of this rule, shall be made in court on notice in writing in accordance with rule 50. Form 76.

(6) Such notice shall be served on the person for whom the solicitor or agent acted in accordance with the said rule, and the

Rule 80.

provisions of the said rule shall apply to the proceedings on such application.

(7) On the hearing of any application under this rule, the committee, arbitrator, or judge may award costs to the solicitor or agent, and may make an order declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded as compensation to such person, or to be entitled to deduct such costs from any such sum, or may make such order or give such directions as may be just.

(8) Any costs awarded to a solicitor or agent on any such application shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the county court as the committee, arbitrator, or judge shall direct; and in default of such direction such costs shall be taxed according to the scale which would be applicable if the proceeding had been an action in the county court; and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions, and as to objections to and review of taxation by the registrar, shall apply accordingly; and any taxation shall be subject to review by the judge according to rule 78.

(9) Where the subject matter of the arbitration is not a capital sum, the committee, arbitrator, or judge shall determine what, for the purpose of the allowance and taxation of such costs, shall be considered to be the amount of the subject matter of the arbitration; and in default of such determination the amount shall be fixed by the registrar by whom the costs are to be taxed, subject to review by the judge. [*Old rule* 65.]

Provisions as to order declaring lien, &c.

81. Where an order is made by a committee, arbitrator, or judge awarding costs to a solicitor or agent, and declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded or agreed as compensation, or to be entitled to deduct such costs from any such sum, the following provisions shall apply:—

(*a*) The registrar shall, on application made to him, tax such costs.

(*b*) A copy of the order, and, when the amount to which such solicitor or agent is entitled has been ascertained by taxation, a memorandum of such amount, shall, at the request and cost of the solicitor or agent, be issued by the registrar for service on the party liable to pay the sum awarded or agreed as compensation; and service thereof may be effected on such party in accordance with rule 16.

(*c*) A memorandum of such order, and when such amount has been ascertained a memorandum of such amount, shall be recorded in the register in which the memorandum or award under which the sum awarded as compensation is payable is recorded, and such last mentioned memorandum or award shall have effect subject to such order and memorandum.

(*d*) The party liable to pay such compensation shall on demand pay to the solicitor or agent the amount to which he is entitled, but so that such party shall not be liable to pay any amount in excess of that which he is liable to pay for compensation, or to pay such amount by any other instalments than those by which he is liable to pay such compensation.

(*e*) If the party liable to pay such compensation fails on demand to pay any amount which he is liable to pay to such solicitor or agent, the judge may, on application made to him on notice to such party in accordance with rule 50, and on proof of the order having been served on and demand for payment made to such party, order such party to pay such sum; and in default of payment the judge may order execution to issue to levy such amount.

(*f*) Payment made by or execution levied on the party liable to pay such compensation shall be a valid discharge to him, as against the party entitled to such compensation, to the amount paid or levied.

(*g*) Where the sum awarded as compensation has been paid into court, the amount to which the solicitor or agent is entitled shall be paid to him out of such sum.

[*Old rule* 66.]

Execution.

Execution. Form 77.

82.—(1) Where a party liable to pay compensation or costs under any award, memorandum, or certificate has made default in payment of the amount awarded, or where payment is to be made by instalments, of any instalment, the party entitled to such compensation or costs may apply to the court for leave to issue execution against the goods of the party in default.

(2) An application for leave to issue execution shall be made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

(3) Where the application is made to the registrar he may, if no cause is shown to the contrary, and no proof of the amount in payment of which default has been made, give leave for execution to issue.

Rule 82.

(4) If cause is shown to the contrary, or if the registrar is in doubt as to the proper order to be made, he may refer the matter to the judge, who may make such order or give such directions as may be just.

(5) In particular, if in the case of a weekly payment the party liable to execution alleges that incapacity has wholly or partially ceased, the judge may, on such terms as to payment into court or otherwise as may be just, adjourn the application for such time as he may think fit, to enable the party liable to execution to file a request for arbitration with respect to the review of the weekly payment. Any such adjournment shall be without prejudice to the right of the party applying for leave to issue execution to renew his application on good cause shown.

Order XXV. rule 11.

(6) Where the parties liable to pay compensation or costs are a firm, the provisions of Order XXV. rule 11, shall with the necessary modifications apply to execution under this rule. [*Old rule* 67.]

This rule is considerably varied.

Rule 82 (4): The registrar, or on appeal the judge, can, on an application under this rule, determine the amount of compensation payable (*Moakes* v. *Blackwell Coll. Co., Ltd.*, (1917) W. C. & I. 46).

PROCEEDINGS UNDER DEBTORS ACT, 1869, SECTION 5.

Proceedings under Debtors Act, 1869. 32 & 33 Vict. c. 62, s. 5.

83.—(1) Where proceedings by way of judgment summons under section 5 of the Debtors Act, 1869, are taken against a party liable to pay compensation or costs under any award, memorandum, or certificate, who has made default in payment of the amount awarded, or, where payment is to be made by instalments, of any instalment, the County Court Rules for the time being in force as to the committal of judgment debtors shall, with any necessary modifications, apply to such proceedings; Provided, that the court shall not alter the terms or mode of payment of any sum to become payable in future under any award, memorandum, or certificate, otherwise than by consent, or under paragraph 16 of the First Schedule to the Act.

(2) Where the amount in payment of which default has been made is not payable into court, the party applying for a judgment summons shall satisfy the court, by affidavit or otherwise, as to the amount in payment of which default has been made.

Form 78.

(3) A judgment summons issued under this rule shall be according to the form in the Appendix.

(4) Where the parties liable to pay compensation or costs are a firm, the provisions of the County Court Rules as to judgment summonses on a judgment or order against a firm shall, with the necessary modifications, apply to proceedings by way of judgment summons under this rule. [*Old rule* 68.]

Other Proceedings for Enforcement of Award, Memorandum, or Certificate.

Rule 84.

84. The County Court Rules for the time being in force as to proceedings for the enforcement of or the recovery of money due under judgments or orders of the county court otherwise than by execution or committal shall, with the necessary modifications, apply to proceedings for the enforcement of or the recovery of money due under any award, memorandum, or certificate. [*Old rule* 69.]

Other proceedings for enforcement of award, &c.

Setting aside Award or Order improperly obtained.

85.—(1) Notwithstanding anything in these rules contained, the statutory provisions and rules relating to new trials in actions in the county court shall not apply to arbitrations under the Act.

Rules as to new trials not to apply.

(2) Where the judge is satisfied—

(*a*) that any award, or any order as to the application of any amount awarded or agreed upon as compensation, made by the judge or by an arbitrator appointed by him, has been obtained by fraud or other improper means; or

(*b*) that any person has been included in any award or order as a dependant who is not in fact a dependant as defined by the Act; or

(*c*) that any person who is in fact a dependant as defined by the Act has been omitted from any award or order,

When award or order may be set aside or varied.

the judge may set aside or vary the award or order, and may make such order (including an order as to any sum already paid under the award or order) as under the circumstances he may think just.

(3) An application to set aside or vary an award or order under this rule shall be made in court on notice in writing, and the provisions of rule 50 shall apply to the proceedings on such application.

(4) An application to set aside or vary an award or order under this rule shall not be made after the expiration of six months from the date of the award or order, except by leave of the judge; and such leave shall not be granted unless the judge is satisfied that the failure to make the application within such period was occasioned by mistake, absence from the United Kingdom, or other reasonable cause. [*Old rule* 70.]

Appeals.

86. Appeals under paragraph 4 of the Second Schedule to the Act shall be had in accordance with the provisions of the Rules of the Supreme Court relating thereto. [*Old rule* 71.]

Appeals. Act, Sched. II. par. 4.

Rule 86 Notes.

The High Court Rules, Order LVIII. r. 20, governing such appeals, are as follows :—

Order LVIII. rule 20.

The following provisions shall apply to appeals to the Court of Appeal from decisions of judges of the county courts on questions of law under the Workmen's Compensation Act, 1906 :—

(*a*) Every such appeal shall be by notice of motion in accordance with Order LIX. Rule 10 ; and such notice of motion shall be served, and the appeal set down under Order LVIII. Rule 8, within the time limited by Order LIX. Rule 12.

(*b*) It shall be the duty of the party appealing to apply to the judge of the county court for a signed copy of the note made by him of any question of law raised before him, and of the facts in evidence in relation thereto and of his decision thereon, and of his decision on the question or matter submitted to him, and to furnish such copy for the use of the Court of Appeal ; and such copy shall be used and received at the hearing of the appeal. If such notes are not produced, the Court of Appeal shall have power to hear and determine the appeal upon any other evidence or statement of what occurred before the judge of the county court, which the Court of Appeal may deem sufficient.

(*c*) Order LIX. Rules 14 and 16, shall apply to any such appeal, with substitution of the Court of Appeal for the High Court.

(*d*) Subject to the foregoing provisions, the rules for the time being in force with respect to appeals from the High Court to the Court of Appeal, shall, so far as practicable, apply to and govern appeals under the said Act to the Court of Appeal.

Parties should note there are three judges in the court, each of whom needs a copy of all material documents (*Birks* v. *Stafford Coal and Iron Co.*, to be reported).

Order LIX. rule 10.

Every such appeal shall be by notice of motion, and no rule *nisi* or order to show cause shall be necessary. The notice of motion shall state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion shall be an eight days' notice, and shall be served on every party directly affected by the appeal entered.

Order LVIII. rule 8.

The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

Order LIX. rule 12.

The notice of motion shall be served, and the appeal entered within twenty-one days from the date of the judgment, order, or finding complained of : such period shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given. And in case of appeals under the Act from the actual signing of the award (*Clayton* v. *Jones*, (1908) W. N. 253). Where there were two sets of proceedings really in the same matter employers were held entitled to appeal against both, being within twenty-one days of the later decision (*Fox* v. *Battersea, etc.*, 4 B. 261).

Order LIX. rule 14.

The appeal shall not operate as a stay of proceedings under the decision appealed from unless the inferior court shall so order, or unless within ten days after the decision a deposit shall be made of or security given to the satisfaction of such inferior court for a sum to be fixed by the said court, not exceeding the amount of the money or the value of the property affected by the judgment, order, or finding appealed from.

Order LIX. rule 16.

The High Court shall have power to extend the time for appealing, or to

mend the grounds of appeal, or to make any other order, on such terms s the court shall think just, to ensure the determination on the merits of the eal questions in controversy between the parties. Rule 86 Notes.

The fee on entering an appeal is 2*l*.

87.—(1) When the Court of Appeal has given judgment on any appeal, any party may deposit the order of the Court of Appeal, or an office copy thereof, with the registrar: and the registrar shall file such order or copy, and shall transmit a copy thereof to the judge: and such order shall have the same effect as if it had been a decision of the judge. Deposit of order of Court of Appeal with registrar, and procedure thereon.

(2) If such order has the effect of an award, decision, or order in the matter in favour of any party, such order shall be served and recorded, and may be proceeded on, in the same manner as if it had been an award, decision, or order of the judge.

(3) If such order be to the effect that an award be made or a decision given or order made in favour of any party, the judge shall make such award or give such decision or make such order accordingly.

(4) If such order directs or involves a re-hearing or further hearing of an arbitration or special case or other matter, the judge shall as soon as conveniently may be appoint a day and hour for such re-hearing or further hearing, and shall instruct the registrar to give notice thereof forthwith to the parties.

(5) Generally the judge shall make such award or give such decision or make such order and give such directions and take or direct to be taken such proceedings in the matter, as may be necessary to give effect to the order of the Court of Appeal. [*Old rule* 72.]

In what Court Proceedings may be taken.

88. (*a*) Any matter which under the Act or these rules is to be done in a county court, or by to or before the judge or registrar of a county court, may be done in the county court or by to or before the judge or registrar of the county court hereinafter mentioned, viz.:— In what court proceedings may be taken. Act, Sched. II. par. 11.

(1) (i.) the court in the district of which all the parties concerned reside or carry on business: or

(ii.) if the parties concerned reside or carry on business in different districts,

(*a*) the court in the district of which the accident out of which the matter arises occurred, or, in the case of

(*a*) New, 22nd Dec., 1913.

Rule 88.

any such workman as in paragraph 1 of rule 41 mentioned, the court in the district of which the workman was last employed in the employment to the nature of which the disease was due: or

(*b*) the court in the district of which the party or one of the parties against whom relief is sought resides or carries on business at the time when the matter is to be done: or

(*c*) where one of the parties concerned resides or carries on business in the district of any of the courts mentioned in section 84 of the County Courts Act, 1888, and the other party concerned resides or carries on business in the district of any other of such courts, the court in the district of which either of such parties resides or carries on business.

(2) If the accident out of which the matter arises occurred at sea, any such matter as in paragraph 1 of this rule mentioned may, without prejudice to the preceding provisions of this rule, be done in the county court, or by to or before the judge or registrar of the county court,

(i.) of the district in which the ship shall be when the matter is to be done: or

(ii.) of the district comprising the port of registry of the ship: or

(iii.) of the district in which the workman or the dependants of the workman by whom or on whose behalf the matter is to be done, or some or one of them, resides or reside.

Detention of ships. 5 Edw. VII. c. 10. Act, sect. 11.

(3) An application for an order for the detention of a ship may, subject to the provisions of the rules for the time being in force under the Shipowners' Negligence (Remedies) Act, 1905, be made to the judge of any court.

Proceedings against persons giving security. 5 Edw. VII. c. 10. Act, sect. 11.

(4) Where proceedings by way of arbitration for the recovery of compensation are taken against the persons giving security pursuant to the Shipowners' Negligence (Remedies) Act, 1905, or section 11 of the Act and rules 39 and 40, such proceedings may be commenced,

(i.) in any court in which proceedings may be commenced pursuant to sub-paragraphs (i.) and (ii.) of paragraph 1 of this rule: or

(ii.) if the accident occurred at sea,

(*a*) in the court in the district of which the vessel is or was detained, or in which the order for detention was made or applied for: or

(*b*) in the court of the district in which the workman or the

dependants of the workman, or some or one of them, resides or reside. Rule 88.

(5) The provisions of this rule shall be without prejudice to any transfer in manner provided by these rules. [*Old rule* 73; *C. W. C. Rules, July*, 1913, *rule* 88.]

PROCEEDINGS IN ONE COURT AS TO SUBJECT-MATTER OF AWARD, MEMORANDUM, OR CERTIFICATE RECORDED IN ANOTHER COURT.

89. Where an award, or a memorandum under paragraph 9 of the Second Schedule to the Act, or a certificate under sub-section 4 of section 1 of the Act, has been recorded in any court, and any party desires to take any subsequent proceedings with reference to the subject-matter of such award, memorandum, or certificate in any other court, he shall before taking such proceedings obtain from the registrar of the first-mentioned court a certified copy of such award, memorandum, or certificate, and shall file the same in the court in which he desires to take proceedings, and the registrar of such last-mentioned court shall record the same as if it had been an award made in the court. [*Old rule* 74.] Filing of certified copy of memorandum, &c. recorded in one court under Act, Sched. II. par. 9, before taking subsequent proceedings in another court.

TRANSFER OF PROCEEDINGS.

90. If the judge is satisfied by any party to any matter under the Act pending in his court that such matter can be more conveniently proceeded with in any other court in England, Scotland, or Ireland, he may order such matter to be transferred to such other court; and thereupon the registrar shall forthwith transmit by registered post to the registrar of the court to which such matter is transferred all original documents filed in such matter, and a certified copy of all records made with reference to such matter, and shall transfer to such last-mentioned court any money invested in his name as registrar: and thenceforth such matter shall be proceeded with in the court to which it is transferred in the same manner as if it had originally been commenced therein. The provisions of Order VIII. rule 9, shall apply to any such transfer or application for a transfer. [*Old rule* 75.] Transfer. Order VIII. rule 9.

TRANSFER OF MONEY PAID INTO COURT.

91.—(1) The provisions of the last preceding rule shall apply to the transfer of money paid into court from one court to another pursuant to paragraph 6 of the First Schedule to the Act or otherwise, and to proceedings with respect to the application of such money. Transfer of money paid into court. Act, Sched. I. par. 6.

Rule 91.

(2) Where any money ordered to be transferred from one court to another is invested in the Post Office Savings Bank in the name of the registrar, such money shall be transferred into the name of the registrar of the court to which the money is ordered to be transferred in accordance with regulations to be made by the Postmaster-General with the consent of the Treasury: and where any money ordered to be transferred is not so invested it shall forthwith be so invested, and shall when invested be transferred in accordance with this rule. [*Old rule* 76.]

(3) Where any money invested otherwise than in the Post Office Savings Bank is ordered to be transferred from one court to another, the investments representing the same shall be transferred from the name or names in which they stand into the name of the registrar of such other court through the Post Office Savings Bank, or into the names of such registrar and the Superintendent of the County Courts Department of the Treasury, as the case may be. [*New rule*, May 24th, 1917.]

Filing and Service of Documents and Notices.

92.—(1) Where any document is to be filed with the registrar under these rules, that document may be so filed by delivering it at the office of the registrar, or by sending it by post addressed to the registrar at his office.

(2) Where any document is to be so filed, there shall be filed with the original document as many copies of the document as there are persons to whom copies of the document or any part thereof are to be sent by the registrar, and in addition a copy for the use of the judge or arbitrator.

(3) Where any document is under these rules to be sent to any person by the registrar, that document may be sent by post.

(4) Any proceeding, document, or notice which is under these rules to be served on any party may be served on such party by the opposite party or his solicitor; and where no special provision as to the mode of service is made by these rules, any such proceeding, document, or notice may be served on such party, or where he acts by a solicitor, on his solicitor, in manner provided by sub-sections 3 and 4 of section 2 of the Act with reference to service of notice in respect of an injury; and the provisions of Order LIV., rule 2, shall apply to the service of any such proceeding, document, or notice. [*Old rule* 77.]

Act, sect. 2, sub-sects. 3, 4. Order LIV. rule 2.

Procedure Generally.

Provisions as to parties acting by solicitors, and as to

93. The provisions of Order XXIII., rule 6, Order LIV., rules 1 and 3 to 6, and Order VII., rule 40, as to parties acting by solicitors,

and as to substituted service and notice in lieu of service, shall apply to proceedings under the Act. [*Old rule* 78.] Rule 93. substituted service and notice in lieu of service. Order XXIII. rule 4; Order LIV. rules 1, 3 to 6; Order VII. rule 40.

94. Rules 7 and 35 shall apply to all proceedings under the Act and these rules in the like manner as to proceedings by way of arbitration. [*Old rule* 78A.] Rules 7 and 35 to apply to all proceedings under Act and Rules.

This rule simply applies the procedure before arbitration to questions rising after. Thus infant children can be seen after at a later stage under this rule.

95.—(1) In any proceedings under the Act or these rules arising out of an injury to a workman employed by or under the Crown, in which, if the employer were a private person, such employer would be a necessary party, the head of the department by in or under which the workman was employed, or, where the department is administered by a Board or by Commissioners, such Board or Commissioners, shall be made a party under his or their official title as representing the Crown. Proceedings where Crown a party.

(2) In any such case any proceeding, document, or notice to be served on the head of the department, or on the Board or Commissioners, may be served on the permanent secretary to the department, subject to the provisions of these rules as to service on parties acting by solicitors. [*Old rule* 79.] Service of documents, &c.

96. Where any matter or thing is not specially provided for under these rules, the same procedure shall be followed and the same provisions shall apply, as far as practicable, as in a similar matter or thing under the County Courts Act, 1888, and the rules made in pursuance of that Act, in so far as such procedure and provisions are applicable to proceedings by way of arbitration. [*Old rule* 80.] Procedure, where not otherwise provided for.

See *ante*, p. 1478, *sub tit.* **Rule 29.**

Record of Proceedings.—Special Register.

97. Proceedings under the Act before the judge or an arbitrator appointed by him shall be recorded in the books of the court in the manner in which other proceedings in the court are recorded; and the registrar shall also keep a special register for the purposes of the Act, in which he shall record— Record of proceedings before judge or arbitrator. Special register. Form 79.

(1) A memorandum of every application made to the judge for the settlement of any matter by arbitration;

(2) A memorandum of every appointment of an arbitrator to settle any such matter made by the judge;

(3) A memorandum of every proceeding taken in any arbitration before the judge or an arbitrator appointed by him prior to the award;

(4) A memorandum of every appointment of a medical referee by the judge or arbitrator, and of his report, and if a

Rule 97.

medical referee is summoned or requested to attend any proceeding in the arbitration, of such summons or request and attendance;

(5) A memorandum of every award made by the judge, or by an arbitrator appointed by him;

(6) A memorandum of every special case submitted to the judge, and of the proceedings and order thereon;

(7) A memorandum of every judgment given by the Court of Appeal on any appeal;

(8) A memorandum of every application to the court for the examination of an employer pursuant to rule 37, paragraph 2, and of the order and proceedings thereon;

(9) A memorandum of every application to the court for the detention of a ship pursuant to section 11 of the Act and rules 39 and 40, and of the order and subsequent proceedings thereon;

(10) A memorandum of every application to the judge for the appointment of an arbitrator in case of the death or refusal or inability to act of an arbitrator agreed on by the parties, and of the proceedings and order thereon;

(11) A copy of every memorandum sent to the registrar pursuant to paragraph 9 of the Second Schedule to the Act, and of the report (if any) of the medical referee annexed thereto, with a note stating whether such memorandum was recorded without further proof, or after inquiry, or by order of the judge;

(12) If such memorandum is recorded after inquiry, a memorandum of the inquiries made and of the result thereof;

(13) If such memorandum is recorded by order of the judge, a memorandum of the application to the judge, and of the order made thereon;

(14) If in the case of a memorandum of an agreement the registrar refers the matter to the judge, a memorandum of such reference, and of the directions of the judge, and the subsequent proceedings and order thereon;

(15) A memorandum of the result of every taxation or review of taxation of costs under any such memorandum, or under any award or order;

(16) A memorandum of every application to rectify the register in respect of any memorandum, and of the proceedings and order thereon;

(17) A memorandum of every application or report with reference to the removal of the record of a memorandum of an agreement from the register, and of the subsequent proceedings and order thereon;

(18) A memorandum of every application to the judge or arbitrator, under paragraph 14 of the Second Schedule to the Act, to determine the amount of costs to be paid to a solicitor or agent, and of the proceedings and order thereon, and of the result of any taxation or review of taxation under such order;

(19) A copy of every certificate under sub-section 4 of section 1 of the Act given by the court or sent to the registrar from any other court;

(20) A memorandum of every proceeding taken in the court for the enforcement of any award, order, memorandum, or certificate, and of the result of such proceeding;

(21) A memorandum of every application to refer a matter to a medical referee pursuant to paragraph 15 of the First Schedule of the Act, and of the order and subsequent proceedings thereon;

(22) A memorandum of every application to the court for the suspension of the right to compensation or to take or prosecute any proceedings under the Act in relation to compensation, or of the right to weekly payments, and o the proceedings and order thereon;

(23) A memorandum of every sum paid into court pursuant to paragraph 5 of the First Schedule to the Act, or under any award, memorandum, or certificate;

(24) A memorandum of every application made to the court with reference to any such sum, and of every order made on such application, and of the manner in which such sum is invested, applied, or disposed of;

(25) A memorandum of every application for the payment of any weekly payment into court, and of the proceedings and order thereon, and of the directions given as to the payment out or application of any such weekly payment;

(26) A memorandum of every application for variation of an order of the court as to the apportionment, investment, or application of any sum paid as compensation, and of the proceedings and order thereon;

(27) A memorandum of every application to refer a matter to a medical referee pursuant to paragraph 18 of the First Schedule to the Act in the case of a workman intending to cease to reside in the United Kingdom, and of the order and the proceedings thereon; and of every certificate and declaration of identity and request for payment received from such workman, and of the proceedings thereon;

(28) A similar memorandum as to the investment or transmission to France of any sum payable in redemption of a weekly

Rule 97.

payment to a workman who is a French citizen, or of any sum payable as compensation to the dependants of a deceased workman who was a French citizen, or of the proceedings where a workman who is a French citizen is in receipt of a weekly payment and intends to return to France ;

(29) A memorandum of every application to set aside or vary an award or order under rule 85, and of the proceedings and order thereon ;

(30) A memorandum of every certified copy given pursuant to rule 89, or a copy of every certified copy filed pursuant to that rule ;

(31) A memorandum of every application for transfer, and of the order thereon, and the proceedings under such order ;

(32) A memorandum of the transmission of documents and certified copies pursuant to paragraph 11 of rule 39 or paragraphs (iii.) or (iv.) of rule 40 ;

(33) A memorandum of the transfer of any money paid into court to any other court ;

(34) The like memorandum as to every matter transferred, or document or certified copy transmitted or money transferred to the court, as would have been recorded as to such matter, document, or money if it had been originally commenced and prosecuted in or transmitted to or paid into the court ;

(35) A memorandum of any other matter which the judge shall order to be recorded with reference to any matter brought into or proceeding taken in the court under the Act.

[*Old rule* 81.]

SUMMONING OF AND REFERENCES TO MEDICAL REFEREES.

Summoning of and references to medical referees.

98.—(1) Where a medical referee is summoned as an assessor, or any matter is referred to a medical referee, the medical referee to be summoned or to whom the matter is to be referred shall in the absence of special circumstances be one of those appointed by the Secretary of State for the area comprising the district of the court in which the arbitration is pending or the case arises.

Provided that if any medical referee has been specially appointed, whether for that area or otherwise, for the purpose of dealing with any specified case or class of cases, the registrar in any such case shall summon, or the matter shall be referred to, the medical referee so appointed.

Provided also, that where a medical referee has been previously summoned as an assessor, or there has been a previous reference in any case, any subsequent summons or reference in the same

se shall, if possible, be sent or made to the same referee, and all in any case be accompanied by the previous report or rtificate (if any) of the medical referee, or by a copy thereof. Rule 98.

(2) Where a medical referee is summoned as an assessor, or any atter is referred to a medical referee, such referee shall be mmoned or the matter shall be referred subject to and in ccordance with any regulations made by the Secretary of State d the Treasury; and any such regulations shall, so far as they fect the county court or an arbitrator appointed by the judge of e county court, and proceedings in the county court or before ny such arbitrator, have effect as Rules of Court. Regulations of Secretary of State and Treasury.

(3) In particular, if such regulations as in the preceding aragraph mentioned provide that an employer or a workman ho desires any matter to be referred to a medical referee under aragraph (*f*) of sub-section 1 of section 8 of the Act shall apply the registrar of a county court for the matter to be so referred, shall be the duty of the registrar to refer the same in accordance ith such regulations. References under Act, s. 8 (1)(*f*).

(4) The registrar shall keep a record in the form prescribed by egulations made by the Secretary of State of all cases in which nedical referees are summoned as assessors or matters are referred o medical referees, and shall forward a copy of the same to the ecretary of State at such times as may be prescribed by such egulations. [*Old rule* 82.] Record and returns as to references.

Matters, how Distinguished.

99. Every matter brought into the court under the Act shall e intituled in the matter of the Act, and shall be distinguished y a separate number; and all documents filed and subsequent roceedings taken in the court with reference to such matter shall e intituled in like manner, and shall be distinguished by the same umber; and the entries made in the special register with respect o each such matter shall be entered together, and shall be kept eparate from the entries with respect to any other matter. [*Old ule* 83.] Matters, how distinguished.

Forms.

100. The forms in the Appendix, where applicable, and where hey are not applicable forms of the like character, with such ariations as the circumstances may require, may be used in roceedings under the Act. [*Old rule* 84.] Forms in Appendix or like forms may be used.

Supply and Filling up of Forms.

101.—(1) The registrar of any court may apply to the Treasury or any of the forms required to be used by parties to proceedings n court under the Act notwithstanding that such forms are Supply of forms.

Rule 101. marked on the Appendix as "not to be printed," and if such application is granted may obtain such forms and supply them without charge for the use of parties to such proceedings.

Filling up of forms. (2) Where any party to any proceeding is illiterate, and unable to fill up any form required to be used, it shall be the duty of the registrar or his clerk to fill up such form. [*Old rule* 85.]

APPENDIX.

FORM 1.

Application for Arbitration by Injured Workman with respect to the Compensation payable to him.

Rule 9.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter .

In the matter of an arbitration between

A. B.
of (*address*)
(*description*) Applicant,

and

C. D. & Co., Limited,
of (*address*)
(*description*) Respondent.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. a workman employed by C. D. & Co., Limited, [*or* by , a contractor with C. D. & Co., Limited, for the execution of work undertaken by them].

2. A question has [*or* questions have] arisen [*here state the questions, specifying only those which have arisen, e.g.*]—

(*a.*) as to whether the said A. B. is a workman to whom the above-mentioned Act applies; *or*

(*b.*) as to the liability of the said C. D. & Co., Limited, to pay compensation under the above-mentioned Act in respect of the said injury; *or*

(*c.*) as to the amount [*or* duration] of the compensation payable by the said C. D. & Co., Limited, to the said A. B. under the above-mentioned Act in respect of the said injury.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between the said A. B. and the said C. D. & Co., Limited, for the settlement of the said question [*or* questions].

4. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of applicant.
2. Name, place of business, and nature of business of respondent.
3. Nature of employment of applicant at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]
4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident, and cause of injury.

5. Nature of injury.
6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.
7. Average weekly earnings during the 12 months previous to the injury, if the applicant has been so long employed under the employer by whom he was immediately employed, or if not, during any less period during which he has been so employed.
8. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business after the accident.
9. Payment, allowance or benefit received from employer during the period of incapacity.
10. Amount claimed as compensation.
11. Date of service of statutory notice of accident on respondent, and whether given before workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]
12. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:
Of the applicant,
Of his solicitor,
The name and address of the respondent to be served with this application are:

Dated this day of
(Signed)
Applicant.
[*Or*
Applicant's Solicitor.]

FORM 2.

Application for Arbitration by or on behalf of Dependants of Deceased Workman, with respect to the Compensation payable in respect of the Injury to such Dependants, where Death has resulted from an Injury to the Workman, and the Settlement of questions as to who are Dependants, and the Apportionment and Application of such Compensation.

In the County Court of , holden at Rule 9.
In the matter of the Workmen's Compensation Act, 1906.
No. of Matter .
In the matter of an arbitration between
E. F.
of (*address*)
(*description*) Applicant,
and
C. D. & Co., Limited,
of (*address*)
(*description*)
and
G. H.
of (*address*)
(*description*) Respondents,
[*or as the case may be; see Rule* 4.]

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. , late

of , deceased, a workman employed by C. D. & Co., Limited [*or* by a contractor with C. D. & Co., Limited, for the execution of work undertaken by them,] and on the day of the death of the said A. B. resulted from the injury.

2. A question has [*or* questions have] arisen [*here state the questions, specifying only those which have arisen; e.g.*]—

(*a.*) as to whether the said A. B. was a workman to whom the above-mentioned Act applied; *or*

(*b.*) as to the liability of the said C. D. & Co., Limited, to pay compensation under the above-mentioned Act to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B. ; *or*

(*c.*) as to the amount of compensation payable by the said C. D. & Co., Limited, to the dependants of the said A. B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A. B. ; *or*

(*d.*) as to who are dependants of the said A. B. within the meaning of the above-mentioned Act; *or*

(*e.*) as to the apportionment and application of the compensation payable by the said C. D. & Co., Limited, to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between E. F. , the legal personal representative of the said A. B. , acting on behalf of the dependants of the said A. B. [*or* between E. F. , a dependant of the said A. B.] and the said C. D. & Co., Limited, , and G. H. , who claims or may be entitled to claim to be a dependant of the said A. B. ,

[*or as the case may be; see Rule* 4.]

for the settlement of the said question [*or* questions].

4. Particulars are hereto appended [*or* annexed]

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondent from whom compensation is claimed.

3. Nature of employment of deceased at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury.

5. Nature of injury to deceased, and date of death.

6. Earnings of deceased during the three years next preceding the injury, if he had been so long in the employment of the employer by whom he was immediately employed, or if the period of his employment had been less than the said

three years, particulars of his average weekly earnings during the period of his actual employment under the said employer.

7. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

8. Name and address of applicant for arbitration.

9. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

10. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

11. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

13. Date of service of statutory notice of accident on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

14. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the applicant,

Of his solicitor,

The names and addresses of the respondents to be served with this application are:

C. D. & Co., Limited.

G. H.,

Dated this day of

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 3.

Rule 9. **Application for Arbitration as to who are Dependants, or as to the Amount payable to each Dependant, where the total amount Payable as Compensation to the Dependants of a Deceased Workman has been agreed or ascertained.**

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an arbitration between

E. F.
of (*address*)
(*description*) Applicant,

and

C. D. & Co., Limited,
of (*address*)
(*description*)
and
G. H.,
of (*address*)
(*description*)
J. K.,
of (*address*)
(*description*)
and
L. M.,
of (*address*)
(*description*) Respondents.

[*or as the case may be ; see Rule* 5.]

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. , late of deceased, a workman employed by C. D. & Co., Limited, [*or* by a contractor with C. D. & Co., Limited, for the execution of work undertaken by them,] and on the day of the death of the said A. B. resulted from the injury.

2. The amount of compensation payable by the said C. D. & Co., Limited, to the dependants of the said A. B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A. B. has been agreed [*or* ascertained], but a question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen ; e.g.*]—

(*a.*) as to who are dependants of the said A. B. within the meaning of the above-mentioned Act ; *or*

(*b.*) as to the apportionment and application of the compensation payable to the dependants of the said A. B.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between E. F., , the legal personal representative of the said A. B. , acting on behalf of N. O. P. R. &c., dependants of the said A. B. [*or* between E. F. N. O. P. R. &c., dependants of the said A. B.], and the said C. D. & Co., Limited, and G. H. J. K. and L. M. , who are or claim or may be entitled to claim to be dependants of the said A. B.

[*or as the case may be ; see Rule* 5.]

for the settlement of the said question [*or* questions].

4. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name and place of business of employers by whom compensation has been paid or is payable.

3. Date of accident to deceased and date of death.

4. Agreed or ascertained amount of compensation to be paid to dependants of deceased.

5. Particulars as to whether the compensation money is still payable by the employer, or has been paid by him, and if so, to whom, and in whose hands it now is.

6. Character in which the applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

7. Particulars as to the dependants or persons claiming to be dependants by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were or claim to have been wholly or partially dependent on the earnings of the deceased at the time of his death.

8. The like particulars as to any dependants who are made respondents.

[NOTE.—*If there is a Legal Personal Representative, and he is not the Applicant, he must be made a Respondent.*]

9. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, descriptions, and occupations (if any).

10. Particulars of the manner in which the applicant claims to have the amount of compensation apportioned and applied.

The names and addresses of the applicant and his solicitor are :

Of the applicant,

Of his solicitor.

The names and addresses of the respondents to be served with this application are :

C. D. & Co., Limited.

G. H.

I. K.

L. M.

[*or as the case may be*].

Dated this day of

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 4.

Rule 9.

Application for Arbitration with respect to the Compensation payable in respect of Expenses of Medical Attendance and Burial, where Deceased Workman leaves no Dependants.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter .

In the matter of an arbitration between

E. F.,
of (*address*)
(*description*) Applicant.

and

C. D. & Co., Limited,
of (*address*)
(*description*)
and
G. H.,
of (*address*)
(*description*) Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. , late of , deceased, a workman employed by C. D. & Co., Limited, [*or* by , a contractor with C. D. & Co., Limited, , for the execution of work undertaken by them,] and on the day of the death of the said A. B. resulted from the injury.

2. The said A. B. left no dependants within the meaning of the above-mentioned Act.

3. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen ; e.g.*]—

(*a.*) as to whether the said A. B. was a workman to whom the above-mentioned Act applied ; *or*

(*b.*) as to the liability of the said C. D. & Co., Limited, to pay compensation under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A. B. ; *or*

(*c.*) as to the amount of compensation payable by the said C. D. & Co., Limited, under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A. B. ; *or*

(*d.*) as to the apportionment and application of the compensation payable by the said C. D. & Co., Limited, under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A. B.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between E. F. and the said C. D. & Co., Limited, , and G. H. for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondent from whom compensation is claimed.

3. Nature of employment of deceased at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident, and cause of injury.

5. Nature of injury to deceased, and date of death.

6. Name and address of applicant for arbitration.

7. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased, or as a person to whom expenses in respect of which compensation is payable are due; and if the latter, particulars must be given of the circumstances under which the expenses are claimed to be due to the applicant.

8. Particulars as to any other persons who claim that expenses in respect of which compensation is payable are due to them, and who are therefore made respondents, with their names and addresses.

9. Particulars of amount claimed as compensation, and of the manner in which the applicant desires such amount to be apportioned and applied.

10. Date of service of statutory notice of accident on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

11. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the applicant,

Of his solicitor,

The names and addresses of the respondents to be served with this application are:

C. D. & Co., Limited.

G. H.

Dated this day of

(Signed)

Applicant.

[*Or* ,

Applicant's Solicitor.]

FORM 5.

Rule 9.

Application for Arbitration with respect to the Review, Termination, Diminution, Increase, or Redemption of a Weekly Payment.

In the County Court of , holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter .

In the matter of an arbitration between
C. D. & Co., Limited,
of (*address*)
(*description*) Applicants,

and

A. B.,
of (*address*)
(*description*)

[*or as the case may be; see* Act, Sched. 1, pars. 16, 17].

An arbitration under the Workmen's Compensation Act, 1906, is hereby requested between C. D. & Co., Limited, and A. B.

[*or as the case may be; see* Act, Sched. 1, pars. 16, 17.]

with respect to the review and termination [*or* diminution, increase, *or* redemption, *as the case may be*] of the weekly payment payable to the said A. B. under the said Act in respect of personal injury caused to him by accident arising out of and in the course of his employment.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of injured workman.
2. Name and place of business of employer by whom compensation is payable.
3. Date and nature of accident.
4. Date of agreement, decision, award, or certificate fixing weekly payment, amount of such payment, and date from which it commenced.
5. Relief sought by applicant, whether termination, diminution, increase, or redemption.
6. Grounds on which termination, diminution, or increase is claimed.

The names and addresses of the applicants and their solicitors are:

Of the applicants,
Of their solicitor,

The name and address of the respondent to be served with this application are:

Dated this day of

(Signed) ,
Applicants.

[*Or*
Applicants' Solicitor.]

FORM 6.

Application for Arbitration by an Injured Master, Seaman, Apprentice or Pilot, with respect to the Compensation payable to him. Rules 9, 33.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter .

In the matter of an arbitration between

A. B.
of (*address*)
(*description*) Applicant,

and

The owners of the Ship " "

Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. , the master of the ship " " [*or* a seaman [*or* an apprentice to the sea service *or* an apprentice in the sea fishing service] and a member of the crew of the ship " "] [*or* a pilot employed on the ship " "].

2. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(*a.*) as to whether the said A. B. is a workman within the meaning of the above-mentioned Act; *or*

(*b.*) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act, in respect of the said injury; *or*

(*c.*) as to the amount [*or* duration] of the compensation payable by the owners of the said ship to the said A. B. under the above-mentioned Act in respect of the said injury.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between the said A. B. and the owners of the said ship for the settlement of the said question [*or* questions].

4. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of applicant.
2. Name of ship of which applicant was master [*or* of the crew of which applicant was a member *or* on which applicant was employed as pilot] at time of accident, and port of registry.
3. Nature of employment at time of accident.
4. Date and place of accident, nature of work on which applicant was then engaged, and nature of accident and cause of injury.
5. Nature of injury.
6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.
7. Average weekly earnings during the 12 months previous to the injury, if the applicant has been so long employed under the same owners, or if not, during any less period during which he has been so employed.

8. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business after the accident.
9. Payment, allowance or benefit received from employer during the period of incapacity.
10. Amount claimed as compensation.
11. Date of service of statutory notice of accident, and whether given before applicant voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]
12. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:
Of the applicant,
Of his solicitor,
The name and address of the person to be served with this application as epresenting the owners of the ship are:
[*State name and address of managing owner or manager, or of master of ship See Rule* 38 (6).]

Dated this day of
(Signed) ,
Applicant.
[*Or*
Applicant's Solicitor.]

FORM 7.

Rules 9, 38. **Application for Arbitration by or on behalf of Dependants of Deceased Master, Seaman, Apprentice or Pilot.**

In the County Court of holden at
In the matter of the Workmen's Compensation Act, 1906.
No. of Matter .
In the matter of an arbitration between
E. F.
of (*address*)
(*description*) Applicant,
and
The owners of the ship " "
and
G. B.
of (*address*)
(*description*) Respondents.
[*or as the case may be; see Rule* 4.]

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. , late of , deceased, the master of the ship " " [*or* a seaman [*or* an apprentice to the sea service *or* an apprentice in the sea-fishing service] and a member of the crew of the ship " " [*or* a pilot employed on the ship " "], and on the day of the death of the said A. B. resulted from the injury.
[*or* 1. The ship " " which left the port of on or about the day of , was lost with all hands on or about the day of [*or* was last heard of on or about the day of and is believed to have been lost with all hands].

When the said ship left the said port A. B. , late of , was the master thereof [*or* a seaman [*or* an apprentice to the sea service *or* an apprentice in the sea-fishing service] and a member of the crew of the said ship [*or* a pilot employed on the said ship].

2. A question has [*or* questions have] arisen [*here state the questions, specifying only those which have arisen; e.g.*]—

(*a.*) as to whether the said A. B. was a workman within the meaning of the above-mentioned Act; *or*

(*b.*) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B. ; *or*

(*c.*) as to the amount of compensation payable by the owners of the said ship to the dependants of the said A. B. under the above-mentioned Act, in respect of the injury caused to them by the death of the said A. B. ; *or*

(*d.*) as to who are dependants of the said A. B. within the meaning of the above-mentioned Act; *or*

(*e.*) as to the apportionment and application of the compensation payable by the owners of the said ship to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between E. F. , the legal personal representative of the said A. B. [*or* between E. F. , a dependant of the said A. B.] and the owners of the said ship, and G. B. , who claims or may be entitled to claim to be a dependant of the said A. B.

[*or as the case may be; see Rule* 4.]

for the settlement of the said question [*or* questions].

4. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of master, seaman, apprentice, or pilot.

2. Name of ship of which deceased was master [*or* of the crew of which deceased was a member *or* on which deceased was employed as pilot] at time of accident or loss of ship, and port of registry.

3. Nature of employment at time of accident or loss of ship.

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury [*or* date and place when and where ship was lost or is deemed to have been lost].

5. Nature of injury to deceased and date of death [*or* date when ship was lost or is deemed to have been lost].

6. Earnings of deceased during the three years next preceding the injury or date of loss, if he had been so long employed under the same owners, or if the period of his employment had been less than the said three years, particulars of his average weekly earnings during the

period of actual employment under the said owners.

7. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

8. Name and address of applicant for arbitration.

9. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

10. Particulars as to the dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

11. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

13. Date of service of statutory notice of accident, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

14. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are :

Of the applicant,

Of his solicitor,

The names and addresses of the respondents to be served with this application are :

As representing the owners of the ship

[*State name and address of managing owner or manager, or of master of ship. See Rule* 38 (6).]

and G. B.,

Dated this day of .

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 8.

Application for Arbitration where Security has been given on behalf of the Owners of a Ship under Section 11. Rules 9, 39.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter .

In the matter of an arbitration between

A. B.
of (*address*)
(*description*) Applicant,

and

(*names and addresses of persons giving security*) Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. , of , and the said A. B. claims that the owners of the ship " " are liable under the Workmen's Compensation Act, 1906, to pay compensation in respect of the said injury.

2. The respondents have given security to abide the event of any proceedings that may be instituted in respect of the said injury, and to pay such compensation and costs as may be awarded thereon.

3. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(*a.*) as to whether the said A. B. is a workman to whom the above-mentioned Act applies; *or*

(*b.*) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act in respect of the said injury; *or*

(*c.*) as to the amount [*or* duration] of the compensation payable to the said A. B. under the above-mentioned Act in respect of the said injury.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between the said A. B. and the respondents for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

[*Here insert particulars of circumstances under which the application is made, and of the relief or order which the applicant claims, adapting the particulars in the preceding forms to the circumstances of the case.*]

The names and addresses, &c. [*as in Form* 1].

NOTE.—*This form to be adapted as required to an application for arbitration as between the dependants of a deceased workman and the persons giving security.*

FORM 9.

Rules 9, 41. **Application for Arbitration by Workman disabled by or suspended on account of having contracted Industrial Disease coming within Section 8.**

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter .

In the matter of an arbitration between

A. B.
of (*address*)
(*description*) Applicant,

and

C. D. & Co., Limited,
of (*address*)
(*description*) Respondent.

1. On the day of Mr. , the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of [*or* Mr. , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906,] certified that A. B. of was suffering from , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and was thereby disabled from earning full wages at the work at which he was employed.

[*Or* 1. On the day of A. B. of was in pursuance of special rules [*or* regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 8 of the Workmen's Compensation Act, 1906.]

2. The said A. B. alleges that the above-mentioned disease is due to the nature of his employment in [*describe employment*], and that he was last employed in such employment within the twelve months previous to the date of disablement or suspension by C. D. & Co., Limited.

3. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(*a.*) as to whether the said A. B. is a workman to whom the Workmen's Compensation Act, 1906, applies ; *or*

(*b.*) as to the liability of the said C. D. & Co., Limited, to pay compensation under the Workmen's Compensation Act, 1906, in respect of the said disease [*or* suspension] ; *or*

(*c.*) as to whether the said disease was in fact contracted whilst the said A. B. was in the employment of the said C. D. & Co., Limited, ; *or*

(*d.*) as to whether the said disease is due to the nature of the employment of the said A. B. under the said C. D. & Co., Limited ; *or*

(*e.*) as to the amount [*or* duration] of the compensation payable by the said C. D. & Co., Limited, to the said A. B. under the Workmen's Compensation Act, 1906, in respect of the said disease.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between the said A. B. and the said C. D. & Co., Limited, for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of applicant.
2. Name, place of business, and nature of business of respondents.
3. Nature of employment of applicant under respondents to which the disease was due.
4. Nature of disease.
5. Date of disablement or suspension.
6. Name and addresses of all other employers by whom applicant was employed in the same employment during the 12 months previous to date of disablement or suspension.
7. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.
8. Average weekly earnings during the 12 months previous to date of disablement or suspension, if the applicant has been so long employed under respondents, or if not, during any less period during which he has been so employed.
9. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business.
10. Payment, allowance, or benefit received from employer during period of incapacity.
11. Amount claimed as compensation.
12. Date of service of statutory notice of disablement or suspension on respondents. [*A copy of the notice to be annexed.*]
13. If notice not served, reason for omission to serve same.

The names and addresses, &c. [*as in Form* 1].

FORM 10.

Application for Arbitration by or on behalf of Dependants of Deceased Workman whose death has been caused by Industrial Disease. Rules 9, 41.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an arbitration between

E. F.
of (*address*)
(*description*) Applicant,

and

C. D. & Co., Limited,
of (*address*)
(*description*)
and

G. H.
of (*address*)
(*description*) Respondents.

[*or as the case may be: see Rule* 4.]

1. On the day of Mr. the certifying surgeon under

the Factory and Workshop Act, 1901, for the district of [*or* Mr. one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906,] certified that A. B. of was suffering from , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and was thereby disabled from earning full wages at the work at which he was employed; and on the day of the said A. B. died, his death being caused by the said disease.

[*Or* 1. On the day of A. B. of was in pursuance of special rules [*or* regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and on the day of the said A. B. died, his death being caused by the said disease.]

[*Or* 1. On the day of A. B. late of died, his death being caused by , a disease coming within section 8 of the Workmen's Compensation Act, 1906.]

2. The applicant alleges that the above-mentioned disease was due to the nature of the employment of the said A. B. in (*describe employment*), and that he was last employed in such employment within the twelve months previous to his disablement or suspension [*or, if the workman died without having obtained a certificate of disablement, or was not at the time of his death in receipt of a weekly payment on account of disablement*, within the twelve months previous to his death] by C. D. & Co., Limited, of .

3. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(*a.*) as to whether the said A. B. was a workman to whom the Workmen's Compensation Act, 1906, applies; *or*

(*b.*) as to the liability of the said C. D. & Co., Limited, to pay compensation under the Workmen's Compensation Act, 1906, to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B. ; *or*

(*c.*) as to whether the said disease was in fact contracted whilst the said A. B. was in the employment of the said C. D. & Co., Limited, ; *or*

(*d.*) as to whether the said disease was due to the nature of the employment of the said A. B. under the said C. D. & Co., Limited, ; *or*

(*e.*) as to whether the death of the said A. B. was in fact caused by the said disease; *or*

(*f.*) as to the amount of compensation payable by the said C. D. & Co., Limited, to the dependants of the said A. B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A. B. ; *or*

(*g.*) as to who are dependants of the said A. B. within the meaning of the above-mentioned Act; *or*

(*h.*) as to the apportionment and application of the compensation payable by the said C. D. & Co., Limited, to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between E. F. , the legal personal representative of the said A. B. , acting on behalf of the dependants of the said A. B. [*or* between E. F. , a dependant of the said A. B. ,] and the said C. D. & Co., Limited, and G. H. , who claims or may be entitled to claim to be a dependant of the said A. B.

[*or as the case may be; see Rule* 4.]

for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondents from whom compensation is claimed.

3. Nature of employment of deceased under respondents to which the disease was due.

4. Nature of disease.

5. Date of disablement, and date of death.

6. Earnings of deceased during the three years next preceding disablement, if he had been so long in the employment of the respondents, or if the period of his employment had been less than the said three years, particulars of his average weekly earnings during the period of his actual employment under the respondents.

7. Names and addresses of all other employers by whom deceased was employed in the same employment during the twelve months previous to the date of disablement.

8. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

9. Name and address of applicant for arbitration.

10. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

11. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

12. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

13. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

14. Date of service of statutory notice of disablement. [*A copy of the notice to be annexed.*]

15. If notice not served, reason for omission to serve same.

The names and addresses, &c. [*as in Form* 2]

FORM 11.

Rules 9, 37. **Application for Arbitration where rights of Employer against Insurers are transferred to Workman under Section 5.**

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of matter

In the matter of an arbitration between

A. B.
of (*address*)
(*description*) Applicant,

and

(*name and address of Insurers*) Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. , a workman employed by of (*name and address of employer*), [or by of , a contractor with (*name and address of employer*) for the execution of work undertaken by him], and the said A. B. claims that the said (*employer*) thereupon became liable to pay compensation under the Workmen's Compensation Act, 1906, to the said A. B. in respect of such injury.

[*Or, where weekly payment has been settled,*

1. Under an agreement [*or* a decision *or* an award *or* a certificate] recorded in this court on the day of a weekly payment of is payable by of (*name and address of employer*) to the above-mentioned A. B. as compensation for personal injury caused to the said A. B. by accident arising out of and in the course of his employment as a workman employed by the said (*employer*) [*or* by of , a contractor with the said (*employer*) for the execution of work undertaken by him].

2. The respondents are insurers of the said (*employer*) in respect of his [*or* their] liability to pay such compensation.

3. The said (*employer*) has become a bankrupt [*or* made a composition *or* arrangement with his creditors] [*or, if the employer is a company*, the said has commenced to be wound up]; and the rights of the said (*employer*) against the respondents as such insurers in respect of his [*or* their] liability to the said A. B. have by virtue of section 5 of the said Act been transferred to and vested in the said A. B.

4. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(*a.*) as to whether the said A. B. is a workman to whom the above-mentioned Act applies; *or*

(*b.*) as to the liability of the said (*employer*) to pay compensation under the above-mentioned Act in respect of the said injury; *or*

(*c.*) as to the liability of the respondents as such insurers as aforesaid to the said A. B. ; *or*

(*d.*) as to the amount [*or* duration] of the liability of the respondents as such insurers as aforesaid to the said A. B.

[*or as the case may be.*]

5. An arbitration under the above-mentioned Act is hereby requested between the said A. B. and the respondents for the settlement of the said question [*or* questions].

6. Particulars are hereto appended [*or* annexed].

PARTICULARS.

(Here insert particulars containing a concise statement of the circumstances under which the application is made, and of all matters necessary to be stated in order to bring the questions to be settled properly before the judge or arbitrator, and of the relief or order which the applicant claims, adapting the particulars given in the preceding forms to the circumstances of the case.)

The names and addresses of the applicant and his solicitor are :
Of the applicant,
Of his solicitor,
The name and address of the respondents to be served with this application are :
Dated this day of .
(Signed) Applicant.
[*Or*
Applicant's solicitor.]

NOTE.—*This form to be adapted as required to an application for arbitration as between the dependants of a deceased workman and insurers.*

FORM 12.

Notice to Applicant of Day upon which Arbitration will be proceeded with. Rule 15.

[*Heading as in Request for Arbitration.*]

Take notice that the judge of this court [*or* Mr. , the arbitrator appointed by the judge of this court] will proceed with the arbitration in this matter at on the day of at the hour of o'clock in the noon.
Dated this day of
To
Of

Registrar.

FORM 13.

Notice to Respondent of Day upon which Arbitration will be proceeded with.

[*Heading as in Request for Arbitration.*]

Take notice that the judge of this court [*or* Mr. , the arbitrator appointed by the judge of this court] will proceed with the arbitration applied for in the request and particulars a sealed copy of which is served herewith at on the day of at the hour of o'clock in the noon : and that if you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made and proceedings taken as the judge [*or* arbitrator] may think just and expedient.

And further take notice that if you wish to disclaim any interest in the subject matter of the arbitration, or consider that the applicant's particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [*or* arbitrator], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [*or* arbitrator], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge [*or* arbitrator],

and a copy for the applicant and for each of the other respondents, must be filed with me ten clear days at least before the day of .

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of .

To

Of

Registrar.

FORM 14.

Rule 18. **Answer by Respondents.**

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

Take notice—

That the respondent, G. H., disclaims any interest in the subject-matter of the above arbitration.

Or

That the respondents, C. D. & Co., Limited, state that the applicant's particulars filed in this matter are inaccurate or incomplete in the particulars hereto annexed.

Or

That the respondents, C. D. & Co., Limited, desire to bring to the notice of the judge [*or* arbitrator] the facts stated in the particulars hereto annexed.

Or

That the respondents, C. D. & Co., Limited, intend at the hearing of the arbitration to give evidence and rely on the facts stated in the particulars hereto annexed.

Or

That the respondents, C. D. & Co., Limited, deny their liability to pay compensation under the Act in respect of the injury to A. B. mentioned in the applicant's particulars, on the grounds stated in the particulars hereto annexed.

PARTICULARS.

1. *Particulars in which the particulars filed by the Applicant are inaccurate or incomplete.*

2. *Facts which the Respondents desire to bring to the notice of the Judge [or Arbitrator].*

That the applicant A. B. refuses to submit himself to medical examination as required by [*or* obstructs the medical examination required by] the respondents, C. D. & Co., Limited, in accordance with paragraph 4 of the first schedule to the Act [*or* refuses to submit himself for examination by a medical referee as ordered] [*or* obstructs the examination by a medical referee ordered] in accordance with paragraph 15 of the first schedule to the Act.

[*or as the case may be.*]

3. *Facts which Respondents, C. D. & Co., Limited, intend to give in evidence and rely on at the hearing of the Arbitration.*

That notice of the alleged accident [*or* of death, disablement *or* suspension] was not given to the respondents as required by the Act ; *or*

That the claim for compensation was not made on the respondents within the time limited by the Act ; *or*

That a scheme of compensation [benefit *or* insurance] for the workmen of

respondents, C. D. & Co., Limited, has been duly certified by Registrar of Friendly Societies, and such certificate was in force at date of the alleged accident, and the said C. D. & Co., Limited, tracted with the applicant A. B. [*or* with the deceased workman] a contract which was in force at the date of the alleged accident, that provisions of the said scheme should be substituted for the provisions of Act, and the said C. D. & Co., Limited, are consequently liable y in accordance with the said scheme :

[*or as the case may be.*]

4. *Grounds on which the Respondents deny their Liability to pay Compensation.*

(i.) That the applicant A. B. is [*or* the deceased workman was] not a workman to whom the Act applies ; *or*

(ii.) That the injury to the applicant [*or* to the deceased workman] was not caused by accident arising out of and in the course of his employment ; *or*

(iii.) That the injury to the applicant [*or* to the deceased workman] was attributable to the serious and wilful misconduct of the applicant [*or* of the deceased workman], and did not result in death or serious and permanent disablement ; *or*

(iv.) That at the time of the alleged accident the applicant [*or* the deceased workman] was not immediately employed by the respondents, but was employed by of , a contractor with the respondents for the execution by or under such contractor of work undertaken by the respondents, and the accident occurred elsewhere than on, in, or about premises on which the respondents had undertaken to execute the work or which were otherwise under the control or management of the respondents ; *or*

(v.) That the injury to the applicant [*or* to the deceased workman] was caused under circumstances creating a legal liability in a person other than the respondents, to wit, [*name and address of such person*] to pay damages in respect thereof, and the applicant [*or* the deceased workman] has taken proceedings against the said and has recovered damages from him ; *or*

in case of industrial disease,

(vi.) That the applicant [*or* the deceased workman] at the time of entering the employment of the respondents wilfully and falsely represented himself in writing as not having previously suffered from the disease mentioned in the applicant's particulars ; *or*

(vii.) That the disease mentioned in the applicant's particulars was not contracted whilst the applicant [*or* the deceased workman] was in the employment of the respondents ; *or*

(viii.) That the disease mentioned in the applicant's particulars was not due to the nature of the employment in which the applicant [*or* the deceased workman] was employed by the respondents :

[*or as the case may be.*]

And further take notice, that the names and addresses of the said respondents and their solicitors are :

Of the respondents,
C. D. & Co., Limited,
Of their solicitors,

Dated this day of .

(Signed)
Solicitors for the Respondents,
C. D. & Co., Limited.

To the Registrar of the Court, and
To the applicant, A. B., and
To the respondents
(*if any, naming them*).

FORM 15.

Rule 19. **Notice by Respondent admitting Liability, and submitting to an Award or Paying Money into Court, or submitting to an Award or paying Money into Court with a denial of Liability.**

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

Take notice—

That the respondents, C. D. & Co., Limited, admit their liability to pay compensation in the above-mentioned matter.

And they hereby submit to an award for payment by them to the applicant, A. B., of the weekly sum of , such weekly payment to commence as from the day of and to continue during the total or partial incapacity of the said A. B., for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

And for payment by them to the applicant forthwith after the award of the amount of such weekly payments calculated from the day of until the first Saturday [*or other usual pay day*] after the date of the award, and for the payment thereafter of the said sum of to the applicant on Saturday [*or other usual pay day*] in every week.

[*Or*, and the said C. D. & Co., Limited, herewith pay into court the sum of £ in satisfaction of such liability.]

[*Or, where liability is denied*,

Take notice—

That the respondents, C. D. & Co., Limited, hereby submit (*follow from above, down to the words* in every week).

[*Or*, That the respondents, C. D. & Co., Limited, herewith pay into court the sum of £ in satisfaction of the applicant's claim in the above-mentioned matter.]

And further take notice, that, notwithstanding such submission [*or* payment], the respondents deny their liability.

And further take notice, that the address of the said respondents is as follows : (*state the address*).]

Dated this day of .

(Signed)

Solicitors for the Respondents,
C. D. & Co., Limited.

To the Registrar of the Court, and
To the applicant, A. B., and
To the respondents
[*if any, naming them*].

FORM 16.

Rule 19. **Notice of Filing of Submission to an Award, or of Payment into Court, in the case of an injured Workman.**

[*Heading as in Request for Arbitration.*]

Take notice—

That the respondents, C. D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter, and submit to an award for payment by them to you of the weekly sum of .

[*or* and have paid into court the sum of £ in satisfaction of such liability].

[*Or*

Take notice—

That the respondents, C. D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they deny their liability

pay compensation in the above-mentioned matter, but that they submit an award for payment by them to you of the weekly sum of [*or* that they have paid into court the sum of £ in satisfaction of your claim].]

If you elect to accept such weekly sum [*or* the sum so paid into court] in satisfaction of your claim, you must send to the registrar of this court, and the said C. D. & Co., Limited, a written notice forthwith by post, leave such notice at the office of the registrar, and at the residence or place of business of the said C. D. & Co., Limited.

If you send such notice, the judge of this court will, on application made to him, make an award directing payment of such weekly sum to you [*or* directing payment of the said sum of £ to you, *or* applying the said sum of £ for your benefit], and you will be liable to no further costs.

In default of such notice, the arbitration will be proceeded with; and if no greater payment is awarded to you, you will be liable to be ordered to pay the costs incurred by the respondents subsequent to the receipt by you of this notice.

Dated this day of

Registrar.

To the applicant, A. B.

FORM 17.

Notice of Payment into Court in the case of Death. Rule 19.

[*Heading as in Request for Arbitration.*]

Take notice—

That the respondents, C. D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter, and have paid into court the sum of £ in satisfaction of such liability.

Or

Take notice—

That the respondents, C. D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they deny their liability to pay compensation in the above-mentioned matter, but that they have paid into court the sum of £ in satisfaction of the claim made herein.]

If you are willing to accept the sum so paid into court in satisfaction of the compensation payable in the above-mentioned matter, you must send to the registrar of this court, and to the said C. D. & Co., Limited, and to the other respondents [*or*, *where this notice is sent to a respondent*, to the applicant and the other respondents], a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C. D. & Co., Limited, and at the residence or place of business of each of the other respondents [*or* of the applicant and each of the other respondents].

If you and all the other respondents [*or*, If you and the applicant and all the other respondents] send such notice, and agree as to the apportionment and application of the said sum of £ , the judge of this court will, on application made to him, make an award for such apportionment and application, and you will be liable to no further costs.

If you and all the other respondents [*or*, If you and the applicant and all the other respondents] send such notice, but do not agree as to the apportionment and application of the said sum of £ , the arbitration will be proceeded with as between you and such other respondents [*or*, as between the applicant and yourself and such other respondents].

In default of such notice being sent by you and all the other respondents [*or*, by the applicant and yourself and all the other respondents], the arbitration will be proceeded with: and if no greater amount than the said sum of £ is awarded as compensation, the parties who do not send

such notice will be liable to be ordered to pay the costs incurred by the respondents, C. D. & Co., Limited, subsequent to the receipt by such parties of this notice, and also any costs incurred subsequent to the receipt of this notice by any parties who send notice of their willingness to accept the said sum of £ in satisfaction of the compensation payable in the above-mentioned matter.

Dated this day of

Registrar.

To the applicant, A. B.,
[*or* To the respondent, G. H.]
[*or as the case may be*].

FORM 18.

Rule 19.

Notice of Acceptance of Weekly Sum offered, or of Willingness to accept Sum paid into Court.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

Take notice—

That the applicant A. B. accepts the weekly sum offered by the respondents, C. D. & Co., Limited, [*or* the sum of £ paid into court] in satisfaction of his claim in the above-mentioned matter [*or*, that the applicant, E. F., *or*, the respondent, G. H., is willing to accept the sum of £ paid into court by the respondents, C. D. & Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter].

But the applicant [*or* the said respondent, G. H.,] will apply to the judge to include in his award an order directing the said respondents, C. D. & Co., Limited, to pay the costs properly incurred by the applicant [*or* the said respondent, G. H.,] before the receipt of notice of the offer of the said weekly sum [*or* of notice of payment of the said sum of £ into court] and his costs properly incurred in relation to the notice of the offer of the said weekly sum [*or* the notice of payment of the said sum of £ into court] and to this notice, and in attending at the court to obtain an award.

Dated this day of .

(Signed)

Applicant.

[*Or*

Respondent.]

To the Registrar of the Court, and
To the respondents, C. D. & Co., Limited, and
To the applicant, A. B., and
To the respondents
[*naming them*].

FORM 19.

Rule 41.

Application for Addition of Employer as Respondent under Section 8, Sub-section (1), Paragraph (*c*), Proviso (ii).

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

Take notice—

That the respondents, C. D. & Co., Limited, allege that the disease mentioned in the applicant's particulars filed in this matter was in fact contracted while the applicant [*or* the deceased workman] was in the employment of of and not whilst in the employment of the said C. D. & Co. Limited.

And the said C. D. & Co., Limited, hereby apply for an order that the said be joined as respondents in the above arbitration, and if necessary for an adjournment of the hearing of the arbitration.

Dated this day of

(Signed) C. D. & Co., Limited.

By

Secretary.

[*Or*

Solicitors for the Respondents,
C. D. & Co., Limited.]

To the Registrar of the Court.

FORM 20.

Order adding Respondents. Rule 41.

[*Heading as in Request for Arbitration.*]

It is this day ordered on the application of the respondents, C. D. & Co., Limited, that of be added as respondents to this arbitration [and that the hearing of this arbitration be adjourned to the day of at o'clock in the noon.]

Dated this day of .

Registrar.

FORM 21.

Notice to Applicant and Original Respondents of Addition of Respondents. Rule 41.

[*Heading as in Request for Arbitration.*]

Take notice—

That by order dated the day of it was ordered on the application of the respondents, C. D. & Co., Limited, (a copy whereof is hereto annexed), that of be added as respondents to this arbitration [and that the hearing of this arbitration be adjourned to the day of at o'clock in the noon].

Dated this day of .

Registrar.

To the Applicant
and
The Respondents,
C. D. & Co., Limited.

FORM 22.

Notice to Parties who are added as Respondents. Rule

[*Heading as in Request for Arbitration.*]

To Messrs. of
[*address and description.*]

Take notice—

That by an order of this court, dated the day of a copy of which order is hereunto annexed, together with a copy of the request and particulars filed by the applicant in this matter, and a copy of the application on which the said order was made, you were ordered to be added as a respondent in the above arbitration.

And further take notice, that the hearing of the above arbitration has been appointed for the day of at o'clock in the noon, and that if you do not attend, either in person or by your solicitor, at the court-house at upon the day and at the hour above-mentioned, such order will be made and proceedings taken as the judge [*or* arbitrator] may think just and expedient.

And further take notice, that if you wish to disclaim any interest in the subject matter of the arbitration, or consider that the applicant's particulars

are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [*or* arbitrator], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [*or* arbitrator], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge [*or* arbitrator], and a copy for the applicant and for each of the other respondents, must be filed with me ten clear days at least before the day of .

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of .

To

Of

Registrar.

FORM 23.

Rules 20, 25.

Notice by Respondent to Third Parties.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

To Mr. , of (*address and description*).

Take notice—

That A. B., of, &c., has filed a request for arbitration (a copy whereof is hereto annexed) as to the amount of compensation payable by the respondents, C. D. & Co., Limited, to the said A. B., in respect of personal injury caused to the said A. B., by accident arising out of and in the course of his employment.

[*Or* That E. F. of has filed a request for arbitration (a copy whereof is hereto annexed) with respect to the compensation payable to the dependants of A. B. deceased, in respect of the injury caused to the said dependants by the death of the said A. B. which resulted from injury caused to the said A. B. by accident arising out of and in the course of his employment.]

[*or as the case may be; see forms of request for arbitration.*]

The respondents, C. D. & Co., Limited, claim to be indemnified by you against their liability to pay such compensation, on the ground that at the time of the injury in respect of which compensation is claimed the said A. B., was not immediately employed by the said C. D. & Co., Limited, but was employed by you in the execution of work undertaken by the said C. D. & Co., Limited, in respect of which the said C. D. & Co., Limited, had contracted with you for the execution thereof by or under you.

[*Or* on the ground that the injury for which compensation is claimed was caused under circumstances creating a legal liability on your part [*add, if so*, as the persons who have given security in respect of the liability of the owners of the ship " "] to pay damages in respect thereof].

[*or as the case may be.*]

[*Or, in case of industrial disease*, The respondents, C. D. & Co., Limited, claim to be entitled to contribution from you in respect of the

compensation claimed from them, on the ground that the disease mentioned in the applicant's particulars was of such a nature as to be contracted by a gradual process, and that the said A. B. was employed by you during the twelve months previous to the date of disablement or suspension in the employment to the nature of which the disease was due.]

And take notice, that if you wish to dispute the applicant's claim as against the respondents, C. D. & Co., Limited, or your liability to the said respondents, you must appear before the judge [*or* arbitrator] at the time and place mentioned in the notice, a copy of which is hereunto annexed.

In default of your so appearing you will be deemed to admit the validity of any award made in the said arbitration as to any matter which the judge [*or* arbitrator] has jurisdiction to decide in such arbitration as between the applicant and the respondents, C. D. & Co., Limited, whether such award is made by consent or otherwise, and your own liability to indemnify the said C. D. & Co., Limited [*or* to contribute as above mentioned].

Dated this day of .

(Signed) C. D. & Co., Limited,
By
Secretary.

To

of [*Or*
Solicitors for the respondents,
C. D. & Co., Limited.]

FORM 24.

Award. Rule 30.

[NOTE.—*These forms are intended for use in ordinary cases only. The award in any special case must be settled under Rule* 30, *in accordance with the directions given by the Judge or Arbitrator.*]

(i.) *In case of Application by Workman.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows :—

[*Here insert any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.*]

1. I order that the respondents, C. D. & Co., Limited, do pay to the applicant, A. B., the weekly sum of as compensation for personal injury caused to the said A. B. on the day of , by accident arising out of and in the course of his employment as a workman employed by the said respondents, such weekly payment to commence as from the day of , and to continue during the total or partial incapacity of the said A. B. for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned act.

2. And I order that the said C. D. & Co., do forthwith pay to the said A. B., the sum of £ being the amount of such weekly payments calculated from the day of until the day of (1) and do thereafter pay the said sum of to the said A. B. on Saturday (2) in every week.

3. And I order that the said C. D. & Co., do pay to the registrar of this court, for the use of the applicant, his costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the

(1) First Saturday or other usual pay day after date of award.
(2). Or other usual pay day.

amount thereof, to be taxed by the registrar under column of the scales of costs in use in the county courts, and to be paid by the said C. D. & Co., to the registrar within 14 days from the date of the certificate of the result of such taxation.

Dated this day of .

Judge [*or* Arbitrator.]

(ii.) *In case of Application by Dependants.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows :—

[*Here insert any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.*]

1. I order that the respondents, C. D. & Co., Limited, do pay the sum of £ to the dependants of A. B., late of , deceased, as compensation for the injury resulting to such dependants from the death of the said A. B., , which took place on the day of from injury caused to the said A. B., on the day of by accident arising out of and in the course of his employment as a workman employed by the said respondents.

2. And I declare that the persons hereinafter named are entitled to share in such compensation as dependants of the said A. B., , that is to say J. B., the widow of the said A. B. and (1)

(1) Name the other persons.

3. [*Add, if so found.*] And I declare that the respondent G. H. the of the said A. B. , is not entitled to share in such compensation as a dependant of the said A. B.

4. And I order that the said sum of £ be apportioned between the said J. B. and (1) in the proportions following, that is to say :—

I apportion the sum of £ to or for the benefit of the said J. B., and the sum of £ to or for the benefit of the said (2)

(2) Specify the persons entitled and the sums apportioned to them.

5. And I order that the said C. D. & Co., Limited, do pay the said sum of £ to the registrar of this court within 14 days from the date of this award.

6. And I order that on payment to the registrar of the said sum of £ , the registrar do forthwith pay to the said J. B. the sum of £ hereby apportioned to her, [*or* the sum of £ out of the sum of £ hereby apportioned to her, and that the balance of the last-mentioned sum (less the fee for the investment thereof) be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said J. B., and that out of the sum so invested and the accruing interest thereof the registrar do from time to time until further order pay to the said J. B. the weekly [*or* fortnightly] sum of payment to be made on the day of].

7. And I order that on payment to the registrar of the said sum of £ the sums of £ and £ hereby apportioned to or for the benefit of the said

respectively (less the fees for the investment thereof) be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said and respectively, and that interest arising from such investments be from time to time, until further order, paid to the said J. B. to be by her applied for the maintenance, education, or benefit of the said and respectively.

8. And I order that the said J. B. and the said or any of them be at liberty to apply to the judge from time to time as they may be advised for any further or other order as to the application of any of the said sums so ordered to be invested and the accruing interest thereof.

9. And I order that the said C. D. & Co., Limited, do pay to the registrar of this court, for the use of the applicants, their costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the county courts, and to be paid by the said C. D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxation.

[*Add directions (if any given) as to costs occasioned by claim of person claiming as a dependant whose claim is disallowed.*]

Dated this day of .

Judge [*or* Arbitrator].

(iii.) *In case of Application by Person to whom Expenses of Medical Attendance or Burial are due.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows :—

[*Leave space for any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.*]

1. I order that the respondents, C. D. & Co., Limited, do pay the sum of £ for or towards the expenses of medical attendance on and the burial of A. B., late of , deceased, who died on the day of from injury caused on the day of by accident arising out of and in the course of the employment of the said A. B. as a workman employed by the said C. D. & Co., Limited.

2. And I declare that the persons hereinafter named are entitled to share in such compensation, that is to say ;

The applicant, E. F. , in respect of charges amounting to £ due to [*or* payable by] him for medical attendance on the said A. B. and the respondent, G. H. , in respect of charges amounting to £ due to him for the burial of the said A. B.

3. And I order that the respondents, C. D. & Co., Limited, do pay the said sum of £ to the registrar of this court within 14 days from the date of this award, and that the said sum of £ be apportioned between and paid to the said E. F. and G. H. in proportion to the amounts due to them respectively as aforesaid.

4. And I order that the said C. D. & Co., Limited, do pay to the registrar of this court for the use of the applicant, E. F., and the respondent, G. H., their respective costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in

the county courts, and to be paid by the said C. D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxations.

Dated this day of .

Judge [*or* Arbitrator].

[NOTE.—*The above forms will serve as guides for framing awards in other cases of arbitration.*]

FORM 25.

Rule 34. **Notice of Day upon which Special Case will be Heard.**

In the County Court of , holden at .

[*Heading as in Special Case.*]

Take notice that the judge of this court will hear the special case stated in the above-named matter, at a court to be holden at , on the day of at the hour of in the noon: and that if you do not attend in person or by your solicitor at the place and time above-mentioned, such order will be made and proceedings taken as the judge may think just.

You may obtain a copy of the case upon application at my office and upon prepayment of the costs of such copy.

Dated this day of

Registrar.

To [*the applicant and respondents*].

FORM 26.

Rule 39 (3). **Application for Order for Detention of Ship.**

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Workmen's Compensation Act, 1906. Section 11.

The Ship "."

Application is hereby made on behalf of of , who alleges that the owners of the ship "" which has been found in the port [*or* river] of [*or* within three miles of the coast of England], are liable as such owners to pay compensation under the Workmen's Compensation Act, 1906, in respect of personal injury by accident arising out of and in the course of his employment caused to of on the day of in the port [*or* harbour] of and who claims compensation in respect of such injury, and alleges that none of the owners of the said ship reside in the United Kingdom,

for an order directed to an officer of customs or other officer named by the judge, requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

The grounds on which this application is made are set forth in the affidavit of filed herewith [*or* will be given in evidence on the hearing of the application].

Dated this day of .

(Signed)

[*Name and Address of Applicant or Applicant's Solicitor.*]

FORM 27.

Undertaking as to Damages. Rule 39 (5).

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of , holden at .

The Workmen's Compensation Act, 1906. Section 11.

The Ship " ."

I, the undersigned, , of , hereby undertake to abide by any order which may hereafter be made as to damages, in case any person affected by the order to be made on my application for the detention of the ship " " shall sustain any damages by reason of such order which I ought to pay.

Dated this day of .

(Signed)
[*Signature and Address of Applicant.*]

[*To be altered as required, if the undertaking is given by any person other than the applicant.*]

FORM 28.

Order for Detention of Ship. Rule 39 (5).

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or* harbour] of :

And that the said ship has been found in the port [*or* river] of [*or* within three miles of the coast of England] :

And whereas it has been shown to me, on the application of of , who claims compensation in respect of such injury, that the owners of the said ship are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom :

[And whereas the said has filed an undertaking to abide by any order which may hereafter be made as to damages, in case any person affected by this order shall sustain any damages by reason of this order which the said ought to pay :]

Now I do hereby issue this order directed to you, the Chief Officer of Customs at [*or other officer named by the judge*], requiring you to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Dated this day of .

Judge.

To the Chief Officer of Customs at .
[*or other officer named by the judge.*]

FORM 29.

Rule 39 (7).

Bond by way of Security.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or* harbour] of .

And whereas the judge of this court has issued an order directed to the Chief Officer of Customs at [*or other officer named by the judge*], requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Now, therefore, we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of this court, or of any other competent court in England or Ireland in which any proceedings may be instituted in respect of the said injury, and consent that if the owners, agent, master, or consignee of the said ship shall not pay all such compensation and costs as may be awarded thereon execution may issue forthwith against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding pounds.

[*Signatures of Sureties.*]

This bail bond was signed by the said and , the sureties, the day of , 19 .

Before me,

Registrar.

[*or* Clerk to the Registrar nominated to take affidavits.]

FORM 30.

Rule 39 (8).

Order of Release.

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " ."

You are hereby authorised and directed to release the ship " " now under detention by virtue of an order made on the day of , upon the payment of all costs, charges and expenses attending the custody thereof.

Dated this day of .

Judge.

To the Chief Officer of Customs at

[*or other officer named in the order for detention.*]

FORM 30A.

Solicitor's Undertaking to give Security. Rule 39 (9).

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .
The Workmen's Compensation Act, 1906.
The Ship " ."

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or* harbour] of :

Now, therefore, I, *L.M.* , of (*address*) , solicitor for the owners [agent, master *or* consignee] of the said ship, hereby undertake within days from the date hereof to put in or give security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon.

Dated this day of .

(Signed) *L.M.*

FORM 31.

Application for Order for Detention of Ship by Employer claiming Indemnity. Rule 40.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .
The Shipowners' Negligence (Remedies) Act, 1905.
The Workmen's Compensation Act, 1906.
The Ship " ."

Application is hereby made on behalf of of , who alleges :—

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or* harbour] of : and

2. That the applicant, as the employer of the said , has paid compensation [*or* has had a claim for compensation made on him] in respect of such injury under the Workmen's Compensation Act, 1906 : and

3. That the applicant is [*or* will become] entitled to be indemnified under that act by the owners of the ship " " on the ground that the said injury was caused by the said ship [*or* sustained on in or about the said ship], in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment : and

4. That the said ship has been found in the port [*or* river] of [*or* within three miles of the coast of England] : and

5. That none of the owners of the said ship reside in the United Kingdom:

for an order directed to an officer of Customs or other officer named by the judge, requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the applicant or paid compensation in respect of the said injury, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury or to recover such indemnity, and to

pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

The grounds on which this application is made are set forth in the affidavit of filed herewith [or will be given in evidence on the hearing of the application].

Dated this day of .

(Signed)

[*Name and address of applicant or applicant's solicitor.*]

FORM 32.

Rule 40.

Order for Detention of Ship on Application of Employer claiming Indemnity.

In the County Court of holden at .

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged by of

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or* harbour] of : and

2. That the said as the employer of the said has paid compensation [*or* has had a claim for compensation made on him] in respect of such injury under the Workmen's Compensation Act, 1906 : and

3. That the said is [*or* will become] entitled to be indemnified under that Act by the owners of the ship " ," on the ground that the said injury was caused by the said ship [*or* sustained on in or about the said ship], in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment : and

4. That the said ship has been found in the port [*or* river] of [*or* within three miles of the coast of England] :

And whereas it has been shown to me, on the application of the said that the applicant probably is [*or* will become] entitled to be indemnified under the said act, and that none of the owners of the said ship reside in the United Kingdom :

[And whereas the said has filed an undertaking to abide by any order which may hereafter be made as to damages, in case any person affected by this order shall sustain any damages by reason of this order which the said ought to pay] :

Now I do hereby issue this order directed to you, the Chief Officer of Customs at [*or other officer named by the judge*], requiring you to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the said or paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury, or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Dated this day of .

Judge.

To the Chief Officer of Customs at .

[*or other officer named by the judge*].

FORM 33.

Bail Bond by way of Security where Order of Detention made on Application of Employer claiming Indemnity. Rule 40.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged :—

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or* harbour] of ; and

2. That of as the employer of the said , has paid compensation [*or* has had a claim for compensation made on him] in respect of the said injury under the Workmen's Compensation Act, 1906 ; and

3. That the said is [*or* will become] entitled to be indemnified under that act by the owners of the ship " ," on the ground that the said injury was caused by the said ship [*or* sustained on in or about the said ship] in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment :

And whereas the judge of this court has issued an order directed to the Chief Officer of Customs at [*or other officer named by the judge*] requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the said or paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury, or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law :

Now, therefore, we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of this court, or of any other competent court in England or Ireland in which any proceedings may be instituted in respect of the said injury, or to recover such indemnity, and consent that if the owners, agent, master, or consignee of the said ship shall not pay all such compensation, indemnity, and costs as may be awarded thereon execution may issue forthwith against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding pounds.

[*Signatures of Sureties.*]

This bail bond was signed by the said and the sureties, the day of , 19 .

Before me,

Registrar.

[*or* Clerk to the Registrar nominated to take affidavits.]

FORM 34.

Rule 42. **Application for Appointment of new Arbitrator, Schedule II., Paragraph 8.**

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

In the matter of an arbitration between

A. B.
of (*address*)
(*description*) Applicant,

and

C. D. & Co., Limited,
of (*address*)
(*description*) Respondents.

Application is hereby made to the judge on behalf of the above-named to appoint a new arbitrator in the above-mentioned matter in the place of Mr. , the arbitrator appointed therein, by reason of the death [*or* refusal [*or* inability] to act] of the said Mr. .

And the applicant hereby requests that a time and place may be fixed for the hearing of the application.

Dated this day of .

(Signed)
Applicant.

[*Or*
Applicant's Solicitor.

FORM 35.

Rule 42. **Summons on Application for Appointment of new Arbitrator.**

[*Title as in Application.*]

You are hereby summoned to attend before the judge in chambers at on the day of at the hour of in the noon, on the hearing of an application on the part of for the appointment by the judge of a new arbitrator in the above-mentioned matter in the place of Mr. , the arbitrator appointed therein, by reason of the death [*or* refusal [or inability] to act] of the said Mr. .

And take notice, that in default of your attendance at the time and place above-mentioned, the judge will, on proof of the service of this summons, proceed to hear and dispose of the said application.

Dated this day of .

To

and to his [*or* their]
Solicitor.

Registrar.

FORM 36.

Form of Memorandum under Paragraph 9 of Schedule II. Rule 43.

(i.) *In case of Injury to Workman by Accident.*

To the registrar of the county court of holden at

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an arbitration between

of Applicant,

and

of Respondents.

Name. Address. Description.

[*Or, where the matter has been decided by agreement without arbitration,*

In the matter of an agreement between

of

and

of .]

Name. Address. Description. Name. Address. Description.

Be it remembered, that on the day of , 19 , personal injury was caused at [*state place of accident*] to the above-named , a workman under no legal disability, [*or* an infant of the age of years,] by accident arising out of and in the course of his employment.

Name. Address. Description.

And that on the day of , 19 , the following agreement was come to by and between the said and the said , that is to say:

[*or* And that on the day of , 19 , the following decision was given by a committee representative of the said and their workmen, having power to settle matters under the above-mentioned Act in the case of the said and their workmen, that is to say:]

[*or* And that on the day of , 19 , the following award was made and given by me, the undersigned , being an arbitrator agreed on by the said and the said , that is to say:

[*Here set out copy of agreement, decision, or award.*]

[*If a medical referee has been appointed to report, add:—*

A copy of the report of Mr. , a medical referee appointed to report in the above-mentioned matter, is hereunto annexed.

[*Add, if so,* The said Mr. attended the arbitration on the day of , 19 .]

You are hereby requested to record this memorandum, pursuant to paragraph 9 of the second schedule to the above-mentioned Act.

Dated this day of , 19

To be signed in accordance with Rule 44, pars. 1, 2.

NOTE—*This form to be adapted to the circumstances of the case and the matter decided.*

(ii.) *In case of Injury to Workman by Industrial Disease.*

To the registrar of the county court of holden at

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an arbitration between

of Applicant,

and

of Respondents.

Name. Address. Description.

[*Or where the matter has been decided by agreement without arbitration.*

In the matter of an agreement between

of

and

of .]

Name. Address. Description. Name. Address. Description.

Be it remembered,

That on the day of , Mr. , the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the

Name. Address. Description.

district of [*or* Mr. , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906,] certified that A. B. of , a workman under no legal disability, [*or* an infant of the age of years,] was suffering from , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and was thereby disabled from earning full wages at the work at which he was employed.

[*or* That on the day of , A. B. of , a workman under no legal disability, [*or* an infant of the age of years,] was in pursuance of special rules [*or* regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 8 of the Workmen's Compensation Act, 1906;

And that the said A. B. alleged that the above mentioned disease was due to the nature of his employment in [*describe employment*] and that he was last employed in such employment within the twelve months previous to the date of disablement or suspension by C. D. & Co., Limited, of .]

And that on the day of , 19 , the following agreement was come to by and between the said and the said , that is to say:

[*or* And that on the day of , 19 , the following decision was given by a committee representative of the said and their workmen, having power to settle matters under the above-mentioned Act in the case of the said and their workmen, that is to say:]

[*or* And that on the day of , 19 , the following award was made and given by me, the undersigned , being an arbitrator agreed on by the said and the said , that is to say:]

[*Here set out copy of agreement, decision, or award.*]

[*If a medical referee has been appointed to report, add:—*

A copy of the report of Mr. , a medical referee appointed to report in the above-mentioned matter, is hereunto annexed.

[*Add, if so,* The said Mr. attended the arbitration on the day of , 19 .]

You are hereby requested to record this memorandum, pursuant to paragraph 9 of the second schedule to the above-mentioned Act.

To be signed in accordance with Rule 44, pars. 1, 2.

Dated this day of , 19 .

NOTE—*This form to be adapted to the circumstances of the case and the matter decided.*

(iii.) *Where Death resulted from the Injury.*

To the registrar of the county court of holden at

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an arbitration between

of Applicant,

and

of Respondents.

[*Or, where the matter has been decided by agreement without arbitration,*

In the matter of an agreement between

of

and

of .]

Name. Address. Description.

Name. Address. Description.

Name. Address. Description.

Name. Address. Description.

Be it remembered, that on the day of , 19 , personal injury was caused at [*state place of accident*] to late of deceased, by accident arising out of and in the course of his employment,

and that on the day of , 19 , the said died as the result of such injury.

And that on the day of , 19 , the following agreement was come to by and between the dependants of the said within the meaning of the above-mentioned Act, and the said that is say :

[*Or* And that on the day of , 19 , the following decision was given by a committee representative of the said and their workmen, having power to settle matters under the above-mentioned Act in the case of the said and their workmen, that is to say :]

[*Or* And that on the day of , 19 , the following award was made and given by me, the undersigned being an arbitrator agreed on by the dependants of the said within the meaning of the above-mentioned Act, and the said , that is to say :]

[*Here set out copy of agreement, decision, or award.*]

[*If a medical referee has been appointed to report, add :—*

A copy of the report of Mr. a medical referee appointed to report in the above-mentioned matter is hereunto annexed.

[*Add, if so,* the said Mr. attended the arbitration on the day of 19 .]

You are hereby requested to record this memorandum, pursuant to paragraph 9 of the second schedule to the above-mentioned Act.

Dated this day of 19 .

To be signed in accordance with Rule 44, pars. 1, 2.

NOTE.—*This form to be adapted to the circumstances of the case and the matter decided.*

(iv.) *Where Death resulted from Industrial Disease.*

To the registrar of the county court of holden at .

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an arbitration between

of Applicant,

Name. Address. Description.

and

of Respondents.

Name. Address. Description.

[*Or, where the matter has been decided by agreement without arbitration,*

In the matter of an agreement between

of

Name. Address. Description.

and

of .]

Name. Address. Description.

Be it remembered, that on the day of , Mr. the certifying surgeon under the Factory and Workshop Act, 1901, for the district of [*or* Mr. one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906], certified that A. B. of was suffering from , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and was thereby disabled from earning full wages at the work at which he was employed ; and on the day of the said A. B. died, his death being caused by the said disease ;

[*Or,* That on the day of A. B. of was in pursuance of special rules [*or* regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 8 of the

Workmen's Compensation Act, 1906, and on the day of the said A. B. died, his death being caused by the said disease :]

[*Or*, That on the day of A. B. late of died, his death being caused by , a disease coming within section 8 of the Workmen's Compensation Act, 1906 ;

And that the dependants of the said A. B. alleged that the above-mentioned disease was due to the nature of the employment of the said A. B. in (*describe employment*), and that he was last employed in such employment within the twelve months previous to his disablement or suspension [*or*, *if the workman died without having obtained a certificate of disablement, or was not at the time of his death in receipt of a weekly payment on account of disablement*, within the twelve months previous to his death] by C. D. & Co., Limited, of].

And that on the day of , 19 , the following agreement was come to by and between , the dependants of the said , within the meaning of the above-mentioned Act, and the said , that is to say :

[*Or* And that on the day of , 19 , the following decision was given by a committee representative of the said and their workmen, having power to settle matters under the above-mentioned Act in the case of the said and their workmen, that is to say :]

[*Or* And that on the day of , 19 , the following award was made and given by me, the undersigned being an arbitrator agreed on by the dependants of the said , within the meaning of the above-mentioned Act, and the said , that is to say :]

[*Here set out copy of agreement, decision, or award.*]

[*If a medical referee has been appointed to report, add :—*

A copy of the report of Mr. a medical referee appointed to report in the above-mentioned matter, is hereunto annexed.

[*Add, if so*, The said Mr. attended the arbitration on the day of 19 .]

You are hereby requested to record this memorandum, pursuant to paragraph 9 of the second schedule to the above-mentioned Act.

To be signed in accordance with Rule 44, pars. 1, 2.

Dated this day of 19 .

NOTE.—*This form to be adapted to the circumstances of the case and the matter decided.*

FORM 37.

Rules 43 (3), 51.

Information to be supplied where a Memorandum of an Agreement as to the redemption of a weekly payment by a lump sum, or as to the amount of compensation payable to a person under any legal disability, or to dependants, or as to the amount of compensation payable in the form of a weekly payment or of a lump sum to a workman who is an insured person within the meaning of the National Insurance Act, 1911 (1 *&* 2 *Geo.* 5, *c.* 55), *is presented for registration. Schedule II., paragraph* 9 : 1 *&* 2 *Geo.* 5, *c.* 55, *s.* 11 (1) (*c*) ; *Rules* 41 (3), 51 (1).

A. *In case of agreement with injured workman.*

[*Heading as in Memorandum.*]

(*a.*) A. B. named in the memorandum of agreement presented for registration in this matter was at the date of the accident [*or* disablement *or* suspension] years of age.

(*b.*) He was employed as , and his average weekly earnings computed in accordance with the above-mentioned Act were

(*c.*) He was injured by , and the nature of his injury was as follows :

(*d.*) He was totally incapacitated for work for a period of , but recovered and was fit to resume his ordinary work on the day of 19 :

[*or* He was and is at present totally incapacitated for work, but is expected to recover and to be fit to resume his ordinary work in about :]

[*or* He was totally incapacitated for work for a period of , and is now partially incapacitated, but such partial incapacity is not likely to be permanent, and he is expected to recover and to be fit to resume his ordinary work in about :]

[*or* He was and is totally incapacitated for work, and such incapacity is likely to be permanent :]

[*or* He was totally incapacitated for work for a period of , and is still partially incapacitated, and such partial incapacity is likely to be permanent, but he is able to do light work, and it is estimated that he is able to earn an average weekly amount of in some suitable employment or business :]

[*or as the case may be*].

(*e.*) The said received the following payments, allowances, or benefits from his employers previous to the date of the agreement, viz. :—

[*Here state payments made, and where a weekly payment has been made, the amount of such payment, and the period for which it was paid.*]

(*f.*) The said is [*or* is not] an insured person within the meaning of the National Insurance Act, 1911 [*add, if he is an insured person,* and the name and address of the Insurance Commissioners [*or* of the society *or* committee] concerned in the administration of the benefit to which he is entitled under the said Act are as follows :— Rule 51 (1).

[*State name and address.*]

Dated this day of , 19 .

To be signed in accordance with Rule 44, par. 2.

B. *Where death resulted from the injury or industrial disease.*

[*Heading as in Memorandum.*]

(*a.*) A.B. named in the memorandum of agreement presented for registration in this matter, was at the date of the accident [*or* disablement *or* suspension *or* death] years of age.

(*b.*) He was employed as , and his earnings in the employment of during the three years next preceding the injury in the said memorandum mentioned [*or* his average weekly earnings during the period of his employment under] were

(*c.*) He left the following dependants wholly dependent upon his earnings, and the following dependants partially dependent, viz. :—

[*Here state dependants, with their relationship to the deceased, and particulars showing how and to what extent they were dependent.*]

[*Or* He left no dependants wholly dependent upon his earnings, but left the following dependants partially dependent, viz. :—

[*Here state dependants, with their relationship to the deceased, and particulars showing how and to what extent they were dependent.*]

(*d.*) The said received the following payments, allowances or benefits from his employers after the accident [*or* disablement *or* suspension], viz. :— To be signed in accordance with Rule 44, par. 2.

Dated this day of 19

FORM 38.

Rule 45. **Notice of Memorandum having been received.**

In the County Court of holden at

[*Heading as in Memorandum.*]

Take notice that a memorandum, copy of which is hereto annexed, has been sent to me for registration.

Such memorandum appears to affect you.

I have therefore to request you to inform me within seven days from this date whether you admit the genuineness of the memorandum, or whether you dispute it, and, if so, on what grounds.

If you do not inform me in due course that you dispute the genuineness of the memorandum or object to its being recorded, it may be recorded without further inquiry, and will be enforceable accordingly.

If you dispute its genuineness, it will not be recorded, except with your consent in writing, or by order of the judge of this Court.

Dated this day of .

Registrar.

To (*all parties interested*).

FORM 39.

Rule 47. **Notice Disputing Genuineness of Memorandum, or Notice by Employer objecting to Memorandum being recorded.**

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Memorandum.*]

(1) *Notice disputing Genuineness of Memorandum.*

Take notice that (*state name of party disputing*), a party [*or* parties] interested, disputes [*or* dispute] the genuineness of the memorandum sent to you for registration in the above-mentioned matter on the following grounds :—

[*Here state grounds, as* e.g.

(*a*) That no such agreement has in fact been entered into : *or*

(*b*) That the terms of the agreement are not correctly stated in the memorandum : *or*

(*c*) That the agreement is no longer subsisting or enforceable : *or*

(*d*) That the agreement is not enforceable by reason of its having been entered into under a mutual mistake [*or* having been obtained by fraud] [*or* undue influence [*or* improper means].

Dated this day of .

[*To be signed by the party disputing or his solicitor, or in case of employers by their duly authorised official-employee, or agent.*]

To the Registrar.

---

(2) *Notice by Employer objecting to Memorandum being recorded.*

Take notice, that (*state name of employer*) objects [*or* object] to the memorandum sent to you for registration in the above-mentioned matter being recorded on the ground that the above-mentioned (*workman*) has in fact returned to work and is earning the same wages as he did before the accident.

Dated this day of .

[*To be signed by the employer or his solicitor, or duly authorised official, employee, or agent.*]

To the Registrar.

FORM 40.

Notice that Genuineness of Memorandum is Disputed, or of Objection by Employer to Memorandum being recorded. Rule 48.

[*Heading as in Memorandum.*]

Take notice that of , a party [*or* parties] interested in the memorandum left with [*or* sent to] me for registration in the above-mentioned matter, has [*or* have] filed with me a notice, copy of which is sent herewith, that he disputes [*or* they dispute] the genuineness of the said memorandum on the grounds stated in the said notice.

[*or* Take notice, that of [*the employer*] has [*or* have] filed with me a notice, copy of which is sent herewith, that he objects [*or* they object] to the memorandum left with [*or* sent to] me for registration in the above-mentioned matter being recorded on the grounds stated in the said notice.]

The memorandum will therefore not be recorded, except with the consent in writing of the said , or by order of the judge of this Court.

Dated this day of .

Registrar.

To (*all parties interested*).

FORM 41.

Notice of Application for Registration of Memorandum or for Ratification of Register.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Memorandum.*]

Take notice that I intend to apply to the judge at on the day of at the hour of o'clock in the noon [*in case of notice by solicitor*, on behalf of of for an order for the registration of the memorandum sent to the registrar in the above-mentioned matter [*or* for an order for the rectification of the memorandum

recorded in the above-mentioned matter] by [*state particulars of rectification applied for*], and for consequential directions, and for costs.

Dated this day of .

Applicant.
[*Or* Applicant's Solicitor.]

To the Registrar of the Court
and to
and to (*all parties interested*).

FORM 41A.

Rule 51 (2). **Request for Information under Rule 51, paragraph 2.**

In the County Court of holden at .
In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of an agreement between of and of .

With reference to the memorandum of agreement in the above-mentioned matter which has been sent to me for registration, I have to request you to inform me by letter or by personal interview at my office situate at , of any facts relating to the agreement and the circumstances in which it was arrived at which you may desire to bring to my notice, and which may assist me in deciding whether the agreement may properly be recorded.

Dated this day of .

To (*all parties interested*). Registrar.

FORM 42.

Rule 51 (5). **Notice to Parties where Registrar refers the Question of recording a Memorandum of an Agreement to the Judge under Schedule II., paragraph 9, proviso (d), as extended by 1 & 2 Geo. 5, c. 55, Section 11 (1) (c).**

In the County Court of , holden at .

[*Heading as in Memorandum.*]

Take notice, that I have refused to record the memorandum sent to me in this matter for registration, and have referred the matter to the judge, pursuant to proviso (*d*) to paragraph 9 of the second schedule to the Act, it appearing to me that the said memorandum ought not to be registered by reason of—

(*a*) the inadequacy of the lump sum agreed to be paid in redemption of the weekly payment referred to in the memorandum ; *or*

(*b*) the inadequacy of the weekly payment [*or* the lump sum] agreed to be paid as compensation to , in the memorandum mentioned, who is an insured person within the meaning of the National Insurance Act, 1911 ; *or*

(*c*) the inadequacy of the amount of compensation agreed to be paid to , a person under legal disability ; *or*

(*d*) the inadequacy of the amount of compensation agreed to be paid to and , dependants ; *or*

(*e*) the agreement having been obtained by fraud [*or* undue influence *or* improper means].

AND FURTHER TAKE NOTICE, that by order of the judge you are hereby summoned to attend before the judge at a Court to be holden at on the day of at the hour of in the noon, when the matter will be inquired into by the judge;

And that if you do not attend either in person or by your solicitor on the day and at the hour above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of

Registrar.

To (*all parties interested*).

FORM 43.

Application for Removal of Record of Memorandum of Agreement from Register under Schedule II., Paragraph 9, Proviso (e). Rule 52 (1).

In the County Court of holden at

[*Heading as in Memorandum.*]

Take notice, that I intend to apply to the judge at on the day of at the hour of in the noon, for an order for the removal from the register of the record of the memorandum of the agreement in the above-mentioned matter which was recorded on the day of pursuant to proviso (*e*) to paragraph 9 of the second schedule to the above-mentioned act, on the ground that the said agreement was obtained by fraud [*or* undue influence *or* improper means], and for consequential directions, and for costs.

Dated this day of

Applicant.

[*Or* Applicant's Solicitor.]

To the Registrar of the Court and to (*all parties interested*).

FORM 44.

Notice to Parties where Judge directs Inquiry as to Removal of Record of Memorandum of Agreement from Register under Schedule II., Paragraph 9, Proviso (e). Rule 5

In the County Court of , holden at

[*Heading as in Memorandum.*]

Whereas it has been made to appear to the judge that an inquiry should be held as to the removal from the register of the record of the memorandum of the agreement in the above-mentioned matter which was recorded on the day of ; pursuant to proviso (*e*) to paragraph 9 of the second schedule to the above-mentioned Act, on the ground that the said agreement was obtained by fraud [*or* undue influence *or* improper means];

Take notice, that you are hereby summoned to attend before the judge at a Court to be holden at on the day of at the hour of in the noon, when the matter will be inquired into by the judge;

And that if you do not attend either in person or by your solicitor on the day and at the hour above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of

Registrar.

To (*all parties interested*).

FORM 45.

Rule 54 (1). **Form of Certificate under Section 1, sub-section 4.**

In the County Court of , holden at .

No. of Plaint

Between

A. B.

of (*address*)

(*description*) Plaintiff,

and

C. D. & Co., Limited,

of (*address*)

(*description*) Defendants.

And in the matter of the Workmen's Compensation Act, 1906.

I hereby certify that on the day of the above-named plaintiff commenced the above-named action against the above-named defendants claiming

[*Here state claim of plaintiff in action.*]

And that on the trial of the said action on the day of it was determined that the injury in respect of which the plaintiff claimed damages in the said action was one for which the defendants were not liable in the said action, but that such defendants would have been liable to pay compensation in respect of such injury under the above-mentioned Act;

And that thereupon the said action was dismissed, but the Court, on the request of the plaintiff, proceeded to assess the compensation which the defendants would have been liable to pay under the said Act.

And that the Court assessed such compensation at the sum of £ and directed (*state directions given as to payment of compensation, and directions, if any given, as to costs, and as to the deduction from the compensation of any costs which in the judgment of the Court were caused by the plaintiff bringing the action instead of proceeding under the Act*).

Dated this day of .

Registrar.

FORM 46.

Rule 55 (1). **Application for Summons of Medical Referee as Assessor.**

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

The applicant [*or* respondent] applies to the judge to summon a medical referee to sit with him as an assessor, on the ground that questions are likely to arise in the arbitration as to the condition of the applicant or his fitness for employment [*or as the case may be*], and that it is desirable that the judge should have the assistance of a medical referee in the determination of such questions.

Dated this day of .

To the Registrar of the Court. (Signed) A. B.,

Applicant.

Or

Solicitor for the Applicant.

[*or as the case may be.*]

I consent to a medical referee being summoned to sit with me as an assessor.

Judge.

FORM 47.

Notice of Refusal to Summon Medical Referee as Assessor. Rule 55 (3).

[*Heading as in Request for Arbitration.*]

I hereby give you notice that his Honour the Judge of this Court has directed me to inform you that your application for a medical referee to be summoned to sit with the judge as an assessor is refused, the judge being of opinion that the summoning of a medical referee is unnecessary.

Dated this day of ,

To Registrar.

[*The applicant for an assessor.*]

FORM 48.

Summons to Medical Referee to sit as Assessor. Rule 55 (4).

[*Title as in Request for Arbitration.*]

The day of

Sir

You are hereby summoned to attend and sit with the Judge as an assessor at the court-house situate at on the day of at the hour of in the noon.

I am, sir,

Your obedient servant,

To

of Registrar.

FORM 49.

Application for Reference to Medical Referee under Schedule I., Paragraph 15. Rule 57 (2).

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

In the matter of a claim for compensation made by A. B. of , against C. D. & Co., Limited , of .

[*or, where an arbitration is pending,*

In the matter of an arbitration between A. B.
of (*address*)
(*description*) Applicant,
and
C. D. & Co., Limited ,
of (*address*)
(*description*) Respondents.

[*or, where application is made after weekly payment has been settled,*

In the matter of an agreement [*or* a decision *or* an award *or* a certificate] recorded in the above-mentioned Court as to the weekly payment payable to A. B. , of , by C. D. & Co., Limited of

Application is hereby made to the Court on behalf of the above-named A. B. and C. D. & Co., Limited, for a reference in the above-mentioned matter to a medical referee pursuant to paragraph 15 of the first schedule to the above-mentioned Act under the following circumstances :—

1. On the day of notice was given by [*or* on

behalf of] the above-mentioned A. B. to the above-mentioned C. D. & Co., Limited , of personal injury caused to the said A. B. by accident arising out of and in the course of his employment, in respect of which injury the said A. B. claims compensation from the said C. D. & Co., Limited, under the said Act.

[*or, where arbitration is pending,*

1. An arbitration under the said Act is pending between the above-mentioned A. B. and the above-mentioned C. D. & Co., Limited, as to the amount of compensation payable to the said A. B. under the said Act in respect of personal injury caused to him by accident arising out of and in the course of his employment.]

[*or, where weekly payment has been settled,*

1. Under an agreement [*or* a decision *or* an award *or* a certificate] in the above-mentioned matter, recorded in this Court on the day of a weekly payment is payable to the above-mentioned A. B. by the above-mentioned C. D. & Co., Limited, as compensation in respect of personal injury caused to the said A. B. by accident arising out of and in the course of his employment.]

2. The weekly payment claimed by [*or* payable to] the said A. B. is

3. A question has [*or* Questions have] arisen between the said A. B. and the said C. D. & Co., Limited, as to the condition [*or* fitness for employment] of the said A. B. [*or* as to whether [*or* to what extent] the incapacity of the said A. B. is due to the accident] [*or* as to the condition [*or* fitness for employment] of the said A. B. and as to whether [*or* to what extent] the incapacity of the said A. B. is due to the accident], and no agreement can be come to between the said C. D. & Co., Limited, and the said A. B. with reference to such question [*or* questions.]

4. The said A. B. has submitted himself for examination by a medical practitioner provided by the said C. D. & Co., Limited, [*or* has been examined by a medical practitioner selected by himself] [*or, if so,* the said A. B. has submitted himself for examination by a medical practitioner provided by the said C. D. & Co., Limited, and has also been examined by a medical practitioner selected by himself], and a copy of the report of the said practitioner is [*or* copies of the reports of the said practitioners are] annexed to this application.

The applicants request that an order may be made referring the matter to a medical referee for his certificate as to the condition of the said A. B. and his fitness for employment, specifying if necessary the kind of employment for which he is fit [*or* for his certificate whether [*or* to what extent] the incapacity of the said A. B. is due to the accident] [*or* for his certificate as to the condition of the said A. B. and his fitness for employment, specifying if necessary the kind of employment for which he is fit, and as to whether [*or* to what extent] the incapacity of the said A. B. is due to the accident].

Dated this day of .

(Signed)

Applicant.

[*or* Applicant's Solicitor.

C. D. & Co., Limited.

by Secretary

[*or*

Solicitors for C. D. & Co., Limited.]

To the Registrar.

FORM 50.

Order of Reference, Schedule I., Paragraph 15. Rule 57 (3).

In the County Court of holden at

[*Heading as in Application.*]

On the application of A.B. of and C. D. & Co., Limited, of (a copy of which is hereto annexed), I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said (*name of workman*), and to give his certificate as to the condition of the said and his fitness for employment, specifying if necessary the kind of employment for which he is fit [*or* his certificate whether [*or* to what extent] the incapacity of the said is due to the accident] [*or* his certificate as to the condition of the said and his fitness for employment, specifying if necessary the kind of employment for which he is fit, and as to whether [*or* to what extent] the incapacity of the said is due to the accident].

Copies of the reports of the medical practitioners by whom the said has been examined are hereto annexed.

The said , who is now at , has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[*or* The said does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the Registrar at the County Court Office situate at on or before the day of

Dated this day of

Registrar.

FORM 51.

Order on Injured Workman to submit himself for Examination by Medical Referee. Rules 57 (4), 66 (7), 75 (8).

In the County Court of holden at

[*Heading as in Application.*]

To A. B. , of [*address and description*].

Take notice, that I have appointed Mr. , of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine you in accordance with the application in the above-mentioned matter for a reference to a medical referee.

You are hereby required to submit yourself for examination by the referee [*add, where workman is in a fit condition to travel*, and to attend for that purpose at such time and place as may be fixed by him].

Dated this day of

Registrar.

FORM 52.

Rules 57 (8), 66 (9), 75 (9).

Notice to Parties of Certificate of Medical Referee.

In the County Court of holden at

[*Heading as in Application.*]

Take notice, that I have received the certificate of the medical referee appointed in this matter, and that you may inspect the same during office hours at my office situate at , and may on request and at your own cost be furnished with or take a copy thereof.

Dated this day of .

To Registrar.
and

FORM 53.

Rule 58 (5).

Notice of Application for Suspension of Right to Compensation or to take or prosecute Proceedings in relation to Compensation, or of Right to Weekly Payments, under Schedule I., paragraph 4, paragraph 14, or paragraph 15, and Rule 58.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of , holden at .

In the matter of the Workmen's Compensation Act, 1906.

In the matter of a claim for compensation made by A. B. of against C. D. & Co., Limited, of

[*or, where an arbitration is pending,*

In the matter of an arbitration between

A. B.
of (*address*)
(*description*) Applicant,

and

C. D. & Co., Limited,
of (*address*)
(*description*) Respondents.]

[*or, where application is made after weekly payment has been settled,*

In the matter of an agreement [*or* a decision *or* an award *or* a certificate] recorded in the above-mentioned court as to the weekly payment payable to A. B. of by C. D. & Co., Limited, of .]

Take notice that I intend to apply to the judge at on the day of at the hour of in the noon [on behalf of Messrs. C. D. & Co., Limited, of, &c.,] for an order suspending your right to compensation in the above-mentioned matter and to take or prosecute any proceedings under the above-mentioned Act in relation to compensation [*or* suspending your right to weekly payments in the above-mentioned matter], on the ground that you refuse to submit yourself to medical examination as required by me [*or* by the said C. D. & Co., Limited], in accordance with paragraph 4 [*or* paragraph 14] of the first schedule to the Act [*or* that you obstruct the medical examination required by me [*or* by the said C. D. & Co., Limited] in accordance with paragraph 4 [*or* paragraph 14] of the first schedule to the Act], [*or* on the ground that you refuse to submit yourself for examination by a medical referee as ordered under paragraph 15 of the first schedule to the Act, *or* that you obstruct the examination by a medical referee ordered under paragraph 15

of the first schedule to the Act], and for consequential directions, and for costs.

Dated this day of .

(Signed) C. D. & Co., Limited,
by Secretary.

To A. B., of
and to Messrs.
(his Solicitors).

[*or*

Solicitors for C. D. & Co., Limited.]

FORM 54.

Præcipe for Payment to Court under Schedule I., Paragraph 5, and Rule 60. Rule 60 (4).

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of an arbitration between
A. B.
of, &c. Applicant.
and
C. D. & Co., Limited,
of, &c. Respondents.

or

[In the matter of an agreement between
A. B.
of, &c.
and
C. D. & Co., Limited,
of, &c.]

or

[In the matter of a certificate given in an action in (*state court*).
Between
A. B.
of, &c. Plaintiff.
and
C. D. & Co., Limited,
of, &c., Defendants]

[*or as the case may be.*]

Take notice, that C. D. & Co., Limited, of [*or* Messrs. solicitors for C. D. & Co., Limited, of] do pay into court [*when paid by solicitors, add* at the request and by the authority of the said C. D. & Co., Limited,], the sum of (*state sum in letters*) , being the sum awarded [*or* agreed *or* directed] to be paid by the said C. D. & Co., Limited, as compensation in the above-mentioned matter.

Dated this day of .

(Signed) C. D. & Co., Limited,
by Secretary.

[*or*

Solicitors for C. D. & Co., Limited]

To the Registrar.

Received the above-mentioned sum of .

Registrar.
[*Date.*]

FORM 55.

Rule 61 (2). **Præcipe for Payment into Court under Schedule I., Paragraph 5, and Rule 61, where there is no dispute as to the liability to pay Compensation, but the Amount payable has not been ascertained or decided by Arbitration or Agreement.**

In the County Court of holden at .

No. of matter,

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an injury by accident to A. B. , late of , which resulted in the death of the said A. B.

Take notice,

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused at (*state place of accident*) to A. B. , late of deceased, a workman employed by [*or* by , a contractor with for the execution of work undertaken by them], and on the day of the death of the said A. B. resulted from the injury.

[*Or in case of industrial disease,*

Take notice,

1. That on the day of Mr. , the certifying surgeon under the Factory and Workshop Act, 1901, for the district of [*or* Mr. , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906,] certified that A. B. , of , was suffering from , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and was thereby disabled from earning full wages at the work at which he was employed; and on the day of the said A. B. died, his death being caused by the said disease.]

[*Or*, That on the day of A. B. , of , was in pursuance of special rules [*or* regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and on the day of the said A. B. died, his death being caused by the said disease.]

[*Or* That on the day of A. B. , late , died, his death being caused by , a disease coming within section 8 of the Workmen's Compensation Act, 1906;

And that the dependants of the said A. B. allege that the above-mentioned disease was due to the nature of the employment of the said A. B. in (*describe employment*), and that he was last employed in such employment within the twelve months previous to his disablement or suspension [*or, if the workman died without having obtained a certificate of disablement, or was not at the time of his death in receipt of a weekly payment on account of disablement*, within the twelve months previous to his death] by C. D. & Co., Limited, of .]

2. There is no dispute as to the liability of the said to pay compensation under the above mentioned Act to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B. , but the amount payable as compensation has not been ascertained or decided either by a committee or by arbitration or by agreement.

3. The said of [*or* Messrs. , solicitors for the said of] do therefore pay into court [*when paid by solicitors, add* at the request of the said] the sum of (*state sum in letters*), being the amount admitted by the said to be payable by them as compensation in the above-mentioned matter.

4. (*a*) The said A. B. was at the date of the accident [*or* disablement *or* suspension *or* death] years of age.

(*b*) He was employed as , and his earnings in the employment of the said during the three years next preceding the injury [*or* disablement *or* suspension *or* death] [*or* his average weekly earnings during the period of this employment under the said] were

5. To the best of the knowledge and belief of the said the persons interested in the said sum as dependants of the said A. B. are

[*State dependants, with their ages and relationship to deceased workman, and places of residence, as far as known.*]

6. The amount admitted by the said to be payable as compensation has been arrived at as follows, viz. :—

Dated this day of .

(Signed)
[*or*
Solicitors for .]

To the Registrar.

Received the above-mentioned sum of , subject to inquiry as to adequacy.

Registrar.
[*Date.*]

FORM 56.

Præcipe for Payment into Court under Schedule I., Paragraph 5, and Rule 62, where Liability to pay Compensation is denied, but the Employer is willing to pay a Sum in Settlement. Rule 62 (2).

In the County Court of , holden at .

In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of a claim for compensation made by the dependants of A. B. , late of , deceased, against C. D. , of .

Take notice,

1. That a claim has been made under the above-mentioned Act by [*or* on behalf of] the dependants of A. B. , late of , deceased, against C. D. , of , for compensation in respect of the injury caused to such dependants by the death of the said A. B. , who died on the day of , 19 .

2. The said dependants allege that the death of the said A. B. resulted from personal injury by accident arising out of and in the course of his employment caused to the said A. B. on the day of at (*state place of accident*) while he was employed as a workman by the said C. D. [*or* by E. F. , a contractor with the said C. D. , for the execution of work undertaken by them].

[*Or, in case of industrial disease,*

2. The said dependants allege that the death of the said A. B. was caused by , a disease coming within Section 8 of the Workmen's Compensation Act, 1906, and that the above-mentioned disease was due to the nature of the employment of the said A. B. in (*describe employment*), and that he was last employed in such employment within the twelve months previous to his disablement [*or* suspension from his usual employment], *or if the workman died without having obtained a certificate of disablement, or was not at the time of his death in receipt of a weekly*

payment on account of disablement, within the twelve months previous to his death] by the said C. D. .]

3. The said C. D. deny their liability to pay compensation under the above-mentioned Act to the dependants of the said A. B. , but to avoid litigation are willing to pay the sum of £ in full settlement of all claims to such compensation, and such of the dependants of the said A. B. as are not under disability are willing to accept such sum in settlement.

4. The said C. D. , of [*or* Messrs. , solicitors for the said C. D. , of], do therefore pay into court [*when paid in by solicitors add* at the request of the said C. D.] the sum of [*state sum in letters*] being the amount which they are willing to pay in full settlement of all claims to compensation in the above-mentioned matter.

5. (*a.*) The said A. B. was at the date of the accident [*or* disablement *or* suspension *or* death] years of age.

(*b.*) He was employed as , and his earnings in the employment of the said C. D. during the three years next preceding the injury [*or* disablement *or* suspension *or* death] [*or* his average weekly earnings during the period of his employment under the said C. D.] were

(*c.*) To the best of the knowledge and belief of the said C. D. the persons interested as dependants of the said A. B. are [*state dependants, with their ages and relationship to deceased, so far as known*].

6. The grounds on which the said C. D. deny their liability to pay compensation are as follows, viz. :—

Dated this day of , 19 .

(Signed)

[*or*

Solicitors for

].

To the Registrar,
County Court.

Received the above-mentioned sum of , subject to inquiry as to adequacy.

Registrar.
[*Date.*]

FORM 57.

Rules 61 (7), 62 (3).

Notice to parties where Registrar refers the question of adequacy of amount paid into Court under Rule 61 or Rule 62 to the Judge.

In the County Court of holden at

[*Heading as in Præcipe for Payment into Court.*]

Take notice, that I have referred the question of the adequacy of the amount paid into court in this matter to the judge.

And further take notice, that by order of the judge you are hereby summoned to attend before the judge at a court to be holden at on the day of at the hour of in the noon, when the matter will be inquired into by the judge;

And that if you do not attend either in person or by your solicitor on the day and at the hour above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of

Registrar.

To [*the employer and the persons appearing by the præcipe to be interested in the amount paid in.*]

FORM 58.

Notice by Registrar of Payment into Court under Schedule I., Paragraph 5. Rule 60 (5).

(i.)

(i.) *Where amount payable has been ascertained or decided, and payment into Court is made under Rule* 60.

In the County Court of holden at

[*Heading as in Præcipe for Payment into Court.*]

Take notice, that the sum of has been paid into court as compensation in the above-mentioned matter.

Any person interested in the said sum may apply to the court for an order for the investment and application of the said sum for the benefit of the persons entitled thereto in accordance with paragraph 5 of the first schedule to the Workmen's Compensation Act, 1906, and the rules of court made under the said Act.

Dated this day of

Registrar.

To .

(ii.)

(ii.) *Where amount payable has not been ascertained or decided, and payment into Court is made under Rule* 61 *or Rule* 62. Rules 61 (4), 62 (3).

In the County Court of holden at .

[*Heading as in Præcipe for Payment into Court.*]

Take notice, that the sum of £ has been paid into court as compensation in the above-mentioned matter.

If any question arises as to the adequacy of the amount paid into court, such question, and all questions as to who are dependants, and the amount payable to each dependant, must be settled by arbitration in accordance with the above-mentioned Act and the Rules of Court made under the said Act.

If no question arises as to the adequacy of the amount paid into court, any person interested in the said sum may apply to the court for an order for the investment and application of the said sum for the benefit of the persons entitled thereto in accordance with paragraph 5 of the first schedule to the Workmen's Compensation Act, 1906, and the Rules of Court made under the said Act.

Dated this day of

Registrar.

To

FORM 59.

Application for Investment or Application of Money paid into Court under Schedule I., Paragraph 5, and Rules 60, 61, 62. Rules 60 (10*a*), 61 (8), 62 (3).

[*Not to be printed, but to be used as a Precedent.*]

(1) *Application for Investment and Application of the Sum paid into Court.*

In the County Court of holden at .

[*Heading as in Præcipe for Payment into Court.*]

Take notice, that I [*name and address of applicant*] intend to apply to the judge at , on the day of , at the hour of in the noon, on behalf of myself and of [*specify the persons on whose behalf the application is made*], as dependants of the above-named A. B., for an order for the investment and application of the sum paid into court in the above-mentioned matter, and

for the allotment of the same between the dependants of the said A. B.

To the best of my knowledge and belief the persons interested in the said sum as dependants of the said A. B. are

[*State dependants, with their ages and relationship to deceased workman, and places of residence.*]

I intend to apply for an order for the investment and application of the said sum, and for the allotment of the same between the dependants of the said A. B. as follows, viz. :—

[*State how applicant wishes the sum to be dealt with.*]

or in such other manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under the above-mentioned Act, and for consequential directions.

Dated this day of .

(Signed)

To the Registrar and (*to any other parties interested, where the application is made on behalf of some only of the parties interested*).

(2) *Application for Investment and Application of the Amount allotted to any Person.*

In the County Court of holden at .

[*Heading as in Præcipe for Payment into Court.*]

Take notice, that I [*name and address of applicant*] intend to apply to the judge at on the day of at the hour of in the noon, on behalf of myself [*or* of] for an order for the investment and application of the sum paid into court in the above-mentioned matter and allotted to me [*or* to the said].

I intend to apply for an order for the investment and application of the said sum as follows, viz. :—

[*State how applicant wishes the sum to be dealt with.*]

or in such other manner as the court in its discretion thinks fit for my benefit [*or* for the benefit of the said], and for consequential directions.

Dated this day of .

(Signed)

To the Registrar.

FORM 60.

Rule 63.

Application for Order for Payment into Court of Weekly Payment payable to Person under Disability. Schedule I., Paragraph 7, and Rule 63.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at

[*Heading as in Award, Memorandum, or Certificate.*]

Take notice, that I [*name and address of applicant*] intend to apply to the judge at on the day of , at the hour of in the noon, for an order that the weekly payment payable in the above-mentioned matter to a person under legal disability [*or* to me] be during his [*or* my] disability paid into court, and for consequential directions.

Dated this day of .

(Signed)

To the Registrar and (*to the parties interested*).

FORM 61.

Application for Variation of Order under Schedule I., Paragraph 9, and Rule 64. Rule 64.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Award, Memorandum or Certificate.*]

Take notice, that I [*name and address of applicant*] intend to apply to the judge at on the day of , at the hour of in the noon, for an order that the order of the court [*or* the award] made in the above-mentioned matter on the day of as to the apportionment of the sum paid as compensation among the dependants of A. B. deceased [*or* as to the manner in which the sum payable to a dependant of A. B. deceased, should be invested, applied or otherwise dealt with] may be varied by directing [*here state variation claimed by applicant*] and for consequential directions.

And further take notice that the circumstances in which this application is made are

(*State particulars.*)

Dated this day of .

(Signed)

Applicant

[*Or*

Applicant's Solicitor.]

To the Registrar,
and to (*all persons interested*).

FORM 62.

Application by Workman intending to cease to reside in the United Kingdom for Reference to Medical Referee under Schedule I., Paragraph 18. Rule 66 (2).

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an agreement [*or* a decision *or* an award *or* a certificate] recorded in the above-mentioned Court as to the weekly payment payable to A. B. of by C. D. & Co., Limited, of

Take notice, that A. B. of , to whom under an agreement [*or* a decision *or* an award *or* a certificate] in the above-mentioned matter recorded in this Court on the day of a weekly payment of is payable by the above-mentioned C. D. & Co., Limited, as compensation for personal injury caused to the said A. B. by accident arising out of and in the course of his employment, intends to cease to reside in the United Kingdom;

And that the said A. B. intends to apply to the registrar at , on the day of , at the hour of in the noon, for an order referring to a medical referee the question whether the incapacity of the said A. B. resulting from the injury is likely to be of a permanent nature.

A report of a medical practitioner, setting out the nature of the incapacity of the said A. B. resulting from the injury, is hereto annexed.

Dated this day of .

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

To the Registrar of the Court,
and to (*the employer*).

FORM 63.

Rule 66 (6).

Order of Reference, Schedule I., Paragraph 18.

In the County Court of holden at .

On the application of of (a copy of which is hereto annexed),

I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said (*name of workman*) , and to give his certificate as to whether the incapacity of the said (*name of workman*) resulting from the injury is likely to be of a permanent nature.

A copy [*or* copies] of the report [*or* reports] of the medical practitioner [*or* practitioners] by whom the said has been examined is [*or* are] hereto annexed. [*Add, if so*, Copies of the statements submitted to me by the parties are also hereto annexed.]

The said , who is now at , has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[*or* The said does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the registrar at the County Court Office situate at on or before the day of , specifying therein the nature of the incapacity of the said , resulting from the injury, and whether such incapacity is likely to be of a permanent nature.

Dated this day of .

Judge [*or* Registrar].

FORM 64.

[*To be printed on thick blue foolscap.*]

Rule 66 (10c), 75 (11).

Certificate of Identity.

[TO BE CAREFULLY PRESERVED.]

NOTICE.—THIS CERTIFICATE IS NO SECURITY WHATEVER FOR A DEBT.

No. of Certificate.

In the County Court of holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

This is to certify that A. B. late of [*address and description*], is entitled to a weekly payment of from [*name and address of employer*] as compensation payable to the said A. B. in respect of personal injury caused to him by accident arising out of and in the course of his employment, such weekly payment to continue during the total or partial incapacity of the said A. B. for work:

And that the description of the said A. B. and his incapacity for work, as certified by the medical referee appointed in this matter, are as follows:—

Age,
Height,
Hair, Eyes,
Nature of incapacity,

[*Describe nature of incapacity, as in certificate of medical referee.*]

Dated this day of .

Registrar.

FORM 65.

Notice to be given to Workman intending to cease to reside in the United Kingdom. Rule 66 (10).

[*Heading as in Award, Memorandum, or Certificate.*]

Take notice, that if you desire to obtain payment of the weekly payments payable to you under the award [memorandum *or* certificate] hereto annexed while you are residing out of the United Kingdom, you must, at intervals of three months from the date up to which such payments have been made, submit yourself to examination by a medical practitioner in the place where you are residing, and produce to him the copy of the certificate of the medical referee and the certificate of identity hereto annexed; and you must obtain from such medical practitioner a certificate in the form hereto annexed that he has examined you, and that your incapacity resulting from the injury specified in the certificate of the medical referee continues: and such certificate must be verified by the medical practitioner by declaration in your presence before some such person as hereinafter mentioned.

You must also attend before some such person as hereinafter mentioned, and make a declaration in the form hereto annexed that you are the same person as mentioned in the copy of the certificate of the medical referee and in the certificate of identity hereto annexed, and in the certificate of the medical practitioner by whom you have been examined, producing to such person the copy and certificates above mentioned.

You must then transmit to me, at my office, situate at the certificate of the medical practitioner by whom you have been examined, and your declaration, together with a request for transmission to you of the amount of the weekly payments due to you, specifying the place where and the manner in which the amount is to be transmitted, according to the form hereto annexed, which request must be signed in your own handwriting.

In the event of your death while residing out of the United Kingdom, your representatives must, in order to obtain payment of the arrears due to you, transmit to me at my office, situate at , a certificate of your death, and documents showing that they are entitled to such arrears, verified by declaration before a person having authority to administer an oath, with a request for transmission to them of the amount of such arrears, specifying the place where and the manner in which such amount is to be transmitted to them.

The expression "your representatives" means—

(*a*) if you leave a will, the executors of such will; or

(*b*) if you die intestate, the persons who are according to law entitled to your personal estate; and payment of the arrears may be made to such persons without the production of letters of administration.

The persons before whom a certificate may be verified or a declaration made are:—

1. Any person having authority to administer an oath in the place in which you reside.

2. Any British ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or legation, exercising his functions in any foreign place in which you reside, or any British consul-general, consul, vice-consul, acting-consul, pro-consul, or consular agent exercising his functions in any foreign place in which you reside.

Dated this day of .

Registrar.

To A. B.
of (*address and description*).

FORM 66.

Rule 66 (10, 11). **Form of Medical Certificate to be obtained by Workman residing out of the United Kingdom.**

[*Heading as in Award, Memorandum, or Certificate.*]

I (*name, address, and medical qualification of medical practitioner*) hereby certify that I have this day examined A. B. of whom I conscientiously believe to be the same person as A. B. of , described in the copy certificate of the medical referee in the above-mentioned matter, dated the day of , and in the certificate of identity dated the day of produced to me by the said A. B. ; and that in my opinion the incapacity of the said A. B. resulting from the injury described in the said certificate of the medical referee still continues.

Dated this day of .

(Signature)

Declared at this day of , in the presence of the said A. B. , the copy of the certificate of the medical referee and the certificate of identity above-mentioned being at the same time produced,

Before me—

[*Signature and description of person before whom the declaration is made.*]

FORM 67.

Rule 66 (10, 12). **Declaration of Identity by Workman residing out of the United Kingdom.**

[*Heading as in Award, Memorandum, or Certificate.*]

I, A. B. of hereby declare that I am the same person as A. B. of described in the copy of the certificate of the medical referee in the above-mentioned matter, dated the day of , now produced by me, and in the certificate of identity, dated the day of , now produced by me, and the same person as A. B. of described in the certificate of declared by the said in my presence on the day of , and now produced by me.

(Signed)

A. B.

Declared at this day of , the certificates above mentioned being at the same time produced,

Before me—

[*Signature and description of person before whom the declaration is made.*]

FORM 68.

Request for Transmission of Amount of Weekly Payments by Workman residing out of United Kingdom. Rule 66 (13).

[*Heading as in Award, Memorandum, or Certificate.*]

Sir,

I herewith enclose medical certificate and affidavit of identity, and request that the amount of the weekly payments due to me in the above-mentioned matter may be transmitted to me at

(*give full address*)

(*state how transmission to be made, as*)—

by Post Office Order payable at

(*name of Post Office*)

or by bankers draft on the

(*name and address of Bank*).

I am, Sir,

Your obedient Servant,

A. B.

[*To be signed by the workman in his own handwriting.*]

To the Registrar
of the County Court of
holden at
[*add address of Registrar's Office.*]

FORM 69.

Notice by Registrar to Employer of Receipt of Medical Certificate and Declaration of Identity. Rules 66 (15), 75 (15).

[*Heading as in Award, Memorandum, or Certificate.*]

TAKE NOTICE. that I have received proof of identity and of continuance of incapacity in the above-mentioned matter.

And I have to request you to transmit the sum of , being the amount of the weekly payments payable to A. B. under the above-mentioned award [memorandum *or* certificate] from (*the date to which they were last paid*) to (13 *weeks from that date*) to me, to be by me remitted to the said A. B.

Dated this day of .

Registrar.

To (*name and address of employer*).

FORM 70.

Certificate of Registrar where lump Sum payable in Redemption of weekly Payments to French Citizen or Sum payable to Dependants of French Citizen is to be transmitted to France. Rules 73, 74. Rules 73, 74.

In the matter of the Workmen's Compensation Act, 1906, and the Workmen's Compensation (Anglo-French Convention) Act, 1909.

No. of Matter .

In the matter of an arbitration between A. B. of , Applicant.

and

C. D. of , Respondents.

I hereby certify—

1. That on the day of an award was made by the Judge of this Court in the above-mentioned matter, whereby the above-mentioned

C. D. were ordered to pay to the above-mentioned A. B., a French citizen, the weekly sum of as compensation for personal injury caused to the said A. B. on the day of by accident arising out of and in the course of his employment as a workman employed by the said C. D.

2. And that on the day of a further award was made by the Judge of this Court in the above-mentioned matter whereby the above-mentioned C. D. were ordered to pay to the said A B. the lump sum of £ in redemption of the said weekly payment:

3. And that the said A. B. has signified to me his intention of returning to reside in France.

[*Or, in case of deceased workman,*

I hereby certify—

1. That on the day of an award was made by the Judge of this Court in the above-mentioned matter, whereby the above-mentioned C. D. were ordered to pay to [*here insert names of dependants, as appearing in the award*].

the dependants of A. B., late of , deceased, a French citizen, the sum of £ as compensation for the injury resulting to such dependants from the death of the said A. B. which took place on the day of from injury caused to the said A. B. on the day of by accident arising out of and in the course of his employment as a workman employed by the said C. D.

2. And that the dependants of the said A. B. have signified to me their intention of returning to reside in France [*or* resided in France at the time of the death of the said A. B.].]

I do therefore, pursuant to the Workmen's Compensation (Anglo-French) Convention Act, 1909, and the Order in Council made thereunder, herewith pay over to the Caisse Nationale des Retraites pour la Vieillesse the sum of £ sterling, being the total sum due to the said A. B. [*or* to the dependants of the said A. B.] under the said award, to be applied in accordance with the said Convention.

Dated this day of .

Registrar.

To the Controller
Caisse Nationale Francaise des Retraites pour la Vieillesse,
Paris, France.

FORM 71.

Rule 75 (4).

Application by Workman in Receipt of weekly Payment, who is a French Citizen and intends to return to reside in France, for Reference to Medical Referee under Rule 75 (4).

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of an award recorded in the above-mentioned Court as to the weekly payment payable to A. B. , of , by C. D. & Co., Limited, of

Take notice, that A. B. , of , a French citizen, to whom under an award in the above-mentioned matter recorded in this Court on the day of a weekly payment of is payable by the above-mentioned C. D. & Co., Limited, as compensation for personal injury caused to the said A. B. by accident arising out of and in the course of his employment, intends to return to reside in France;

And that the said A. B. intends to apply to the registrar at on the day of , at the hour of in the

noon, for a certificate of a medical referee as to the nature of the incapacity of the said A. B. resulting from the injury.

Dated this day of .

(Signed)

Applicant.

[*Or*,

Applicant's Solicitor.]

To the Registrar of the Court
and to [*the employer*].

FORM 72.

Order of Reference, Rule 75 (7). Rule 75 (7).

In the County Court of holden at

[*Heading as in Application, Form* 71.]

On the application of of (a copy of which is hereto annexed),

I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said [*name of workman*] , and to give his certificate as to the nature of the incapacity of the said [*name of workman*] resulting from the injury.

The nature of the injury in respect of which the award was made, so far as it appears on the records of the Court, was as follows [*state it*]

A copy [*or* copies] of the report [*or* reports] of the medical practitioner [*or* practitioners] by whom the said has been examined is [*or* are] hereto annexed. [*Add, if so*, Copies of the statements submitted to me by the parties are also hereto annexed.]

The said , who is now at , has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[*or* The said does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the Registrar at the County Court office situate at on or before the day of , specifying fully therein the nature of the incapacity (if any) of the said resulting from the injury.

Dated this day of

Judge [*or* Registrar].

FORM 73.

Application by French Citizen intending to return to reside in France to fix Intervals at which Certificates of Continuance of Incapacity are to be furnished by him. Rule 75 (10). Rule 75 (10).

[*Heading as in Form* 71.]

TAKE NOTICE, that I intend to apply to the registrar at on the day of , at the hour of in the noon, for an order fixing the intervals at which certificates of the continuance of the incapacity specified in the certificate of the medical referee given in this matter are to be furnished by me on my returning to reside in France.

Dated this day of .

(Signed)

Applicant.

To the Registrar of the Court
and to (*the employer*).

FORM 74.

Rule 75 (10). **Order as to Intervals at which Certificates of Continuance of Incapacity are to be furnished by French Citizen residing in France. Rule 75 (10).**

[*Heading as in Form* 71].

On the application of I order that certificates of the continuance of the incapacity specified in the certificate of the medical referee given in this matter are to be furnished by the said , who intends to return to reside in France, at intervals of months, the first of such certificates to be furnished on the day of .

Dated this day of 19 .

Registrar.

To [*the applicant and the employer*].

FORM 75.

Rule 75 (11). **Notice to be given to Workman who is a French Citizen and intends to return to reside in France. Rule 75 (11).**

[*Heading as in Award.*]

TAKE NOTICE, that if you desire to have the weekly payments payable to you under the award hereto annexed remitted to you while you are residing in France, you must at intervals of three months from the date up to which such payments have been made produce to the Mayor of the Commune in which you reside the certificate of identity hereto annexed, and obtain from him a certificate that you were alive on the day when the certificate of identity was produced. You must also at intervals of* months from the date up to which such payments have been made obtain from a medical practitioner employed in an official capacity in the Department in which you reside a certificate that he has examined you and that your incapacity resulting from the injury, as specified in the certificate of the medical referee hereto annexed, still continues.

* As fixed by the Registrar.

You must then forward the certificate of the Mayor, and, where a certificate of a medical practitioner is required, such certificate (which certificate or certificates must be authenticated by a *visé* of the Prefecture of the Department attesting the official status of the Mayor and medical practitioner respectively), with a request for payment of the weekly payments due to you, to the French consular authority for the district in which the Court is situated, to be by him transmitted to me.

In the event of your death while in the receipt of weekly payments, your representatives must, in order to obtain payment of the arrears due to you, forward a certificate of your death and documents showing that they are entitled to such arrears, with a request for payment of such arrears, to the consular authority, to be by him transmitted to me.

Dated this day of .

Registrar.

To A. B.

[*Address and description.*]

FORM 76.

Notice of Application for Determination of Amount of Costs under Schedule II., Paragraph 14, and Rule 80. Rule 80 (5).

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Award or Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge at on the day at the hour of in the noon, to determine the amount of costs to be paid to me as solicitor [*or* agent] for you A. B. in the above-mentioned matter; and for an order declaring that I am entitled to a lien for such amount on or to deduct such amount from the sum awarded as compensation to you the said A. B. in the above-mentioned matter, and for consequential directions.

Dated this day of .

Applicant.

To the Registrar of the Court, and to A. B. of

FORM 77.

Execution on Award or Memorandum or Certificate. Rule 82.

In the County Court of , holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the judge [*or* by Mr. , an arbitrator appointed by the judge] whereby it was ordered [*state operative parts of award*]

[*or* Whereas on the day of a memorandum was recorded in this Court of an agreement [*or* a decision *or* an award] come to [*or* given *or* made] in the above-mentioned matter, whereby it was agreed [*or* ordered] [*state operative parts of agreement, decision or award*]:

[*or* Whereas on the day of a memorandum was recorded in this Court of a certificate given by the County Court of holden at to the effect that [*state operative parts of certificate*]:

And whereas default has been made in payment of the sum of £ payable by the said into Court [*or* to the said A. B.] according to the said award [*or* memorandum *or* certificate];

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of [*name the party*

against whose goods execution is issued] wheresoever they may be found within the district of this Court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due under the said award [*or* memorandum *or* certificate], together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the said which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the Registrar of this Court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this day of 19 .

By the Court,

To the High Bailiff of the said Court, and others the Bailiffs thereof. Registrar.

	£	*s.*	*d.*
Amount in payment whereof default has been made ...			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon].			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said

Application was made to the Registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

SEE BACK.

51 & 52 Vict. c. 43, s. 155.

[*To be indorsed on every warrant of execution.*]

FEES FOR THE EXECUTION OF THIS WARRANT.

Order XXV. Rule 17.

The fees for keeping possession of the goods seized (including expenses of removal, storage of goods, and all other expenses) is SIXPENCE IN THE POUND PER DAY NOT EXCEEDING SEVEN DAYS ON THE VALUE OF SUCH GOODS, to be fixed by appraisement in case of dispute, so that the total fee does not exceed 10*s.* per day although the value may exceed 20*l.*, and, in addition, for feeding animals, the actual cost thereof.

If the debtor pays the amount to be levied, as stated on the other side, within half an hour of the entry of the bailiff, he will not be required to pay to him any further sum.

If possession is kept after the seventh day at the written request of both parties, the fees and costs of keeping possession as above may be allowed for a reasonable further time in respect of such possession.

If the goods are removed, the debtor will have to pay the appraisement fee as undermentioned.

If the goods are sold, the following fees are chargeable for the appraisement and sale, and no others:—

For the appraisement, SIXPENCE IN THE POUND on the value of the goods appraised, over and above the stamp duty.

For the sale, including advertisements, catalogues, sale and commission, and delivery of the goods, ONE SHILLING IN THE POUND ON THE NET PRODUCE OF THE SALE.

For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the last-mentioned fee, the sum actually and necessarily paid.

Where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, there may be allowed all charges actually and necessarily incurred for inventory, appraisement, cataloguing, lotting, and preparing for sale, not exceeding ONE SHILLING IN THE POUND on the value of the goods seized, if such value does not exceed ten pounds, and EIGHTPENCE IN THE POUND on any excess above ten pounds, the value to be fixed by appraisement in case of dispute, and in addition any sum actually and necessarily paid for advertising pursuant to section 145 of the Bankruptcy Act, 1883.

If the goods are removed, the bailiff is required to give the debtor a sufficient inventory of the goods so removed, and to give him notice of the time when and the place where such goods will be sold, at least twenty-four hours before the time fixed for the sale.

If the goods are sold, the bailiff is required to furnish the debtor, on request, with a detailed account in writing of the sale, and of the application of the proceeds thereof.

[*This form to be adapted to the circumstances of the case where execution is ordered to issue under Rule* 81, *paragraph* (*e*), *for costs.*]

FORM 78.

Judgment Summons on Award, Memorandum, or Certificate. Rule 83 (3).

In the County Court of holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the judge [*or* by Mr. , an arbitrator appointed by the judge], whereby it was ordered [*state operative parts of award*]:

[*or* Whereas on the day of a memorandum was recorded in this court of an agreement [*or* a decision *or* an award] come to [*or* given *or* made] in the above-mentioned matter, whereby it was agreed [*or* ordered] [*state operative parts of agreement, decision, or award*]:

[*or* Whereas on the day of a memorandum was recorded in this court of a certificate given by the County Court of holden at to the effect that [*state operative parts of certificate*]:

And whereas default has been made in payment of the of £ payable by you the above-named into court [*or* to the said A. B.] according to the said award [*or* memorandum *or* certificate]:

You the said are therefore hereby summoned to appear personally in this court at [*place where court holden*] on the day of , 19 , at the hour of in the noon, to be examined on oath by

the court touching the means you have or have had since the date of the award [*or* memorandum *or* certificate] to pay the said sum, in payment of which you have made default; and also to show cause why you should not be committed to prison for such default, or why a receiving order should not be made against you pursuant to sub-section 5 of section 103 of the Bankruptcy Act, 1883.

Dated this day of 19 .

Registrar.

To [*name and address of the party against whom the summons is issued.*]

	£	*s.*	*d.*
Amount in payment of which default has been made ...			
Cost of this summons			
Total sum due			

NOTE.—*This form to be adapted to the circumstances of the case where a summons is issued under the County Court Rules, Order XXV., Rule* 27, *against a person alleged to be a partner in or sole member of a firm, or to be carrying on business in any name other than his own;* see *Form* 184 *in the Appendix to the County Court Rules. If an order of commitment is made it should be according to Form* 189 *or Form* 191 *in the said Appendix, such form being adapted to the case of default in payment of an amount due under an award, memorandum, or certificate.*

FORM 79.

Register.

Rule 97.

The Workmen's Compensation Act, 1906.

Register.

No of Matter.	Title.	Date of Proceedings.	Nature.
1	In the matter of the arbitration between A. B., of &c., Applicant, and C. D. & Co., Limited, of, &c., Respondents.	July 11, 1913	Request for arbitration filed, and copy sent to judge.
		July 20, 1913	Appointment of Mr. as arbitrator.
		July 24, 1913	Copy request sent to arbitrator.
		July 29, 1913	Day for arbitration fixed.
		July 29, 1913	Notice of day fixed sent to applicant, and notice with copy request sent to respondents by registered post.

REGISTER—*continued.*

No. of Matter.	Title.	Date of Proceedings.	Nature.
		Aug. 5, 1913	Respondents' answer filed; copies sent to arbitrator and applicant.
		Aug. 19, 1913	Five subpœnas issued on application of applicant's solicitor.
		Aug. 23, 1913	Arbitration held; Mr. appointed as medical referee to report; further hearing adjourned.
		Sept. 5, 1913	Report of medical referee received and forwarded to arbitrator; notice given to the parties.
		Oct. 16, 1913	Further hearing. Award made as follows (enter minute of award).
		Oct. 23, 1913	Costs of applicant taxed at £ .
		Nov. 5, 1913	£ for costs paid into Court by respondents.
		Nov. 11, 1913	£ for costs paid to applicant's solicitor.
2.	In the matter of an agreement between A. B., of , and E. F. & Co., Limited, of, &c.	Oct. 7, 1913	Memorandum of agreement as to compensation, signed by A. B., left to be recorded.
		Oct. 8, 1913	Notice and copy memorandum sent by post to E. F. & Co., Limited.
		Oct. 10, 1913	Notice received from E. F. & Co., Limited, disputing memorandum.
		Oct. 10, 1913	Notice sent to A. B. that memorandum is disputed, and will not be recorded without consent in writing of E. F. & Co., Limited, or order of judge.

REGISTER—*continued.*

No of Matter.	Title.	Date of Proceedings.	Nature.
		Oct. 15, 1913	Application on behalf of A. B. that memorandum be recorded.
		Oct. 22, 1913	Application heard, and order made that memorandum be recorded with alterations.
		Oct. 24, 1913	Memorandum recorded as follows [*set out memorandum*].
		Oct. 31, 1913	Costs of A. B. taxed and allowed at £ .
		Nov. 18, 1913	Execution issued for costs.
			&c., &c., &c,

NOTE.—*Similar entries to be made as to all matters required to be recorded.*

We, William L. Selfe, William Cecil Smyly, Robert Woodfall, Thomas C. Granger, and H. Tindal Atkinson, being the five judges of the County Courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, having made the foregoing Rules of Court, pursuant to paragraph twelve of the Second Schedule to the Workmen's Compensation Act, 1906, do hereby certify the same under our hands, and submit them to the Lord Chancellor accordingly.

WM. L. SELFE.
WILLIAM CECIL SMYLY.
R. WOODFALL.
T. C. GRANGER.
H. TINDAL ATKINSON.

I allow these Rules,

The 6th of May, 1913. HALDANE, C.

APPENDICES.

APPENDIX AA.

REGULATIONS, DATED JUNE 21, 1907, MADE BY THE SECRETARY OF STATE AND THE TREASURY AS TO THE DUTIES AND FEES OF CERTIFYING AND OTHER SURGEONS, AND AS TO REFERENCES TO AND REMUNERATION AND EXPENSES OF MEDICAL REFEREES, IN ENGLAND AND WALES, UNDER SECTION 8 OF THE ACT.

DEFINITIONS.

1. In these regulations—

(i.) "Act" means the Workmen's Compensation Act, 1906.

(ii.) "Workman" means a workman as defined in section 13 of the Act.

(iii.) "Certifying surgeon" means either the certifying surgeon mentioned in sub-section (1) (i.) of section 8 of the Act, or a medical practitioner appointed by the Secretary of State under sub-section (5) of section 8 to have the powers and duties of a certifying surgeon under the said section.

(iv.) "Appointed surgeon" means a surgeon having power, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, to suspend a workman from employment in the process or processes specified in such rules or regulations.

(v.) "Medical referee" means a medical practitioner appointed by the Secretary of State to act as medical referee for the purposes of section 8 of the Act.

(vi.) The words "disease to which the Act applies" mean a disease mentioned in the third schedule to the Act or a disease or injury (not being an injury by accident) to which the provisions of section 8 of the Act have been extended by an Order made by the Secretary of State under sub-section (6) of that section.

2. Where a workman applies to a certifying surgeon for a certificate (hereinafter called "a certificate of disablement") that he is suffering from a disease to which the Act applies, and is thereby disabled from earning full wages at the work at which he was employed, the certifying surgeon, on payment of the prescribed fee, and after obtaining the particulars specified in Form 1. the schedule to these regulations and such further information, if any, respecting the case as in the particular circumstances he may deem necessary, shall either proceed at once, if the application is made by the workman in person, to make a medical examination of the workman, or shall appoint forthwith a time and place for

making such examination, and give notice thereof to the workman. Such notice, if given in writing, shall follow, as closely as may be, the form prescribed in the schedule.

Form 2.

3. After personally examining the workman, the certifying surgeon shall either give the workman a certificate of disablement or shall certify that he is not satisfied that the workman is entitled to such certificate, and shall in either case deliver his certificate to the workman. The certificate given shall be in the form prescribed in the schedule to these regulations.

Forms 3 and 5.

Not satisfied: See notes to section 8, p. 1412.

4. Where, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, the certifying or appointed surgeon, after having personally examined a workman, suspends him from his usual employment on account of his having contracted any disease to which the Act applies, or where in the case of a workman applying to be suspended on account of his having contracted any such disease, the surgeon as aforesaid, after having personally examined such workman, refuses to order his suspension, he shall, on the application either of the employer or of the workman, and on payment of the prescribed fee, certify such suspension or refusal to suspend in accordance with the form prescribed in the schedule to these regulations, and shall deliver such certificate to the applicant.

Forms 6 and 8.

5. Where a certificate of disablement is given or a workman is suspended, and the case is one in which, under the provisions of sub-section (2) of section 8 of the Act as extended by any order of the Secretary of State made under sub-section (6) of the said section, the disease contracted by the workman will be deemed, unless the employer proves, or the certifying surgeon certifies, to the contrary, to have been due to the nature of the employment in the process in which at or immediately before the date of the disablement or suspension the workman was employed, the certifying surgeon, if he is of opinion that the disease contracted by the workman was not due to the nature of such employment, shall certify accordingly. Such certificate shall, where possible, be given simultaneously with, and included in, the certificate of disablement or the certificate (if any) of suspension, but may also be given separately on application by the employer and on payment of the prescribed fee; and in either case shall follow the form prescribed in the schedule to these regulations.

See Forms 4 and 7.

For the purposes of this regulation an appointed surgeon shall have the same powers and duties as a certifying surgeon.

6. A copy of any certificate given by a certifying or appointed surgeon under the foregoing regulations shall, together with any other documents relating to the case, be retained and kept by the surgeon; and copies of any such certificate shall, on payment of the prescribed fee, be supplied by the surgeon to the employer and the workman.

7. The fees which the certifying and appointed surgeons shall be entitled to charge in respect of duties performed under section 8 of the Act shall be as follows:—

FEES PAYABLE BY THE WORKMAN.

(i.) For any certificate given under regulation 3—

(*a*) in cases where the medical examination of the workman is made by the surgeon in the performance of his duties under the Factory and Workshop Act, 1901, a fee of 1*s.*;

(*b*) In all other cases, a fee of 5*s.*, and where the workman is unable to present himself for examination at the residence of, or other nearer place fixed by, the certifying surgeon, for every mile or portion thereof which the certifying surgeon is required to travel therefrom for the purpose of examining the workman, an additional fee of 1*s.*

(ii.) For any certificate of suspension or refusal to suspend, under regulation 4, when the medical examination of the workman is made in pursuance of any special rules or regulations under the Factory and Workshop Act, 1901, a fee of 1*s.*

(iii.) For a copy of any certificate obtained under regulation 6, a fee of 1*s.*

FEES PAYABLE BY THE EMPLOYER.

(iv.) For any certificate of suspension or refusal to suspend, obtained by the employer under regulation 4, a fee of 1*s.*

(v.) Where the employer applies under regulation 5 for a certificate that the disease contracted is not due to the nature of the employment, in respect of every such application (to include the certificate, if given), a fee of 2*s.* 6*d.*

(vi.) For a copy of any certificate obtained under regulation 6, a fee of 1*s.*

REFERENCES TO MEDICAL REFEREES.

8. Where the employer or workman is aggrieved by the action of a certifying or appointed surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman, he may—

(*a*) if he is an employer, within seven days of the receipt of the notice of disablement or suspension required to be given under the Act, or, in a case of disablement, if the notice is not accompanied by the certificate of the surgeon, or a copy thereof, and the employer forthwith requires the workman to furnish him with a copy, within seven days of the receipt of such copy, or

(*b*) if he is a workman, within seven days of the date on which the surgeon has refused to give him a certificate of disablement or suspension,

apply to the registrar of the county court for the district in which the workman was employed at the time of his examination by the surgeon, for the matter to be referred to a medical referee; provided that it shall be within the discretion of the registrar, on good cause shown, to extend in any case by not more than seven days the period within which an application is required to be made.

Forms 9 and 10.

9.—(*a*) Any application under the foregoing regulation shall be made in writing, and shall state the grounds on which the reference is asked for, in accordance with the form prescribed in the schedule to these regulations, or as near thereto as may be.

(*b*) The application shall be accompanied by the certificate or a copy of the certificate obtained from the surgeon by whose action the applicant is aggrieved, and by any available report or reports of any medical practitioner by whom the workman has been examined ; and if the applicant is an employer, by the notice of disablement or suspension served on him by the workman, and by an undertaking to pay any reasonable travelling expenses incurred by the workman in attending for examination by the medical referee.

(*c*) The applicant shall also file with the registrar such copies of the application and other documents as aforesaid as may be necessary for the use of the medical referee and of the employer or workman, as the case may be, hereinafter referred to as the respondent, who together with the applicant is directly interested in the application.

(*d*) In the event of any dispute as to the amount of the travelling expenses payable to the workman by the employer, the matter may be referred to the registrar, whose decision shall be final.

10. It shall be the duty of the registrar on receiving an application to satisfy himself that it is duly made in accordance with the foregoing regulations, and if it is not, to return it for amendment. If and when the application is in accordance with the regulations, he shall refer the matter forthwith to a medical referee, and shall forward to such medical referee by registered post one of the copies of the application and the other documents filed therewith, with an order of reference according to the form prescribed in the schedule.

Form 11.

Form 12.

11. The registrar shall also make an order directing the workman to submit himself for examination by the medical referee. Before making such order the registrar shall inquire whether the workman is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition shall by the order direct him to attend at such place as the referee may fix, and if satisfied that he is not in a fit condition to travel, shall so state in the order of reference ; and it shall be the duty of the workman, on being served with the order, to submit himself for examination accordingly.

12. The registrar shall deliver or send by registered post to both parties a copy of the order of reference, and shall also send to the respondent copies of the other documents forwarded to the medical referee, and shall send to the workman a copy of the order directing him to submit himself for examination.

13. In the case of a reference under these regulations, the medical referee shall be one of those appointed by the Secretary of State for the county court circuit which includes the district in which the case arises, and if the circuit has been sub-divided and medical referees have been appointed for the sub-divisions, shall be one appointed for the sub-division comprising the

aforesaid district. Provided that if any medical referee is or has been specially appointed by the Secretary of State, either for the circuit or otherwise, for the purpose of deciding on any specified case or class of cases in which a reference may be made under these regulations, the reference in any such case shall be made to the medical referee so appointed. Provided also that if the surgeon by whose action the applicant is aggrieved has been appointed a medical referee, the reference shall not be made to him, but to such other medical referee as may be authorised to act.

14. The medical referee shall, on receipt of an order of reference duly signed by the registrar of a county court, together with copies of the documents required to be sent therewith, fix a time and a place for a personal examination of the workman, and shall send notice to the employer and workman accordingly. It shall be the duty of the workman, and, if the employer is the applicant, of the employer or a person duly authorised by him, to attend at the time and place fixed by the medical referee, and in the event of failure on the part of the workman or employer or both to appear as required by this regulation, the medical referee shall decide on the matter referred to him forthwith upon such information as shall be available and with or without a personal examination. Provided that where the absence of the employer or his representative or of the workman is shown to the satisfaction of the medical referee to be unavoidable, or where the medical referee considers it necessary to apply for expert assistance as hereinafter provided, it shall be open to him to adjourn the inquiry on the reference and to resume it at such time and place as he may fix, after giving due notice to all parties concerned. Forms 13 and 14.

15. Except as otherwise provided by regulation 14, the medical referee shall, before deciding on the matter referred to him, make a personal examination of the workman, and shall consider any statements made or submitted by either party.

16. The medical referee shall, in the form prescribed in the schedule to these regulations (subject to such additions and modifications as the circumstances of the case may require) notify in writing his decision to the registrar of the county court, to the applicant and to the respondent. Form 15.

17. The medical referee shall send to the Home Office at the end of each quarter a statement (accompanied by any vouchers necessary) in the form prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations. Form 16.

18. The following fees and allowances are authorised to be paid to medical referees under these regulations :—

(i.) For deciding the matter referred to him in any reference and for all duties performed in connection therewith, 2 guineas.

(ii.) Where in order to examine the workman the medical referee is compelled to travel to a place distant more than 2 miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above

fee, 5*s*. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1*s*. for each mile distant therefrom.

(iii.) In cases involving special difficulty the medical referee may apply for special expert assistance which may be granted by the Secretary of State if he thinks fit, on such terms as to remuneration or otherwise as he may with the sanction of the Treasury determine.

19. In cases where a claim is made under regulation 18 (ii.) in respect of an examination of a workman, the medical referee, in submitting his quarterly statement under regulation 17, shall certify the distance of the place where the examination was made from his residence or other prescribed centre.

Form 17.

20. The registrar of a county court shall keep a record, in the form prescribed in the schedule, of all references made by him under these regulations, and shall send the same to the Secretary of State at the end of each quarter.

21. These regulations shall come into force on the 1st day of July, 1907, and shall apply to England and Wales.

SCHEDULE.

Form 1.

Particulars to be obtained by Certifying Surgeon upon application by Workman for Certificate of Disablement.

1. Name and address of workman
2. Disease in respect of which certificate is applied for . . . . .
3. Symptoms complained of . . . .
4. Employment to the nature of which disease is attributed . . . . .
5. Name and place of business of employer who last employed workman in such employment . . . . .
6. (*Where application is not made by workman in person*) whether workman is able to travel for purposes of examination . . . . .

Form 2.

Notice to Workman of Time and Place appointed for his Examination by Surgeon.

Workmen's Compensation Act, 1906.

I hereby give you notice, with reference to your application for a certificate of disablement under section 8, sub-section (1), of the above-named Act, that I propose to examine you at on the day of at o'clock, and that you are required to submit yourself for examination accordingly.

To (*the Workman*).

(Signed)

FORM 3.

Certificate of Disablement.

Workmen's Compensation Act, 1906.

I, (*a*) as certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of (*or* as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the Act), hereby certify that having personally examined (*b*) on the day of I am satisfied that (*c*) is suffering from (*d*) being one of the diseases to which the Workmen's Compensation Act applies, and is thereby disabled from earning full wages at the work at which (*c*) has been employed; and I* certify that the disablement commenced on the day of .

1. Full name and address of workman .
2. Process in which workman states he was employed at or immediately before the date of disablement .
3. Name and place of business of employer stated by workman to have last employed him in process above-mentioned .
4. Leading symptoms of disease .

Dated this day of .

(Signed) .

(*a*) Strike out portion of description inapplicable.
(*b*) Name of workman.
(*c*) "He" or "she."
(*d*) Name disease according to the terms in which it is described in the third schedule to the Act or order of the Secretary of State adding it to the schedule.

FORM 4.

Certificate (supplementary to a Certificate of Disablement) to be given by Certifying Surgeon in circumstances mentioned in Regulation 5.

1. *When the certificate is included in the certificate of disablement, it should run as follows:—*

But whereas the said workman appears to have been employed at or immediately before the date of disablement in (*a*) being a process (*b*) the second column of the third schedule to the Act, and the disease contracted by him, viz. (*c*) is a disease which (*d*) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease is not due to the nature of such employment.

Dated this day of .

(Signed)

(*a*) Name process.
(*b*) "Mentioned in" or "added by an order of the Secretary of State to."
(*c*) Name disease.
(*d*) "In the first column of that schedule" or "under the provisions of the said order."

2. *When the certificate is given separately on a subsequent application of the employer, it should be in the following form:—*

Workmen's Compensation Act, 1906.

Whereas I, (*e*) the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of (*or* as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon, for the purposes of section 8 of the above-named Act), on the day of certified that (*f*) was suffering from (*g*) being a disease to which the Workmen's Compensation Act applies, and was thereby disabled from earning full wages at the work at which he

(*e*) Strike out portion of description inapplicable.
(*f*) Name of workman.
(*g*) Name disease.

* If the surgeon is unable to certify a date on which the disablement commenced, he should strike out this part of the certificate. In that case the disablement will be deemed to have commenced on the date on which this certificate is given. *See* section 8 (4) o the Act.

was employed; and whereas the said (*f*) appears to have been employed at or immediately before the date of disablement in (*h*) being a process (*i*) the second column of the third schedule to the Act, and the disease above-named is a disease which (*k*) is set opposite the above-mentioned process, I hereby certify that, in my opinion, the said disease was not due to the nature of such employment.

Dated this day of .

(Signed)

(*h*) Name process.
(*i*) "Mentioned in" or "added by an order of the Secretary of State to."
(*k*) "In the first column of that schedule" or "under the provisions of the said order."

FORM 5.

Certificate of Certifying Surgeon refusing to give Certificate of Disablement

Workmen's Compensation Act, 1906.

I, (*a*) as certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of (*or* as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the above Act), hereby certify that having personally examined (*b*) who has applied for a Certificate of Disablement in respect of (*c*) being a disease to which the Workmen's Compensation Act applies, I am not satisfied that (*d*) is suffering from the said disease so as to be disabled from earning full wages at the work at which (*d*) has been employed.

1. Full name and address of workman
2. Employment to nature of which disease complained of was attributed . . . . . .
3. Name and place of business of employer stated by workman to have last employed him in such employment . . . . . .

Dated this day of .

(Signed)

(*a*) Strike out portion of description inapplicable.
(*b*) Name workman.
(*c*) Describe disease.
(*d*) "He" or "she."

FORM 6.

Certificate of Suspension by Certifying or Appointed Surgeon.

Workmen's Compensation Act, 1906.

I the (*a*) surgeon for (*b*) hereby certify that after personally examining (*c*) , I have on the day of in pursuance of the (*d*) made under the Factory and Workshop Act, 1901, suspended the said (*c*) from (*e*) usual employment on account of (*e*) having contracted (*f*) being a disease to which the Workmen's Compensation Act applies.

1. Full name and address of workman
2. Employment from which workman is suspended . . . . . .
3. Name and place of business of employer . . . . . .
4. Leading symptoms of disease . .

Dated this day of .

(Signed)

(*a*) "Certifying" or "appointed."
(*b*) Name works at which workman is employed.
(*c*) Name workman.
(*d*) Name the special rules or regulations governing the employment.
(*e*) "His" or "her."
(*f*) Describe disease.

FORM 7.

Certificate to be given by Surgeon in cases of suspension in circumstances mentioned in Regulation 5.

1. *When the certificate is included in a certificate of suspension, it should run as follows:—*

But whereas the said workman appears to have been employed at or immediately before the date of suspension in (*a*) being a process (*b*) the second column of the third schedule to the Act, and the disease contracted by him, viz., (*c*) is a disease which (*d*) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease is not due to the nature of such employment.

Dated this day of .

(Signed)

2. *When the certificate is given separately on an application by the employer, it should be in the following form:—*

Workmen's Compensation Act, 1906.

Whereas I, the (*a*) surgeon for (*b*) on the day of in pursuance of the (*c*) made under the Factory and Workshop Act, 1901, suspended (*d*) from (*e*) usual employment on account of (*e*) having contracted (*f*) being a disease to which the Workmen's Compensation Act applies, and whereas the said (*d*) appears to have been employed at or immediately before the date of suspension in (*g*) being a process (*h*) the second column of the third schedule to the Act, and the disease above-named is a disease which (*i*) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease was not due to the nature of such employment.

Dated this day of .

(Signed)

(*a*) Name process.
(*b*) "Mentioned in" or "added by an order of the Secretary of State to."
(*c*) Name disease.
(*d*) "In the first column of that schedule" or "under the provisions of the said order."
(*a*) "Certifying" or "appointed."
(*b*) Name works at which workman was employed.
(*c*) Name special rules or regulations governing the employment.
(*d*) Name of workman.
(*e*) "His" or "her."
(*f*) Describe disease.
(*g*) Name process.
(*h*) "Mentioned in" or "added by an order of the Secretary of State to."
(*i*) "In the first column of that schedule" or "under the provisions of the said order."

FORM 8.

Certificate by Certifying or Appointed Surgeon of Refusal to Suspend.

Workmen's Compensation Act, 1906.

I, the (*a*) surgeon for (*b*) hereby certify that (*c*) having applied to me to be suspended from his usual employment in pursuance of (*d*) made under the Factory and Workshop Act, 1901, on account of (*e*) having contracted (*f*) being a disease to which the Workmen's Compensation Act applies, I have after personally examining the said (*c*) refused to suspend (*g*)

1. Full name and address of workman
2. Name and place of business of employer . . . . .
3. Grounds for refusal to suspend .

Dated this day of .

(Signed)

(*a*) "Certifying" or "appointed."
(*b*) Name works at which workman is employed.
(*c*) Name workman.

(*d*) Name the code of special rule or regulations governing the employment. (*e*) "His" or "her." (*f*) Describe disease. (*g*) "Him" or "her."

FORM 9.

Application by Employer for Reference to Medical Referee.

In the county court of holden at
In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of a Certificate of Disablement (*or* Suspension) granted in the case of (*name and address of workman*) in pursuance of the provisions of section 8 of the above-mentioned Act and the regulations made thereunder by the Secretary of State.

Application for a reference in the above-mentioned matter to a medical referee, pursuant to section 8, sub-section (1) (f), of the Act and to the above-mentioned regulations, is hereby made on behalf of (*name and place of business of applicant*) who states :—

1. That on the day of notice of disablement (*or* suspension) was given to the applicant by the above-mentioned under the provisions of the said Act.

2. That the said notice was consequent on a certificate of disablement given (*or* order of suspension made), on the day of , in pursuance of the said Act and regulations, by Mr. residing at (*full address*), the certifying surgeon under the Factory and Workshop Act, 1901, for the district of (*or* a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon under section 8 of the said Act, (*or* a surgeon appointed in pursuance of (*describe special rules or regulations under the Factory Act*) at (*name of factory or other place of employment*)).

3. That the applicant is aggrieved by the action of the above-mentioned Mr. in giving the said certificate (*or* in making the said order of suspension) and claims that the said had not contracted the disease in respect of which the said certificate was given (*or* in respect of which the said order was made) (*or, in the case of a certificate of disablement*, was not suffering from the disease therein specified so as to be disabled from earning full wages at the work at which he was employed), in support of which claim he mentions the following circumstances :—(*)

* State grounds for claim, *e.g.*, report of any doctor employed by applicant.

And the applicant hereby undertakes, if the matter is referred to a medical referee, to repay the said (*workman*) any reasonable travelling expenses he may incur in attending for examination by such referee.

Two copies of this application are annexed hereto, together with a copy of the notice and certificate of disablement (*or* suspension). (The above-mentioned report of the medical practitioner employed by me, and two copies thereof, are also annexed.)

Dated this day of .

(Signed)

Applicant.

To the Registrar.

FORM 10.

Application by Workman for Reference to Medical Referee.

In the county court of holden at .
In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of a Refusal of a certifying (*or* appointed), surgeon to give a Certificate of Disablement to (*or* to suspend) (*name and address of applicant*) in pursuance of the provisions of section 8 of the above-mentioned Act and the regulations made thereunder by the Secretary of State.

Application for a reference in the above-mentioned matter to a medical

referee, pursuant to section 8, sub-section (1) (f), of the said Act and to the above-mentioned regulations, is hereby made on behalf of the said who states :—

1. That on the day of applicant applied to Mr. residing at (*full address*) the certifying surgeon under the Factory and Workshop Act, 1901, for the district of (*or* a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the said Act, *or* a surgeon appointed in pursuance of (*describe special rules or regulations under Factory Act*) at (*name of factory, or other place of employment*)), for a certificate of disablement (*or* to be suspended) in respect of a disease to which the provisions of section 8 of the Workmen's Compensation Act apply.

2. That the said Mr. refused to give the applicant a certificate of disablement (*or* to suspend the applicant) and certified to such refusal by a certificate, dated the day of , which is annexed to this application.

3. That the applicant is aggrieved by the action of the said Mr. in refusing to give him a certificate of disablement (*or* to suspend him) and claims that he was suffering from the said disease, and was thereby disabled from earning full wages at the work at which he was employed (*or in the case of a refusal to suspend*, that he had contracted the said disease and was thereby entitled, in accordance with the special rules (*or* regulations) made under the Factory and Workshop Act, 1901, for the process in which he was employed, to be suspended), in support of which claim he mentions the following circumstances :—(*)

* State grounds of claim, *e.g.*, report, if any, of doctor employed by applicant.

4. That the employer on whom the applicant, if the matter is referred to a medical referee and decided in favour of the applicant, would serve the statutory notice of disablement (*or* suspension) is (*name and place of business of employer*).

Two copies of the application and the certificate of the surgeon (together with the above-mentioned report of the medical practitioner employed by applicant and two copies thereof) are annexed hereto.

Dated this day of .

(Signed)

Applicant.

To the Registrar.

FORM 11.

Order of Reference to Medical Referee.

In the county court of holden at

[*Heading as in application.*]

On the application of (a copy of which is hereto annexed), I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to decide on the matter arising on the said application.

Copies of the notice and certificate of disablement (*or* suspension), (and of a report of a medical practitioner by whom the workman referred to in the application has been examined), are hereto annexed.

Or, if the workman is the applicant,

A copy of the certificate of the surgeon referred to in the application (together with a copy of a report of a medical practitioner by whom applicant has been examined), is hereto annexed.

The said , who is now at , has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[*Or* the said does not appear to be in a fit condition to travel for the purpose of being examined.]

Dated this day of .

Registrar.

FORM 12.

Order on Workman to submit himself for Examination by Medical Referee.

In the county court of holden at .

[*Heading as in Application.*]

To A. B. , of (*address and description*).

Take Notice, that I have appointed Mr. , of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to decide on the matter arising on the above application.

You are hereby required to submit yourself for examination by the referee [*add where workman is in a fit condition to travel*, and to attend for that purpose at such time and place as may be fixed by him.]

Dated this day of .

Registrar.

FORM 13.

Notice by Medical Referee to Workman.

Workmen's Compensation Act, 1906.

I hereby give you notice that I have received from the registrar of the county court at , an order of reference appointing me to decide on your appeal against the action of Mr. (*name of surgeon*) in refusing to give you a certificate of disablement (*or* to suspend you).

Or, if the employer is the appellant,

on the appeal made by (*name of employer*) against the action of Mr. (*name of surgeon*) in giving you a certificate of disablement (*or* in suspending you);

And that you are required to attend (*or, if the workman has been ascertained not to be in a fit condition to travel*, to submit yourself) for examination at on the day of at o'clock.

Any statement made or submitted by you shall be considered.

(Signed)

Medical Referee.

To

FORM 14.

Notice by Medical Referee to Employer.

Workmen's Compensation Act, 1906.

I hereby give you notice that I have received from the registrar of the county court at , an order of reference appointing me to decide on your appeal against the action of Mr. (*name of surgeon*) in giving a certificate of disablement to (*or* in suspending) (*name of workman*)

Or, if the workman is the appellant,

on the appeal made by (*name of workman*) against the action of Mr. (*name of surgeon*) in refusing to give him a certificate of disablement (*or* to suspend him) ;

And that I propose to examine (*name of workman*) at on the day of at o'clock.

Any statement made or submitted by you shall be considered.

Add if the employer is the appellant.

You, or some person duly authorised by you, are hereby required to attend at the above time and place.

Dated this day of .

(Signed)

Medical Referee.

To

FORM 15.

Decision of Medical Referee.

[*Heading as in application.*]

I hereby give you notice that having duly inquired into the above-mentioned matter in accordance with the regulations of the Secretary of State, I decide as follows :—

I dismiss (*or* allow) the appeal of (*name of employer*) against the certificate of disablement given to (*name of workman*) on the day of

or

I dismiss (*or* allow) the appeal of (*name of employer*) against the suspension of (*name of workman*) on the day of

or

I dismiss the appeal of (*name of workman*) against the refusal of Mr. (*name of surgeon*) to give him a certificate of disablement in respect of (*name of disease*),

or

I allow the appeal of (*name of workman*) against the refusal of Mr. (*name of surgeon*) to give him a certificate of disablement in respect of (*name of disease*), and I fix the day of as the date on which the disablement commenced,

or

I dismiss (*or* allow) the appeal of (*name of workman*) against the refusal of Mr. (*name of surgeon*) to suspend him on the day of

Dated this day of .

(Signed)

Medical Referee.

To (*the Registrar*),
and to (*the Employer*),
and to (*the Workman*).

FORM 16 (*a*).

Medical Referee's Statement of Fees in respect of References under Section 8 of the Workmen's Compensation Act, 1906.

Court Number of Matter. (1)	Names of Parties. (2)	Date on which Reference received from Registrar. (3)	Registrar from whom received. (4)	Date of Examination. (5)	Place of Examination. (6)	Date of Decision. (7)	Terms of Decision. (8)	Amount of Fees under each of the Headings in Regulation 18.		
								Deciding Matter. £2 2s. (9)	Mileage. See Certificate of Distance and Scale of Fees (on back). (10)	Expert Assistance.* (11)
								£ s. d.	£ s. d.	£ s. d.
							Totals ...			
								Total £		

* A reference should be given to the Home Office Number of the letter authorising the expenditure, and each payment should be supported by a voucher.

Endorsement to be made on back of statement.

I hereby certify that I examined the workman on , at , which is distant miles from my residence (or prescribed centre).

(Signed)

FORM 17 (*a*).

Record of References to be kept by Registrar.

County Court Circuit No. . Court holden at . Name of Registrar
For the Quarter ended .

Court Number of Matter. (1)	Names of Parties. (2)	Action of Surgeon by which applicant is aggrieved. (3)	Nature of Disease.* (4)	Date on which Reference forwarded to Referee. (5)	Whether workman directed to attend on Referee or not. (6)	Date on which Registrar received notification of Referee's Decision. (7)	Name of Medical Referee appointed (8)

* Describe in terms of the third schedule to the Act or of the Secretary of State's Orders dated May 22nd, 1907, and December 2nd, 1908.

NOTE.—If in any case the fees of the Medical Referee have been or are to be paid otherwise than from the Exchequer, a note to that effect should be appended.

(*a*) New, 1910.

APPENDIX BB.

REGULATIONS, DATED JUNE 24, 1907, MADE BY THE SECRETARY OF STATE AND THE TREASURY AS TO THE DUTIES AND REMUNERATION OF MEDICAL REFEREES IN ENGLAND AND WALES UNDER THE PROVISIONS OF THE FIRST AND SECOND SCHEDULES TO THE WORKMEN'S COMPENSATION ACT, 1906.

PART I.

DEFINITIONS AND GENERAL REGULATIONS.

1. In these regulations—

(i.) "Medical referee" means a medical practitioner appointed by the Secretary of State to act as medical referee for the purposes of the Workmen's Compensation Act, 1906.

(ii.) "Reference" means—

(*a*) in regulations in Part II., the appointment of a medical referee by the registrar of a county court to give a certificate, in accordance with the provisions of paragraph (15) of the first schedule to the Workmen's Compensation Act, 1906, as to the condition of the workman and his fitness for employment or as to whether or to what extent the incapacity of the workman is due to the accident.

(*b*) in regulations in Part III., the appointment of a medical referee by the registrar of a county court to give a certificate, in accordance with the provisions of paragraph (18) of the first schedule to the Workmen's Compensation Act, 1906, as to whether the incapacity resulting from the injury is likely to be of a permanent nature.

(*c*) in regulations in Part V., the appointment of a medical referee by a committee, arbitrator or judge to report on any matter material to any question arising in an arbitration under the Workmen's Compensation Act, 1906.

(iii.) "Committee" means a committee representative of an employer and his workmen, with power to settle matters under the Workmen's Compensation Act, 1906, in the case of the employer and workmen.

(iv.) "Agreed arbitrator" means a single arbitrator agreed on by the parties to settle any matter which under the Workmen's Compensation Act, 1906, is to be settled by arbitration.

(v.) "Appointed arbitrator" means a single arbitrator appointed by the judge.

(vi.) "Judge" means county court judge.

(vii.) The words "district in which the case arises" mean the county court district in which all the parties concerned reside, or, if they reside in different districts, the district prescribed by rules of court, subject to any transfer made under those rules.

2. In the case of any reference under these regulations, the medical referee, in the absence of special circumstances, shall be one of those appointed by the Secretary of State for the county court circuit which includes the district in which the case arises, and shall, if the circuit has been sub-divided, and medical referees have been appointed for the sub-divisions, be one appointed for the sub-division which comprises the aforesaid district. Provided that, where there has been a previous reference in any case, any subsequent reference in the same case shall, if possible, be made to the same referee and be accompanied by the previous report or certificate, or copy thereof, of the medical referee.

3. The medical referee shall not accept any reference under these regulations unless signed or counter-signed by the registrar of a county court and sealed with the seal of the county court.

Forms I., J., K. and L.

4. The medical referee shall send to the Home Office at the end of each quarter statements, in the forms prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations.

5. In cases where a claim is made under the regulations in respect of travelling expenses, the medical referee, in submitting his quarterly statements under regulation 4, shall certify the distance of the place to which he was required to travel from his residence or other prescribed centre.

6. In cases involving special difficulty the medical referee may apply to the Secretary of State for special expert assistance which may be granted by the Secretary of State, if he thinks fit, on such terms as to remuneration or otherwise as he may with the sanction of the Treasury determine.

Form M.

7. The registrar of every county court shall keep a record, in the form prescribed in the schedule, of all references made under these regulations, and of all cases in which a medical referee is summoned to sit as assessor, and shall send a copy thereof to the Secretary of State at the end of each quarter.

8. These regulations shall come into force on the 1st day of July, 1907, and shall apply to England and Wales.

PART II.

Regulations as to References under Schedule I. Paragraph (15).

Forms A. and B.

9. The medical referee shall, on receipt of a reference duly signed and sealed, fix a time and place for the examination of the workman, and shall send notice accordingly to both the parties signing the application on which the reference is made.

10. Before giving the certificate required by the reference, the medical referee shall personally examine the workman and shall consider any statements that may be made or submitted by either party.

11. The certificate given by the medical referee shall be according to the form prescribed in the schedule to these regulations. Form C.

12. The medical referee shall forward his certificate to the registrar from whom he received the reference.

13. The following shall be the scale of fees to be paid to medical referees in respect of references under this part of the regulations :—

(i.) For a first reference (to include all the duties performed in connection therewith) . . . 2 guineas.

(ii.) For a second or subsequent reference to the same medical referee in the same case . . 1 guinea.

(iii.) Where in order to examine the injured workman the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, Form D. in addition to the above fees—5*s*. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1*s*. for each mile distant therefrom.

PART III.

Regulations as to References under Schedule I. Paragraph (18).

14. The medical referee shall, on receipt of a reference duly signed and sealed, fix a time and place for the examination of the workman, and shall send notice accordingly to the workman. Form E.

15. Before giving the certificate required by the reference the medical referee shall make a personal examination of the workman.

16. The certificate given by the medical referee shall be according to the form prescribed in the schedule to these regulations.

17. The medical referee shall forward his certificate to the registrar from whom he received the reference.

18. The fee to be paid to a medical referee in respect of a reference (to include all the duties performed in connection therewith) under this part of these regulations shall be one guinea.

PART IV.

Regulation as to remuneration of Medical Referee for sitting as Assessor under Schedule II. Paragraph (5).

19. Where a medical referee attends on the summons of the judge for the purpose of sitting with the judge as an assessor, as provided for in paragraph (5) of the second schedule to the Workmen's Compensation Act, 1906, he shall be entitled for such attendance (to include his services as assessor) to a fee of 3 guineas, and where in order so to attend on the judge, he is compelled to

travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, he shall be entitled, in addition to the above fee, to 5*s*. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter to 1*s*. for each mile distant therefrom.

PART V.

Regulations as to References under Schedule II. Paragraph (15). Conditions of Reference.

20. Before making any reference, the committee, arbitrator, or judge shall be satisfied, after hearing all medical evidence tendered by either side, that such evidence is either conflicting or insufficient on some matter which seems material to a question arising in the arbitration, and that it is desirable to obtain a report from a medical referee on such matter.

Form and Mode of Reference.

21. Every reference shall be made in writing and shall state the matter on which the report of the medical referee is required, and the question arising in the arbitration to which such matter seems to be material. Such reference shall be in accordance with the form prescribed in the schedule to these regulations, or as near thereto as may be.

Form F.

The reference shall be accompanied by a general statement of the medical evidence given on behalf of the parties; and if such evidence has been given before a committee or an agreed arbitrator, each medical witness shall sign the statement of his evidence, and may add any necessary explanation or correction.

Form G.

22. On making the reference to the medical referee, the committee, arbitrator or judge shall make an order in the form prescribed in the schedule, directing the injured workman to submit himself for examination by the medical referee. Before making such order they shall inquire whether he is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition, they shall by the same order direct him to attend at such time and place as the referee may fix.

It shall be the duty of the injured workman to obey any such order.

If the committee, arbitrator or judge is satisfied that the workman is not in a fit condition to travel, they shall so state in the reference.

23. The reference shall be signed, if made by a committee, by the chairman and secretary of the committee; if made by an agreed arbitrator, by the arbitrator; if made by a judge or an appointed arbitrator, by the judge or arbitrator, or by the registrar of the county court in which the arbitration is pending.

24. A committee or an agreed arbitrator, making a reference, shall, without naming a medical referee, address the reference in general terms to "one of the medical referees appointed by the

Secretary of State for the purposes of the Workmen's Compensation Act, 1906," and shall forward it to the registrar of the county court of the district in which the case arises.

Duties of Registrar.

25—(1) In the case of a reference by a committee or agreed arbitrator the registrar on receiving the reference—

(*a*) Shall see that the reference is in accordance with these regulations, and if it is not, shall return it for amendment;

(*b*) Shall insert the name of the medical referee proper to be appointed;

(*c*) Shall, when the reference is in accordance with these regulations, countersign and seal it, and forward it forthwith to the medical referee.

(2) In the case of a reference by a judge or an appointed arbitrator, the registrar of the court in which the arbitration is pending shall sign (or countersign) and seal it, and forward it forthwith to the medical referee.

26. The registrar, on receiving a report from a medical referee under regulation 28, shall forthwith file a copy at the court and transmit the report to the committee, arbitrator or judge by whom the reference was made.

If the committee, arbitrator, or judge shall direct that the parties be at liberty to inspect the report, the registrar shall on receiving notice of such direction permit such inspection to be made during office hours, and shall on the application and at the cost of any party furnish him with a copy of the report or allow him to take a copy thereof.

Report of Medical Referee.

27. The medical referee shall, on receipt of a reference duly signed and sealed, appoint a time and place for the examination of the workman, and shall send him notice accordingly. Form H.

28. The medical referee shall give his report in writing, and shall forward it to the registrar from whom he received the reference.

29. The committee, arbitrator or judge may, by request signed and forwarded in the same manner as the reference, remit the report to the medical referee for a further statement on any matter not covered by the original reference.

Fees.

30. The following shall be the scale of fees to be paid to the medical referees in respect of references under this part of the regulations:—

(i.) For a first reference, to include examination of the injured workman and written report	2 guineas.
(ii.) For a further statement under regulation 29 on any matter not covered by the original reference	1 guinea.

(iii.) For a second or subsequent reference to the same referee in a further arbitration on the same case, to include examination, if necessary, and written report. . . . 1 guinea.

(iv.) Where in order to examine the injured workman the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fees—5*s.* for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1*s.* for each mile distant therefrom.

SCHEDULE.

Form A.

Notice by Medical Referee to Employer or Solicitor signing the application on Employer's behalf (Schedule I. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the reference made to me by the registrar of the county court of holden at under Schedule I. paragraph (15), of the above-named Act, in the case of (*name and address of workman*). I propose to examine the said at on the day of at o'clock.

Any statements made or submitted by you (*or, if notice is addressed to the solicitor*, by the employer), will be considered.

Dated this day of .

(Signed)

Medical Referee.

Form B.

Notice by Medical Referee to Workman or Solicitor signing the application on Workman's behalf (Schedule I. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the reference made to me in your case (*or, if notice is addressed to the solicitor*), in the case of (*name and address of workman*), by the registrar of the county court of holden at , under Schedule I. paragraph (15), of the above-named Act, I propose to examine you (*or* the said) at on the day of at o'clock.

And you are required to submit yourself (*or* the said is required to submit himself) for examination accordingly.

Any statements made or submitted by you (*or, if notice is addressed to the solicitor*, by the workman) will be considered.

Dated this day of .

(Signed)

Medical Referee.

FORM C.

Certificate of Medical Referee as to condition of Workman and fitness for employment, or as to whether or to what extent incapacity of Workman is due to the accident (Schedule I. (15)).

Workmen's Compensation Act, 1906.

In accordance with the reference made to me by the registrar of the county court of holden at upon the application of (*names and addresses of parties*) I have on the day of examined the said (*name of workman*) and I hereby certify as follows:—

1. The said is *

and his condition is such that he is †

2. The incapacity of the said is ‡

NOTE.—*Either paragraph 1 or paragraph 2 to be filled up, or both to be filled up, according to the terms of the reference.*

Dated this day of

(Signed)

Medical Referee.

* Describe state of health.

† State whether workman is fit for his ordinary or other work, specifying where necessary the kind of work, or whether he is unfit for work of any kind.

‡ State whether or to what extent the incapacity is due to the accident (*or, in cases coming within section 8 of the Act*, to the disease).

FORM D.

Notice by Medical Referee to Workman (Schedule I. (18)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the reference made to me in your case by the registrar of the county court of holden at under Schedule I. paragraph (18), of the above-named Act, I propose to examine you at on the day of at o'clock, and you are required to submit yourself for examination accordingly.

Dated this day of .

(Signed)

Medical Referee.

FORM E.

Certificate of Medical Referee (Schedule I. (18)).

Workmen's Compensation Act, 1906.

In accordance with the reference made to me by the registrar of the county court of holden at under Schedule I. paragraph (18), of the above-named Act, I have on the day of examined of (*name and address of workman*) and I hereby certify that his incapacity is [*or* is not] likely to be of a permanent nature.

Dated this day of

(Signed)

Medical Referee.

FORM F.

Reference to a Medical Referee (Schedule II. (15)).

In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of an Arbitration between—
A.B.
Address . . . . . .
Description . . . . . Applicant,
and
C.D.
Address
Description . . . . . Respondent.

As the case may be
- (*a*) We, a committee representative of and his workmen, and empowered to arbitrate in the matter arising under the Workmen's Compensation Act, between A.B. and C.D.;
- (*b*) I, , an arbitrator agreed upon by A.B. and C.D. to arbitrate in the matter arising between them under the Workmen's Compensation Act, 1906;
- (*c*) I, , judge of county courts;
- (*d*) I, , arbitrator appointed by a judge of county courts,

having heard the evidence tendered by both parties, hereby certify that in our (*or* my) opinion the medical evidence given before us (*or* me) is conflicting (*or* insufficient) on a matter which seems to us (*or* me) to be material to a question arising in the above-mentioned arbitration, and that it is desirable to obtain a report from a medical referee on such matter, as follows :—

(A) On the day of personal injury was (*or* is alleged to have been) caused to * by accident arising out of and in the course of his employment, under the following circumstances :—

* Insert name of injured workman.

† Here state the facts of the accident as ascertained from the evidence.

†

Or, in a case of industrial disease to which the Act applies—

(A) On the day of the said * was, under section 8 of the above-named Act, certified to be disabled by, or suspended from his usual employment on account of his having contracted, a disease to which the said section applies, namely, ‡

‡ Name disease.

(B) The matter on which we are (*or* I am) satisfied that it is desirable to obtain a report is—

(C) Such matter seems to be material to the following question arising in the arbitration, viz. :—

§ The name must, if the reference is made by a committee or agreed arbitrator, be left in blank to be inserted by the registrar.

We (*or* I) therefore appoint § one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said (*or* me) on the matter specified above, and to report to us.

A statement of the medical evidence given before us (*or* me) is appended.

We are (*or* I am) satisfied that the said who is now at , is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and

place as shall be fixed by the referee ; *or* does not appear to be in a fit condition to travel for the purpose of being examined.

The referee is requested to forward his report to—

The Registrar,
County Court Office,

on or before the day of

Dated this day of

(Signed)
*

or On behalf of the Committee

Chairman / Secretary } *of Committee.*

Signature of Registrar and Seal of Court.

* For signature of judge or arbitrator.

A previous reference was made to a medical referee in this case on the 19 , and a copy of the report then given is attached.

FORM G.

Order on injured Workman to Submit himself for examination by Medical Referee.

(*Title as in Reference.*)

To *Address.*

of *Description.*

TAKE NOTICE—

That the Committee (*or* arbitrator, *or* judge) have (*or* has) appointed one of the medical referees under the Workmen's Compensation Act, 1906, to examine you for the purposes of the above-mentioned arbitration, and to report to them (*or* him).

You are hereby required to submit yourself for examination by such referee,† and to attend for that purpose at such time and place as may be fixed by him.

† Strike out from "and to attend" when injured workman does not appear to be in a fit condition to travel.

Dated this day of

(*To be signed in the same manner as reference.*)

FORM H.

Notice by Medical Referee to injured Workman (Schedule II. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that I have been appointed to examine and report on your case under Schedule II. paragraph (15), of the above-named Act, and that I propose to make such examination at on the day of at o'clock.

(Signed)

Medical Referee.

FORM I.

Medical Referee's Statement of Fees in respect of References under Schedules I. (15) and II. (15).

Court Number of Matter.	Names of Parties.	Date on which Reference received from Registrar.	Registrar from whom received.	Date of Examination.	Place of Examination.	Date on which Certificate or Report sent to Registrar.	Amount of Fees under each of the headings in Regulation 13 or Regulation 30 (as the case may be).				Expert Assistance.* [Payments under Regulation 6.]
							First Reference; Examination and Certificate or Report. (£2 2s. 0d.)	Subsequent Reference; Examination and Certificate or Report. (£1 1s. 0d.)	Further Statement under Reg. 29. (£1 1s. 0d.)	Travelling more than two miles from residence [or centre] to examine workman. (*See* Certificate of Distance and Scale of Fees on back.)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
							£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
						Total ..					
										Total £	

* A reference should be given to the Home Office Number of the letter authorising the expenditure and each payment should be supported by a voucher.

Endorsement to be made on back of statement.

I hereby certify that I examined the workman on at which is distant miles from my residence (or prescribed centre).

(Signed)

FORM K.

Medical Referee's Statement of Fees in respect of References under Schedule I. (18).

Court Number of Matter.	Name of Workman.	Date on which Reference received from Registrar.	Registrar from whom received.	Date of examination.	Date on which Certificate sent to Registrar.	Whether incapacity certified to be permanent or not.	Fees (£1 1s. per case to include all duties).	Expert Assistance* (Payments under Regulation 6).
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
							£ s. d.	£ s. d
						Totals ...		
							Total £	

* A reference should be given to the Home Office Number of the letter authorising the expenditure, and each payment should be supported by a voucher.

(Signed)

FORM L.

Medical Referee's Statement of Fees in respect of Attendances to sit as Assessor under Schedule II. (5).

Court Number of Matter.	Names of Parties.	Date on which Summons received from Registrar.	Registrar from whom Summons received.	Date of Attendance.*	Place of Attendance.*	Whether Medical Referee actually sat as Assessor.*	Fees under Regulation 19.	
							For Attendance. (£3 3s.)	For Mileage. (*See* Certificate of Distance and Scale of Fees on back.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
							£ s. d.	£ s. d.
						Totals ...		
							Total £	

* If the Medical Referee has to attend on more dates than one in the same case, the necessary particulars of each attendance should be given on a separate line.

I hereby certify that I attended on the day of at the county court holden at , which is distant miles from my residence (or prescribed centre).

(Signed)

Endorsement to be made on back of tatement.

FORM M.

Record of References and Summonses to be kept by Registrar.

County Court Circuit No. . Court holden at . Name of Registrar .
For the quarter ended .

Court Number of Matter.	Names of Parties.	Workman's Employment.	References under Sched. I. (15), I. (18) or II. (15).*				Summonses to sit as[S] Assessor (Sch. II. (5))					
			Date on which Reference forwarded to Referee.	Provision in the Act under which Reference is made, and if under Sch. II. (15), by whom made.†	Whether workman directed to attend on Referee or not.	Date on which Registrar received Referee's Certificate (Sch. I. (15) or Sch. I. (18)) or Report (Sch. II (15)).	Date of		Whether Referee sat as Assessor on each date.§	Name of Medical Referee appointed.	Date and number of previous Reference, if any, in same case.
							Summons.	Each separate attendance of Referee in case.‡			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(9)		(10)	(11)	(12)

* If in any case the fees of the Medical Referee have been or are to be paid otherwise than from the Exchequer, a note to that effect should be appended.

† Here say whether committee, agreed arbitrator, county court judge, or appointed arbitrator.

‡ Each attendance should be entered on a separate line.

§ If the Medical Referee did not sit, a brief statement of the reasons should be appended.

APPENDIX CC.

REGULATIONS OF THE SECRETARY OF STATE, DATED JUNE 28, 1907, AS TO EXAMINATIONS OF A WORKMAN BY A MEDICAL PRACTITIONER PROVIDED AND PAID BY THE EMPLOYER UNDER THE PROVISIONS OF THE FIRST SCHEDULE TO THE WORKMEN'S COMPENSATION ACT, 1906.

In pursuance of the powers vested in me by paragraph (15) of the first schedule to the Workmen's Compensation Act, 1906, I, the Right Honourable Herbert John Gladstone, one of His Majesty's Principal Secretaries of State, do hereby make the following regulations :—

1. Where a workman has given notice of an accident or is in receipt of weekly payments under the Act, he shall not be required to submit himself, against his will, for examination by a medical practitioner provided by the employer except at reasonable hours.

2. A workman in receipt of weekly payments shall not be required, after a period of one month has elapsed from the date on

which the first payment of compensation was made, or if the first payment is made in obedience to the award of a committee or arbitrator, from the date of the award, to submit himself, against his will, for examination by a medical practitioner provided by the employer except at the following intervals: Once a week during the second, and once a month during the third, fourth, fifth, and sixth months, after the date of the first payment or the award, as the case may be, and thereafter once in every two months.

Provided that where after the second month an application has been made to the county (in Scotland, the sheriff) court or to a committee for a review of the weekly payment, the workman may be required, pending and for the purposes of the settlement of the application, to submit himself to one additional examination.

H. J. Gladstone,
One of His Majesty's Principal
Secretaries of State.

Whitehall,
28th June, 1907.

APPENDIX DD.

THE WORKMEN'S COMPENSATION (SCHEMES) REGULATIONS, 1913, DATED MARCH 1, 1913, MADE BY THE CHIEF REGISTRAR OF FRIENDLY SOCIETIES UNDER THE WORKMEN'S COMPENSATION ACT, 1906 (6 EDW. 7, C. 58).

In pursuance of the powers vested in me by the above-mentioned statute, I, George Stuart Robertson, Chief Registrar of Friendly Societies, hereby make the following regulations:—

1. The regulations made under the above-mentioned statute on July 1, 1907, are hereby rescinded.

2. Every application for certificate to a scheme under section 3 of the Workmen's Compensation Act, 1906 (in these regulations termed "the Act"), shall be in Form A annexed to these regulations, and shall be accompanied by the documents mentioned in such form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

3. Every application for renewal of certificate to a scheme shall be in Form C, and shall be accompanied by the documents mentioned in such form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

4. Every complaint by or on behalf of workmen shall be as nearly as may be in Form D.

5. Whenever a scheme has been certified or the certificate to a scheme has been renewed, the employer shall furnish to the registrar every year during the currency of the certificate accounts and information in regard to such scheme in such form as the Chief Registrar may from time to time prescribe.

6. These regulations may be cited as the Workmen's Compensation (Schemes) Regulations, 1913.

G. STUART ROBERTSON,
Chief Registrar of Friendly Societies.

1 March, 1913.

FORM A.

Workmen's Compensation Act, 1906.

Application for Certificate to Scheme.

TO THE REGISTRAR OF FRIENDLY SOCIETIES.

Full name and address of employer

Nature of employment

Situation of works

This application is made by the undersigned employer and five workmen.

If the scheme includes other employers and their workmen, a separate application must be made by each employer and provision for administration, etc., should be made in the scheme.

The total number of workmen in the employment is , and at a ballot, taken on , 19 , of such workmen voted in favour of the scheme, an abstract of which—with a notification that any workman objecting to the same was at liberty to communicate his views to the Registrar of Friendly Societies, Abingdon Street, London, S.W. [*or*, for Scotland, 3A, Howe Street, Edinburgh, *or*, for Ireland, 12, South Frederick Street, Dublin]—was posted in a conspicuous position at all the works for a period of at least fourteen days immediately preceding the date of such ballot.

The scheme includes (*or* does not include) other employers and their workmen.

The following is a comparison of the provisions of the scales of compensation in the scheme with the corresponding scales in the Act :—

	SCALE OF COMPENSATION.	
	In the Act.	In the Scheme.
Where death results from the injury—		
(*a*) If the workman leaves any dependants wholly dependent upon his earnings.	Sched. I. (1) (*a*) (i), (2)	
(*b*) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings.	Sched. I. (1) (*a*) (ii), (2)	
(*c*) If the workman leaves no dependants.	Sched. I. (1) (*a*) (iii)	
Where total or partial incapacity for work results from the injury.	Sched. I. (1) (*b*), (2), (3)	

The contributions by the workmen to the scheme are :—

The following are the benefits conferred by the scheme in addition to the benefits to which the workmen would have been entitled under the Act, such additional benefits being at least equivalent to the workmen's contributions :—

The scheme does not contain any obligation upon the workmen to join the scheme as a condition of their hiring, and contains provisions enabling a workman to withdraw from the scheme.

With this application are sent—

(*a*) Two printed copies of the scheme, each stitched in covers and signed by the applicants ;

(*b*) An actuarial report on the scheme by Mr. ;

(*c*) A statutory declaration in Form B verifying the result of the ballot, etc.

(*d*) A statement showing (1) the views of the employer ; (2) the views of the workmen, and how such views were ascertained ;

Employer.

} Workmen.

If the employer is a body corporate the seal of the corporation should be affixed and duly witnessed in the space provided for the signature.

Date ; 19 .

FORM B.

Workmen's Compensation Act, 1906.

Declaration verifying result of Ballot, etc.

(This declaration is to be made either by the employer, by the manager of the works, or by some other responsible person.)

Full name of employer

I, , of , do solemnly and sincerely declare that at a ballot taken on , 19 , after fourteen days' notice thereof had been given, out of the total number of workmen in the employment of voted in favour of the scheme, application for* which is attached to this declaration, and that on the date of the said ballot the total number of workmen in the said employment was .

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

* Insert "certificate to," or "re-certification of."

Signature of declarant.

† Taken and received before me, one of His Majesty's Justices of the Peace for the County of , at , in the said County, this day of , 19 .

† This is to be altered as the case requires where any declaration is made before a Borough Magistrate or Commissioner for Oaths.

FORM C.

Workmen's Compensation Act, 1906.

Application for renewal of Certificate to Scheme.

TO THE REGISTRAR OF FRIENDLY SOCIETIES.

Full name and address of employer

Nature of employment

Situation of works

This application is made by the undersigned employer and five workmen.

The total number of workmen in the employment is , and the number included in the scheme is .

If the scheme includes other employers and their workmen a separate application must be made by each employer and provision for administration, etc. should be made in the scheme.

The scheme includes (*or* does not include) other employers and their workmen.

[If any modification of the scheme is now proposed, the following comparative statement should be filled in]—

The following is a comparison of the scales of compensation in the scheme now submitted with those in the scheme as certified and with the corresponding scales in the Act :—

	SCALES OF COMPENSATION.		
	In the Act.	In the Scheme.	
		As certified.	As now submitted.
Where death results from the injury—			
(*a*) If the workman leaves any dependants wholly dependent upon his earnings.	Sched. I (1) (*a*) (i), (2)		
(*b*) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings.	Sched. I. (1) (*a*) (ii), (2)		
(*c*) If the workman leaves no dependants.	Sched. I. (1) (*a*) (iii)		
Where total or partial incapacity for work results from the injury.	Sched. I. (1) (*b*), (2), (3)		
Contributions of workmen			
Benefits additional to those to which the workmen would have been entitled under the Act.			

With this application are sent—

(*a*) Two printed copies of the scheme, each stitched in covers and signed by the applicants ;

(*b*) An actuarial report on the working of the scheme during the currency of the certificate, and on the effect of any modifications proposed therein by Mr. ;

[If the scheme has been so modified as to amount substantially to a new scheme]—

(*c*) A statutory declaration in Form B verifying the result of the ballot, etc. ;

(*d*) A statement showing (1) the views of the employer ; (2) the views of the workmen, and how such views were ascertained.

Employer.

} Workmen.

If the employer is a body corporate the seal of the corporation should be affixed and duly witnessed in the space provided for the signature.

Date , 19 .

FORM D.

Workmen's Compensation Act, 1906.

Form of Complaint by or on behalf of Workmen.

Scheme No.

TO THE REGISTRAR OF FRIENDLY SOCIETIES,
ABINGDON STREET, LONDON, S.W.

[*or*, for Scotland, 3A, Howe Street, Edinburgh, *or*, for Ireland, 12, South Frederick Street, Dublin.]

Complaint is hereby made by [*or* on behalf of] the workmen of (the employer under the above-mentioned scheme) :—

1. That the benefits conferred by the scheme no longer conform to the conditions stated in sub-section (1) of section 3 of the above-mentioned Act in the following respects :—

or,

2. That the provisions of the scheme are being violated in the following respects :—

or,

3. That the scheme is not being fairly administered in the following respects :—

or,

4. That the following reasons exist for revoking the certificate to the scheme :—

You are requested to examine into this complaint, and, if satisfied that good cause exists for it, to revoke the certificate to the scheme unless the cause of complaint is removed.

} Workmen.

[*Or*, The undersigned have been authorised in the following manner to make the complaint on behalf of themselves and the other workmen of the said employer :—

} Workmen.]

Date , 19 .

APPENDIX DDa.

REGULATIONS, DATED OCTOBER 17, 1913, MADE BY THE SECRETARY OF STATE UNDER SECTION 12 OF THE WORKMEN'S COMPENSATION ACT, 1906 (6 EDW. 7, C. 58), AS TO RETURNS TO BE FURNISHED EACH YEAR BY EMPLOYERS IN CERTAIN INDUSTRIES WITH RESPECT TO THE COMPENSATION PAID UNDER THE ACT DURING THE PREVIOUS YEAR.

In pursuance of the powers conferred on me by section 12 of the Workmen's Compensation Act, 1906, I hereby make the following regulations :—

1. The industries to which section 12 of the Act shall apply shall be the industries specified in the first schedule to these regulations.

2. The date on or before which in every year the return required under the said section shall be sent to the Secretary of State shall be the first day of March.

3. The return shall furnish the particulars and shall be made in accordance with the directions contained in the second schedule to these regulations.

4. The regulations made on the 15th January, 1908, are hereby revoked.

R. McKENNA,
One of His Majesty's Principal Secretaries of State.

Whitehall,
17th October, 1913.

SCHEDULE I.

INDUSTRIES FOR WHICH RETURNS ARE TO BE MADE.

(i.) Mining.
(ii.) Quarrying.
(iii.) Working of railways (not being railways laid on public roads) authorised by special Act or by order or certificates made in pursuance of general Acts and having statutory force, including stations and sidings connected with such railways and belonging to the owners thereof.
(iv.) Any industry being carried on in any factory to which the Factory and Workshop Acts, 1901 and 1907, apply.
(v.) The business of a harbour, dock, wharf or quay.
(vi.) Constructional work (including the construction of railways, tramways, canals, harbours or docks, bridges, tunnels, waterworks, sewers, roads, and other works of engineering, *but not including construction of buildings*).
(vii.) Shipping (excluding sailing vessels in the sea-fishing service).

SCHEDULE II.

Directions for Preparing the Returns.

Note.—The figures furnished by the individual employer will not be published, but will be treated as strictly confidential; only totals for industries will be published.

(i.) *Separate Returns for each Industry.*—If an employer is engaged in more than one of the seven classes of industry specified in Schedule I. he must make a separate return in respect of each class in which he is engaged. For instance, where a factory is carried on in connection with a mine or quarry, the employer must make a separate return for the factory. In the case of factory industries (class iv.), separate returns must be made in respect of each of the following groups:—(*a*) cotton; (*b*) wool, worsted and shoddy; (*c*) other textiles; (*d*) wood; (*e*) metals (extraction including conversion, founding, galvanising); (*f*) marine, locomotive and motor engineering, and shipbuilding; (*g*) machines, appliances, conveyances, tools; (*h*) paper, printing, stationery, &c.; (*i*) china and earthenware; (*j*) miscellaneous.

In the case of railways, separate returns must be made in respect of (*a*) clerical staff, (*b*) other railway servants employed in the working of railways. In the case of the other industries the clerical staff is to be excluded from the returns.

In the case of shipping, separate returns must be made in respect of (*a*) steam ships (including motor vessels), and (*b*) sailing vessels.

Where an employer carries on in connection with an industry included in Schedule I. a business or industry not so included, the return must cover only the persons employed in the scheduled industry—*e.g.*, persons employed by the occupier of a factory in a shop connected with the factory, or persons employed by the occupier of a factory in building operations, are to be excluded.

(ii.) *Forms for Returns.*—Different forms, numbered I. to VII., will be issued for each of the seven classes of industry, and each return must be made upon the form applicable to the industry to which the return relates.

(iii.) *Joint Returns for Two or more Establishments, &c.*—A numbered form will be issued by the Home Office for the purpose of the return in respect of each mine, quarry, factory, or dock or wharf on the Home Office lists. But an employer who owns two or more mines or two or more quarries, or who occupies two or more factories (within the same trade group, as indicated in (i.) above), or two or more docks or wharves, may, in lieu of rendering a separate return for each mine, quarry, factory, or dock or wharf, as the case may be, include in one return all his premises falling within the same class of industry or division thereof, provided that he

(*a*) States in Part 1 (*a*) of the return the names and addresses of all the premises included, and

(*b*) returns to the Home Office the other forms sent him and marks them "Included in return county and No. " (for mines and quarries) or "Included in No. " (for factories, docks, and wharves), adding the identifying number of the return in which the premises are included.

Every form received must be returned to the Home Office.

(iv.) *Payments under Certified Schemes, &c., to be excluded.*—The return must *not* include any particulars with regard to (*a*) compensation paid under a contracting-out scheme certified by the Registrar of Friendly Societies under the Act, or (*b*) damages under the Employers' Liability Act or at Common Law, or (*c*) payments made under section 34 of the Merchant Shipping Act, 1906, or (*d*) compensation for accidents which occurred prior to 1st July, 1907.

(v.) *Returns to include only Payments under Act.*—In calculating the figures as to compensation paid, the employer is to take into account only the amount actually paid by him (or by an employer's association

or mutual indemnity or other insurance company on his behalf) under the Act to the worker. In particular, he must not take into account either (*a*) any benefits given to the worker over and above those provided for by the Act, or (*b*) costs incurred by him in connection with legal proceedings or otherwise, or (*c*) amounts received by him by way of indemnity from third parties, or (*d*) amounts received by him from, or paid by him to, other employers, under sub-section (1) (*c*) (iii.) of section 8 (industrial diseases) of the Act.

(vi.) *Returns by Insurance Companies on behalf of Employers.*—An employer insured against his liabilities under the Act in a mutual indemnity or other insurance company, or belonging to an association of employers which deals on behalf of its members with claims for compensation, will not be required to make a separate return, if the company in which he is insured, or the association to which he belongs, is under an arrangement with the Home Office to make returns of the whole of the prescribed particulars on behalf of the employers insured or represented by it; provided he states in the form issued to him from the Home Office the name of the company or association in which he is insured or to which he belongs and his policy number (or if he has been insured during the year in more than one company, the name of each company and the number of each policy) and returns the form to the Home Office. If the employer is insured with a company, or belongs to an association, which is under an arrangement with the Home Office to supply part of the particulars prescribed, *e.g.*, the particulars in Part 2 only, the employer will only be required to furnish a return of the remaining particulars. Otherwise, the employer must make the whole return, obtaining any particulars required from the company or association.

(vii.) *Returns by Employers partly Insured.*—An employer insured for part of the year only, must make a return for the part of the year during which he was uninsured, and must state the period for which the return is made, and the name of the insurance company, &c., in which he was insured for the remainder of the year.

Similarly, if an employer is insured for part only of the persons employed in his business, or for fatal cases but not for disablement cases, or for accidents but not for industrial diseases—he must make a return for the part of his liability not covered by insurance, and specify in respect of what part of his liability the return is made.

(N.B.—By "insured" is meant insured with a company or association which has made an arrangement with the Home Office—*see* above.)

(viii.) *Number of Persons Employed.*—The number of persons employed, which is to be stated in Part 1 (b) of the return, must be the average number employed *throughout* the year, *e.g.*, two persons employed for six months each are to be counted as one person employed.

(ix.) *Blanks in Return.*—In filling up the form, no blanks must be left. Columns in which there are no entries to be made should have "Nil" written across them. If no compensation at all has been paid during the year, the particulars in Part 1 must be filled in, and the words "No compensation paid" written across the columns in Part 2.

(x.) *Outside Workers in Factories.*—Persons employed in the business of the factory whose duties take them wholly or partly outside the factory, such as carters, should be included in the return, but their number should be stated separately in Part 1 (*b*) of the return under the heading of "Outside workers." "Outworkers" (*i.e.*, persons to whom articles or materials are given out to be made up, finished, cleaned, &c., &c., on *other* premises) are *not* to be included.

(xi.) *Shipping.*—Vessels employed solely on inland waters are not to be included in the return.

If no paid hands have been employed during the year, or if (in the case of steam fishing vessels) the persons employed are paid by the share, a statement to that effect is to be made in Part 1 (*b*) of the return. If part only of the crew are paid hands, the number must be stated separately.

FORM OF RETURN.

PART 1.

(*a*) Name and address of premises and nature of industry .
(*b*) Approximate average number of persons employed to whom the Act applies :—
Male .
Female .
(*c*) (*In returns for shipping*) gross tonnage of the ships or vessels in respect of which the return is made .
(*d*) If you have been insured for the whole of the year and in respect of your whole liability under the Workmen's Compensation Act with a company or association which is under an arrangement with the Home Office to make returns, state :—
Name of insurance company,* indemnity society, &c., and policy No. .
(*e*) If you have been insured with a company or association as aforesaid, but not for the whole year or not for the whole of your liability, state :—
(i.) Name of insurance company,* indemnity society, &c., and Policy No. .
(ii.) Period of year or part of liability not covered by insurance (you must also fill up Part 2 of this Form in respect of the period or part of liability not covered) .
(*f*) Name of owner, firm, or company .
Address (for correspondence) .

(*Signed*)
Employer, Secretary, Manager (or as the case may be).

Date .

* If you have been insured during the year in more than one company which is under an arrangement with the Home Office, the particulars must be given in respect of each company.

PART 2.

ACCIDENTS.

A.—*Cases of Death* (*whether Compensation paid into Court or to Legal Personal Representative.*)

—	No. of cases in which compensation paid during 19 .	Total amount of compensation paid during 19 .
(*a*) Cases where there were persons wholly dependent*		
(*b*) Cases where there were only persons partly dependent		
(*c*) Cases where only medical and burial expenses paid		
TOTAL . .		

* Including cases in which compensation paid *both* to persons wholly *and* to persons partly dependent.

B.—*Cases of Persons Temporarily or Permanently Disabled.*

I. Total figures for 19 .

—	No. of cases in which compensation paid during 19 .	Total amount of compensation paid during 19 .*
Cases continued from previous years . . .		
Cases in which the first payment of compensation was made during 19		
TOTAL . . .		

* Including both weekly payments and lump sums.

II. Additional particulars as to cases terminated during 19 .

(i.) Particulars as to non-fatal cases settled by payment of lump sums.*

—	Number of cases.	Total amount paid.†
Cases settled by payment of lump sum without previous weekly payments . . .		
Cases settled by payment of lump sum after previous weekly payments :—		
(*a*) Where weekly payments had lasted less than 26 weeks . . .		
(*b*) Where weekly payments had lasted 26 weeks and over . . .		
TOTAL . .		

* Cases in which the lump sum was only the aggregate of a number of separate weekly payments already due should not be entered in this table but in Table II. (ii.) below.

† Exclusive of previous weekly payments.

(ii.) Particulars as to duration of compensation in terminated cases *not settled by payment of a lump sum.*

State in following Table how many cases were terminated during 19 after payment (whether in 19 or in previous years) of less than 2 weeks' compensation, of 2 weeks' compensation but less than 3, and so on.

(Cases terminated after weekly payments by payment of a lump sum should *not* be included.)

Less than 2 weeks.	2 weeks and less than 3.	3 weeks and less than 4.	4 weeks and less than 13.	13 weeks and less than 26.	26 weeks and over.

III. Additional particulars as to cases *not* terminated during 19 .

State in following table number of cases not terminated at end of 19 which had lasted :—

Less than one year.	1 year and less than 2.	2 years and less than 5.	5 years and less than 10.*	10 years and over.*

* Cases in which the accident occurred prior to the 1st July, 1907, are not to be included.

INDUSTRIAL DISEASES.

A.—*Cases of Death (whether Compensation paid into Court or to Legal Personal Representative).*

—	No. of cases in which compensation paid during 19 .	Total amount of compensation paid during 19 .
(*a*) Cases where there were persons wholly dependent*		
(*b*) Cases where there were only persons partly dependent		
(*c*) Cases where only medical and burial expenses paid		
TOTAL . . .		

* Including cases in which compensation paid *both* to persons wholly *and* to persons partly dependent.

B.—*Cases of Persons Temporarily or Permanently Disabled.*

I. Total figures for 19 .

—	No. of cases in which compensation paid during 19 .	Total amount of compensation paid during 19 .*
Cases continued from previous years . .		
Cases in which the first payment of compensation was made during 19		
TOTAL . .		

* Including both weekly payments and lump sums.

II. Additional particulars as to cases terminated during 19 .

(i.) Particulars as to non-fatal cases settled by payment of lump sums.*

—	Number of cases.	Total amount paid.†
Cases settled by payment of lump sum without previous weekly payments . . .		
Cases settled by payment of lump sum after previous weekly payments :—		
(*a*) Where weekly payments had lasted less than 26 weeks		
(*b*) Where weekly payments had lasted 26 weeks and over		
TOTAL . .		

* Cases in which the lump sum was only the aggregate of a number of separate weekly payments already due should not be entered in this Table but in Table II. (ii.) below.
† Exclusive of previous weekly payments.

(ii.) Particulars as to duration of compensation in terminated cases *not settled by payment of a lump sum.*

State in following Table how many cases were terminated during 19 after payment (whether in 19 or in previous years) of less than 2 weeks' compensation, of 2 weeks' compensation but less than 3, and so on.

(Cases terminated after weekly payments by payment of a lump sum should *not* be included.)

Less than 2 weeks.	2 weeks and less than 3.	3 weeks and less than 4.	4 weeks and less than 13.	13 weeks and less than 26.	26 weeks and over.

III. Additional particulars as to cases *not* terminated during 19 .

State in following table number of cases not terminated at end of 19 which had lasted :—

Less than 1 year.	1 year and less than 2.	2 years and less than 5.	5 years and less than 10.	10 years and over.

Further particulars as to cases of industrial disease.*

Name of Disease.	Number of cases in which compensation paid.	
	Continued from previous years.	In which first payment was made during 19 .
Anthrax		
Lead poisoning or its sequelæ		
Mercury poisoning or its sequelæ		
Phosphorus poisoning or its sequelæ		
Arsenic poisoning or its sequelæ		
Ankylostomiasis		
Poisoning by nitro- and amido-derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelæ		
Poisoning by carbon bisulphide, or its sequelæ		
Poisoning by nitrous fumes or its sequelæ		
Poisoning by nickel carbonyl or its sequelæ		
Poisoning by *Gonioma Kamassi* (African boxwood) or its sequelæ		
Chrome ulceration or its sequelæ		
Eczematous ulceration of the skin produced by dust or liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust		
Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to pitch, tar, or tarry compounds		
Scrotal epithelioma (chimney sweep's cancer)		
Miner's nystagmus		
Glanders		
Compressed air illness or its sequelæ		
Subcutaneous cellulitis of the hand (beat hand)		
Subcutaneous cellulitis over the patella (miner's beat knee)		
Acute bursitis over the elbow (miner's beat elbow)		
Inflammation of the synovial lining of the wrist joint and tendon sheaths		
Cataract in glassworkers		
Telegraphist's cramp		
Writer's cramp		

* All cases in which compensation is paid for Anthrax should be entered in the return as cases of industrial disease, *not* as cases of accident.

APPENDIX EE.

MERCHANT SHIPPING.

EXERCISE OF CONSULAR POWERS IN BRITISH PROTECTORATES.

ORDER IN COUNCIL PROVIDING FOR THE EXERCISE IN VARIOUS BRITISH PROTECTORATES OF THE POWERS OF A BRITISH CONSULAR OFFICER UNDER SECTION 7 OF THE WORKMEN'S COMPENSATION ACT, 1906.

At the Court at Buckingham Palace, the 4th day of July, 1908,

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas by section 7 of the Workmen's Compensation Act, 1906, it is amongst other things provided that where an injured master seaman or apprentice (being a member of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner or, if there is more than one owner, the managing owner or manager resides, or has his principal place of business in the United Kingdom) is discharged or left behind in a British possession, or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim for compensation be admissible in evidence as provided by sections 691 and 695 of the Merchant Shipping Act, 1894, and those sections shall apply accordingly:

And whereas by section 691 of the Merchant Shipping Act, 1894, it is amongst other things provided that whenever in the course of any legal proceeding instituted in any part of His Majesty's dominions before any judge or magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject matter of that proceeding, then upon due proof, if the proceeding is instituted in the United Kingdom, that the witness cannot be found in that kingdom, or if in any British possession, that he cannot be found in that possession, any deposition that the witness may have previously made on oath in relation to the same subject matter before any justice or magistrate in His Majesty's dominions or any British consular officer elsewhere shall be admissible in evidence:

And whereas by section 737 of the said last recited Act it is provided that where under that Act anything is authorised to be done by, to or before a British consular officer, and in any place

outside His Majesty's dominions in which His Majesty has jurisdiction there is no such officer, such things may be done in that place by, to or before such officer as His Majesty in council may direct:

And whereas the places specified in the first column of the schedule hereto are places outside His Majesty's dominions in which His Majesty has jurisdiction, but in which there is no British consular officer:

And whereas it has been made to appear to His Majesty that it is expedient that the officers named in the second column of the schedule hereto, should exercise and perform in the said places respectively the hereinbefore mentioned power and duties of a British consular officer to take depositions as aforesaid:

Now, therefore, His Majesty, by virtue and in exercise of the power on that behalf by section 737 of the Merchant Shipping Act, 1894, in His Majesty vested, is pleased, by and with the advice of his Privy Council, to direct that the taking of depositions which is under the hereinbefore recited Acts authorised to be done by or before a British consular officer may be done in the places specified in the first column of the schedule hereto, by or before any officer for the time being acting in the office or offices respectively named in the second column of the schedule hereto and set opposite to such places specified as aforesaid.

A. W. FITZROY.

SCHEDULE.

1. Northern Nigeria	The Cantonment Magistrate at Lokoja.
2. The Protectorate of Southern Nigeria.	At Calabar and Warri the Police Magistrate, and at other ports of the Protectorate the District Commissioner of the District.
3. The East Africa Protectorate	The Chief of Customs.
4. Uganda	The Principal Judge.
5. Somaliland	The District Officer at Berbera.
6. Nyasaland	The Comptroller of Customs.
7. Weiheiwei	The Magistrate.
8. Cyprus	The President of the District Court of Nikosia.

APPENDIX FF.

POST OFFICE SAVINGS BANK.

IMMEDIATE LIFE ANNUITIES.

Table showing the sum for which an immediate life annuity of 1*l.* will be granted. The first half-yearly instalment of such annuity will become due

and payable on the second quarterly day of payment next following the day of purchase.

Age at time of Purchase.	Males. Cost of an Immediate Annuity of 1*l.*	Females. Cost of an Immediate Annuity of 1*l.*	Age at time of Purchase.	Males. Cost of an Immediate Annuity of 1*l.*	Females. Cost of an Immediate Annuity of 1*l.*
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
If 5 & under 6	25 19 0	27 12 6	If 46 & under 47	16 4 2	18 0 0
6 ,, 7	25 15 1	27 9 1	47 ,, 48	15 18 3	17 13 2
7 ,, 8	25 11 1	27 5 8	48 ,, 49	15 12 3	17 6 1
8 ,, 9	25 7 0	27 2 2	49 ,, 50	15 6 1	16 18 11
9 ,, 10	25 2 11	26 18 8	50 ,, 51	14 19 11	16 11 9
10 ,, 11	24 18 10	26 15 1			
			51 ,, 52	14 13 6	16 4 7
11 ,, 12	24 14 9	26 11 6	52 ,, 53	14 7 1	15 17 4
12 ,, 13	24 10 6	26 7 10	53 ,, 54	14 0 5	15 9 11
13 ,, 14	24 6 4	26 4 1	54 ,, 55	13 13 8	15 2 4
14 ,, 15	24 2 1	26 0 4	55 ,, 56	13 6 9	14 14 9
15 ,, 16	23 17 10	25 16 6			
			56 ,, 57	12 19 8	14 6 11
16 ,, 17	23 13 6	25 12 7	57 ,, 58	12 12 5	13 19 0
17 ,, 18	23 9 1	25 8 8	58 ,, 59	12 4 11	13 11 1
18 ,, 19	23 4 9	25 4 8	59 ,, 60	11 17 4	13 3 1
19 ,, 20	23 0 4	25 0 8	60 ,, 61	11 9 8	12 15 1
20 ,, 21	22 15 10	24 16 6			
			61 ,, 62	11 2 2	12 7 0
21 ,, 22	22 11 4	24 12 4	62 ,, 63	10 14 11	11 19 0
22 ,, 23	22 6 9	24 8 1	63 ,, 64	10 7 8	11 11 0
23 ,, 24	22 2 3	24 3 10	64 ,, 65	10 0 6	11 2 11
24 ,, 25	21 17 7	23 19 5	65 ,, 66	9 13 4	10 14 7
25 ,, 26	21 12 11	23 15 0			
			66 ,, 67	9 6 4	10 6 4
26 ,, 27	21 8 3	23 10 6	67 ,, 68	8 19 7	9 18 1
27 ,, 28	21 3 6	23 5 11	68 ,, 69	8 12 10	9 9 10
28 ,, 29	20 18 9	23 1 3	69 ,, 70	8 8 2	9 1 10
29 ,, 30	20 13 11	22 16 6	70 ,, 71	7 19 5	8 14 2
30 ,, 31	20 9 1	22 11 8			
			71 ,, 72	7 12 10	8 6 10
31 ,, 32	20 4 2	22 6 9	72 ,, 73	7 6 4	7 19 10
32 ,, 33	19 19 2	22 1 9	73 ,, 74	7 0 1	7 13 0
33 ,, 34	19 14 2	21 16 7	74 ,, 75	6 14 1	7 6 4
34 ,, 35	19 9 2	21 11 5	75 ,, 76	6 8 4	6 19 10
35 ,, 36	19 4 1	21 6 2			
			76 ,, 77	6 2 8	6 13 7
36 ,, 37	18 18 11	21 0 9	77 ,, 78	5 17 4	6 7 5
37 ,, 38	18 13 9	20 15 3	78 ,, 79	5 12 3	6 1 6
38 ,, 39	18 8 6	20 9 7	79 ,, 80	5 7 2	5 15 9
39 ,, 40	18 3 2	20 3 11	80 or any greater age.	5 2 4	5 10 3
40 ,, 41	17 17 10	19 18 0			
41 ,, 42	17 12 4	19 12 1			
42 ,, 43	17 6 10	19 5 11			
43 ,, 44	17 1 4	18 19 8			
44 ,, 45	16 15 8	18 13 3			
45 ,, 46	16 9 11	18 6 9			

The above table gives the cost of an annuity of 1*l.*, and an annuity of a larger amount costs a larger sum in exact proportion.

Savings Bank annuities are payable by half-yearly instalments on the 5th January and 5th July, or the 5th April and 10th October, according to the date of purchase.

The purchase money for immediate life annuities is not returnable in any event.

APPENDIX GG.

TREASURY ORDER, DATED NOV. 18, 1913, REGULATING FEES IN COUNTY COURTS.

In pursuance of the powers given by the County Courts Act, 1888, and of all other powers enabling us in this behalf, we, the undersigned, being two of the Commissioners of His Majesty's Treasury, whose names are hereunto subscribed, do hereby, with the consent of the Lord Chancellor, order that on and after the 22nd day of December, 1913, the several alterations and additions to the Schedules to the Treasury Order regulating fees in county courts, dated the 30th day of December, 1903 (as amended by Treasury Orders dated 30th May, 1907, 7th July, 1909, and 15th May, 1912), specified in Schedules hereunder written, shall have effect.

JOSEPH A. PEASE.
J. HERBERT LEWIS.

I approve of this Order,
LOREBURN, C.

SCHEDULE A.

Paragraph 46. The words and figures "the Consolidated Workmen's Compensation Rules, July, 1913," shall be substituted for the words and figures "the Workmen's Compensation Rules, 1907."

SCHEDULE B.

PART I.

GENERAL.

Registrar's Fees.

The words and figures "The Consolidated Workmen's Compensation Rules, July, 1913," shall be substituted for the words and figures "the Workmen's Compensation Rules, 1907" in paragraphs 8 and 9.

The following paragraph shall be substituted for paragraph 26:

26. On proceedings under the Workmen's Compensation Act, 1906, and the Workmen's Compensation Rules, 1907 (when applicable), and the Consolidated Workmen's Compensation Rules, July, 1913 (*a*) (*b*).

(N.B.—*These fees with the exception of Nos. 6 and 7 are not to be taken in respect of proceedings by or against a workman prior to the award.*)

	£	s.	d.
1. On the filing of a special case under Rule 34	0	5	0
2. On an order for the detention of a ship, an order of release, a bail bond, or an affidavit of justification, under the			

(*a*) By order, May 30th, 1907, as amended November 18th, 1913.

(*b*) By order, January 17th, 1908, as amended November 18th, 1913, the fees prescribed in sects. 5, 12, 16, 17, 18, 19, 20, 21 and 22 of this paragraph are payable in respect of similar proceedings under the Workmen's Compensation Acts, 1897 and 1900, and the Workmen's Compensation Rules, 1898 and 1900.

	£	s.	d.
Workmen's Compensation Act, 1906, or the Shipowners Negligence (Remedies) Act, 1905	0	7	6
3. On an order adding a respondent under Rule 41 (4) ..	0	4	0
4. On an application to rectify the register or to remove a record from the register under Schedule II. par. 9 (c) or (e), and Rule 50 or Rule 52	0	4	0
5. For preparing a certificate under Section 1, Sub-section 4 and Rule 54	0	5	0
6. On an application for a reference to a medical referee under Schedule I. paragraph 15, the fee prescribed by Rule 57 (9).			
7. On a reference to a medical referee in accordance with regulations made by the Secretary of State pursuant to section 8 (1) (f)	0	10	0
8. On an application for the suspension of the right to compensation or to take proceedings, or of the right to weekly payments, under Schedule I. pars. 4, 14, or 15, and Rule 58	0	4	0
8A(c). On a payment into court under Rule 53, Rule 60, Rule 61, Rule 62, or Rule 65	0	5	0
9. On an application for investment, etc., under Schedule I. par. 5, and Rule 60, Rule 61, Rule 62, or Rule 65 ..	0	4	0
10. On an application for the payment of weekly payments into court under Schedule I. par. 7 and Rule 63 (3) ..	0	4	0
11. On an application for the variation of an order under Schedule I. par. 9 and Rule 64	0	4	0
11A(c). The fee mentioned in the last preceding item is not to be taken on an application under the liberty to apply reserved by paragraph 13 of Rule 60, but on any such application there shall be allowed a fee (which shall be deducted from the fund to which the application relates) of	0	2	0
12. For every investment made by a registrar, including the payment out or application of a sum allotted to any person by weekly or other periodical payments (charged once only, and to be deducted from the sum ordered to be invested or allotted). For every 10*l.*, or part of 10*l.*, invested, but so that the total fee shall not exceed 50*s.*..	0	5	0
13. On an application for a reference to a medical referee under Schedule I. par. 18, and Rule 66	0	4	0
14. For a certificate of identity under Rule 66 (10) (c) ..	0	5	0
15. For receiving and forwarding any sum due to a workman or the representative of a deceased workman residing out of the United Kingdom under Rule 60 (15) or Rule 67 (4) (to be deducted from the sum to be forwarded)	0	5	0
16. For every taxation of the costs of an award, or between third parties and other parties to an arbitration ..	0	10	0
17. For every other taxation of costs	0	5	0
18. On an application to the judge under Rule 80 (3 to 5) at a date subsequent to the hearing of the arbitration ..	0	4	0
19. On an application to the judge under Rule 81 (e) other than an application for an order for execution to issue..	0	4	0
20. For examining every affidavit or taking other evidence in support of an application for issue of execution or a judgment summons under Rules 82 (3) or 83 (2) ..	0	1	6

(*c*) By order, July 7th, 1909, as amended November 18th, 1913.

	£	s.	d.
21. On an application to set aside or vary an award or order under Rule 85	0	4	0
22. For every office copy or certified copy of documents filed or records made in reference to any matter, per folio ..	0	0	4
23. For every sitting under Rule 37	0	10	0
24. On any other proceeding not herein specified, for which if such proceeding were taken in an action, a fee would be payable, the fee which would be payable if such proceeding were taken in an action.			

The fees prescribed in Sections 5, 12, 16, 17, 18, 19, 20, 21, and 22 of this paragraph are payable in respect of similar proceedings under the Workmen's Compensation Acts, 1897 and 1900, and the Workmen's Compensation Rules, 1898 to 1900, when the accident happened before the commencement of the Workmen's Compensation Act, 1906.

High Bailiff's Fees.

The words and figures "the Consolidated Workmen's Compensation Rules, July, 1913," shall be substituted for the words and figures "the Workmen's Compensation Rules, 1907," in paragraphs 41, 42, and 42B.

The word and figures "Rule 39 (8)" shall be substituted for the word and figures "Rule 37 (8)" in paragraph 42A.

APPENDIX HH.

PRECEDENTS OF COSTS (*a*).

PRECEDENT No. 1.

ARBITRATIONS UNDER THE WORKMEN'S COMPENSATION ACT, 1906.

APPLICANT'S COSTS.

Lower Scale.

	Item.	Exceeding £2 and not exceeding £5.	Exceeding £5 and not exceeding £10.
		£ s. d.	£ s. d.
Preparing particulars of claim, &c. ...	1	0 4 0	0 8 0
Attending court when matter adjourned for want of time	9	0 3 6	0 5 0
Preparing for and attending hearing ...	3	0 7 0	0 10 0
Or, if so ordered by the judge, not exceeding	7	1 0 0	1 0 0
Attending court applying for award in the terms of respondent's submission ...	4	0 5 0	0 5 0
Or such portion of item 3 as judge or registrar may direct.		or as directed by judge or registrar.	
Fee to counsel, if allowed by judge ...	8	1 3 6	1 3 6
Taxing fee	B.I. 26 (16).	0 10 0	0 10 0
Witnesses			

PRECEDENT No. 2.

ARBITRATIONS UNDER THE WORKMEN'S COMPENSATION ACT, 1906.

RESPONDENT'S COSTS.

Lower Scale.

	Item.	Exceeding £2 and not exceeding £5.	Exceeding £5 and not exceeding £10.
		£ s. d.	£ s. d.
Attending court when matter adjourned for want of time	9	0 5 0	0 7 6
Preparing defence and attending hearing...	6	0 10 0	0 15 0
Or, if so ordered by the judge, not exceeding	7	1 0 0	1 0 0
The matter having been withdrawn, costs of preparing for hearing	4	0 5 0	0 5 0
Or such portion of item 6 as judge or registrar may direct.		or as directed by judge or registrar.	
Fee to counsel, if allowed by judge ...	8	1 3 6	1 3 6
Taxing fee	B.I. 26 (16).	0 10 0	0 10 0
Witnesses			

(*a*) These precedents have been specially prepared for the Annual County Courts Practice by Mr. J. J. Cooper, Chief Clerk of the Bow County Court.

PRECEDENT No. 3.

ARBITRATIONS UNDER THE WORKMEN'S COMPENSATION ACT, 1906.

APPLICANT'S COSTS.

(See notes (1), (2), (3), (4), (5), (6), (7) at the end of this Precedent.)

Scale.

	Item.	A. £	A. s.	A. d.	B. £	B. s.	B. d.	C. £	C. s.	C. d.	
Letter before action	96	0	3	6	0	3	6	0	3	6	
Instructions for arbitration	20	0	3	4	0	6	8	0	13	4	
Preparing request for arbitration, including necessary copies	2	0	6	0	0	12	0	1	1	0	Request for arbitration.
Fee to counsel to settle same, if allowed by judge	93	..	—	..	1	3	6	(4) 1 to 2	3 to 4	6 to 6	
Attending to file	54	0	3	4	0	6	8	0	6	8	
(5) Personal service of notice ...	14	0	5	0	0	5	0	0	5	0	
(5) Mileage, after two miles, but not to exceed ten miles; per mile...	15	0	0	6	0	0	6	0	1	0	
(5) Service through an agent for correspondence in addition, if in consequence of distance it is proper to do so	16	0	4	0	0	7	0	0	7	0	
(5) Substituted service in addition ...	17	0	10	0	1	0	0	1	5	0	
Service by post	19	0	1	0	0	1	6	0	1	6	
Affidavit of service, unless answer filed in due time	39	0	3	4	0	5	0	0	6	8	
Perusing respondent's answer ...	45	0	2	0	0	3	4	0	6	8	Perusing answer.
Or per folio		0	0	2	0	0	4	0	0	4	
Attending applicant thereon to receive instructions	63	0	3	4	0	6	8	0	6	8	
Having received notice of submission to award for payment of £ : : weekly [or of payment into court of £ : :], attending applicant thereon when he declined to accept same	63	0	3	4	0	6	8	0	6	8	Receipt of submission.
Instructions to counsel to advise on evidence if given in writing ...	26	..	—	..	0	3	4	0	6	8	Advice on evidence.
Fee to counsel if advice given in writing and allowed by order of judge	94	1	(1) 3	6	1	3	6	(4) 1 to 2	3 to 4	6 to 6	
Preparing notice to produce and copy	7	0	3	0	0	4	0	0	5	0	Notice to produce.
If special or necessarily long, not exceeding per folio	8	..	—	..	0	0	8	0	0	8	
Service by post	19	0	1	0	0	1	6	0	1	6	
Affidavit of service (when required), including engrossing, etc.	40	0	2	0	0	2	0	0	3	4	
Copy notice to annex, per folio ...	44	0	0	2	0	0	4	0	0	4	
Preparing notice to admit, and copy...	7	0	3	0	0	4	0	0	5	0	Notice to admit.

PRECEDENT No. 3—*continued.*

		Item.	Scale. A. £	s.	d.	B. £	s.	d.	C. £	s.	d.
	If special or necessarily long, not exceeding, per folio	8		—		0	0	8	0	0	8
	Service (if separate)—as of notice to produce, *ante*. *Cf.* note to "Service" in scale where two or more notices have been or could have been served together.										
	Notice of appointment for inspection	12	0	1	6	0	2	0	0	2	6
	Service	19	0	1	0	0	1	6	0	1	6
Inspection.	Attending producing documents for inspection	57	0	3	4	0	6	8	0	6	8
	Or per hour			—		0	6	8	0	6	8
Respondent's notice to produce and admit.	Perusing respondent's notice to produce	48	0	2	0	0	5	0	0	6	8
	Perusing respondent's notice to admit	48	0	2	0	0	5	0	0	6	8
	Notice to produce documents for inspection	12	0	1	6	0	2	0	0	2	6
	Service by post	19	0	1	0	0	1	6	0	1	6
	Attending to inspect documents ...	57	0	3	4	0	6	8	0	6	8
	Or per hour			—		0	6	8	0	6	8
	Where solicitor inspecting does not reside or carry on business within two miles of place of inspection, in addition, sum paid for locomotion, not exceeding	58	0	10	0	1	0	0	1	0	0
Admission of documents.	Notice of admission of documents mentioned in notice to admit copy and service	12 and 19	0	2	6	0	3	6	0	4	0
Notice to admit facts.	Preparing notice to admit facts and one copy	7	0	3	0	0	4	0	0	5	0
	If special or necessarily long, not exceeding, per folio	8		—		0	0	8	0	0	8
	Service by post	19	0	1	0	0	1	6	0	1	6
Respondent's notice to admit facts.	Perusing respondent's notice to admit facts	48	0	2	0	0	5	0	0	6	8
	Drawing notice of admission of facts and copies	32	0	3	0	0	5	0	0	6	8
	Or per folio beyond three ...			—		0	1	0	0	1	0
	Attending to deliver same	55	0	2	0	0	3	4	0	3	4
	Attending witness arranging for his attendance without subpœna ...	59A	0	2	6	0	3	4	0	5	0
Subpœna.	Subpœna to witness, including attending for leave to serve and sealing...	5	0	2	0	0	3	0	0	5	0
	Or per folio beyond four... ...			—			—		0	0	8
	Service	18	0	1	6	0	2	6	0	2	6
	Affidavit of service, when required, including engrossing	40	0	2	0	0	2	0	0	3	4
Medical examination of applicant.	The respondents requiring medical examination of applicant, writing applicant to submit himself for same	97	0	2	0	0	3	6	0	3	6
Examination of witness.	Preparing notice of motion for examination of witness	9	0	4	0	0	5	0	0	6	0
	Service by post	19	0	1	0	0	1	6	0	1	6

PRECEDENT No. 3—*continued.* *Scale.*

	Item.	A. £	A. s.	A. d.	B. £	B. s.	B. d.	C. £	C. s.	C. d.	
Instructions for affidavit in support of motion	23	0	3	4	0	6	8	0	6	8	
Drawing and engrossing same ...	37	0	2	6	0	5	0	0	5	0	
Or per folio	37	0	0	6	0	1	0	0	1	0	
Copy affidavit for service, per folio ...	44	0	0	2	0	0	4	0	0	4	
Attending on deponents being sworn...	61	0	2	0	0	3	4	0	6	8	
Paid oath	100										
Attending to make application before judge without counsel	64	0	5 to	0	0	6 to	8	0	10 to	0	
		0	10	0	0	13	4	1	1	0	
Or to registrar	66	0	2	0	0	3	4	0	6	8	
Instructions for brief on motion, where counsel allowed	27	0	3	4	0	6	8	0	6 to	8	
								0	10	0	
Drawing brief, if counsel allowed ...	35	0	5	0	0	6	8	0	6 to	8	
								0	13	4	
Copy per folio	44	0	0	2	0	0	4	0	0	4	
Copy documents to accompany, per folio	43	0	0	2	0	0	4	0	0	4	
Fee to counsel, if judge certifies for counsel	91	1	3	6	1	3	6	2	(4) 4	6	
Attending court with counsel ...	65	0	3	4	0	6	8	0	6 to	8	
								0	10	0	
Copy order for service on other side, per folio	44	0	0	2	0	0	4	0	0	4	
Notice of appointment for examination	12	0	1	6	0	2	0	0	2	6	
Service of copy order and notice ...	19	0	1	0	0	1	6	0	1	6	
Subpœna for witness	5	0	2	0	0	3	0	0	5	0	
Or per folio beyond four... ...			—			—		0	0	8	
Service	18	0	1	6	0	2	6	0	2	6	
Affidavit of service when required ...	40	0	2	0	0	2	0	0	3	4	
Examining and taking minutes of evidence where no counsel employed	29	0	2	0	0	3	4	0	6	8	
If exceeding six folios, for each additional folio	30	0	0	6	0	1	0	0	1	0	
Attending examination, per hour ...	60	0	3	4	0	6	8	0	10 (4)	0	
Fee to counsel if certified by judge ...	92	1	3	6	2	4	6	3	5	6	
Paid for office copy depositions ...	99										
Instructions for affidavit of witness for use at trial	23	0	3	4	0	6	8	0	6	8	Affidavit of witness.
Drawing affidavit and engrossing ...	37	0	2	6	0	5	0	0	5	0	
Or per folio		0	0	6	0	1	0	0	1	0	
Attending deponent upon his being sworn...	61	0	2	0	0	3	4	0	6	8	
Notice of desire to use affidavit at trial, Order XVIII. rule 11 ...	12	0	1	6	0	2	0	0	2	6	
Copy affidavit for service with notice, per folio	44	0	0	2	0	0	4	0	0	4	
Service	18	0	1	6	0	2	6	0	2	6	
Or by post	19	0	1	0	0	1	6	0	1	6	

PRECEDENT No. 3—*continued.* *Scale.*

		Item.	A. £	A. s.	A. d.	B. £	B. s.	B. d.	C. £	C. s.	C. d.
Suspension of weekly payments.	*Where proceedings for review of weekly payment.*										
	Notice requiring respondent to submit himself to medical examination, and service	12 and 19	0	2	6	0	3	6	0	4	0
	The workman having refused to submit himself for examination by employers' medical man, drawing notice of application to court to suspend weekly payments until examination has taken place, and copies	11	0	2	0	0	3	0	0	5	0
	Service by post	19	0	1	0	0	1	6	0	1	6
	Instructions for brief, if counsel allowed	27	0	3	4	0	6	8	0	6 to 0	8 10 0
	Drawing brief for application ...	35	0	5	0	0	6	8	0	6 to 0	8 13 4
	Copy per folio	44	0	0	2	0	0	4	0	0	4
	Copy documents to accompany, per folio	43	0	0	2	0	0	4	0	0 (4)	4
	Paid counsel's fee, if allowed by judge	91	1	3	6	1	3	6	2	4	6
	Attending court with counsel ...	65	0	3	4	0	6	8	0	6 to 0	8 10 0
	Attending making application without counsel	64	0	5 to 0	0 10 0	0	6 to 0	8 13 4	0 1	10 to 1	0 0
Medical assessor.	Drawing application to judge to summon medical assessor	12	0	1	6	0	2	0	0	2	6
	Service on registrar by post	19	0	1	0	0	1	6	0	1	6
Notice that matter settled.	Notice to registrar that matter settled	97	0	2	0	0	3	6	0	3	6
	Where counsel is not employed.										
	Examining and taking minutes of evidence, where no counsel employed, for each witness	29	0	2	0	0	3	4	0	6	8
	If exceeding six folios, for each additional folio	30	0	0	6	0	1	0	0	1	0
	Preparation of minutes of fact or argument, in addition, if judge so orders	31	0	15	0	1	1	0	2	2	0
Hearing.	Attending court when matter adjourned for want of time, or upon payment of costs of day	73	0	10	0	0 1	15 to 1	0 0	1 2	(2) 1 to 2	0 0
	Attending court when hearing continued	72	0	10	0	0 1	15 to 1	0 0	1 2	(2) 1 to 2	0 0

PRECEDENT No. 3—*continued.* *Scale.*

	Item.	A. £	A. *s.*	A. *d.*	B. £	B. *s.*	B. *d.*	C. £	C. *s.*	C. *d.*	
Attending court conducting matter ...	69	0	15	0	1	1	0	1	1	0	
								to			
								2	2	0	
Or by order of judge instead of last item	70	1	1	0	2	2	0	3	3	0	
Or at discretion of registrar, subject to review by judge or by special order of judge (Ord. LIII, r. 8 (2)) may be increased to...			—			—		5	5	0	
Sum paid for locomotion, not exceeding	74	0	10	6	1	1	0	1	1	0	
Cost of maintenance, not exceeding...	75	0	10	6	1	1	0	1	1	0	If allowable, see items 74 and 75 in scale and Ord. LIII. r. 22.
Where counsel is employed.									(7)		
Instructions for brief	28	0	6	8	0	10	6	1	1	0	
			to			to			to		
		0	10	0	1	11	6	3	3	0	
Drawing same, per folio	34	0	1	0	0	1	0	0	1	0	Brief.
			not								
			exceeding								
		0	10	0							
Copy for counsel, per folio	44	0	0	2	0	0	4	0	0	4	
Copy notice of injury to accompany, per folio	43	0	0	2	0	0	4	0	0	4	
The like request for arbitration, per folio	43	0	0	2	0	0	4	0	0	4	
The like respondent's answer, per folio	43	0	0	2	0	0	4	0	0	4	
The like applicant's notices to admit and produce, per folio	43	0	0	2	0	0	4	0	0	4	
The like respondent's notices to admit and produce, per folio	43	0	0	2	0	0	4	0	0	4	
Copy correspondence, per folio ...	43	0	0	2	0	0	4	0	0	4	
Attending on counsel with brief ...	67	0	3	4	0	3	4	0	6	8	
									(4)		
Fee to counsel not to exceed	85	2	4	6	3	5	6	5	10	0	
Where more counsel than one, cf. Ord. LIII. r. 8 (3) (b)											
If there is no local bar in the court town or within twenty miles thereof, a further fee may be allowed by order of the judge once only not exceeding	86	1	3	6	2	4	6	(4) 2	4	6	Conference.
Attending to appoint conference and attending thereon	68		—		0	6	8	0	13	4	
									(4)		
Fee to counsel	87		—		1	6	0	1	6	0	
Attending court on hearing with counsel	71	0	10	0	0	15	0	1	1	0	
						to			to		
NOTE.—The minimum must not be exceeded if the case is undefended or there is no real contest, nor if the solicitor does not attend in person.					1	1	0	2	2	0	
Sum paid for locomotion not exceeding	74	0	10	6	1	1	0	1	1	0	If allowable, see items 74 and 75 and Ord. LIII. r. 22.
Cost of maintenance not exceeding ...	75	0	10	6	1	1	0	1	1	0	

PRECEDENT No. 3—*continued.* *Scale.*

		Item.	A. £	s.	d.	B. £	s.	d.	C. £	s.	d.
Hearing.	Attending court with counsel when matter adjourned for want of time, or upon payment of costs of the day	73	0	10	0	0	(3) 15 to 1	0 0	(2) and (3) 1 to 2	1 2	0 0
	Circular letter to witness G. H. to attend adjourned hearing	98		—		0	1	0	0	1	0
	Refresher to counsel	88	1	3	6	1 to 2	(4) 3 4	6 6	2 to 3	4 5	6 6
	Attending court with counsel when hearing continued	72	0	10	0	0 to 1	(3) 15 1	0 0	(2) and (3) 1 to 2	1 2	0 0
	Circular letter to witness G. H. to attend adjourned hearing	98		—		0	1	0	0	1	0
Further consideration.	Attending court on further consideration or argument	72	0	10	0	0 to 1	(3) 15 1	0 0	(2) and (3) 1 to 2	1 2	0 0
	Fee to counsel	90	1	3	6	1 to 2	3 4	6 6	(4) 2 to 3	4 5	6 6
	Attending court on trial, with counsel, when award given ... ... The minimum must not be exceeded if there is no real contest.	71	0	10	0	0 to 1	15 1	0 0	(2) and (3) 1 to 2	1 2	0 0
	Refresher to counsel	88	1	3	6	1 to 2	3 4	6 6	(4) 2 to 3	4 5	6 6
	Or attending court with counsel when the judge, after hearing the evidence, decided to submit questions to medical referee	71	0	10	0	0 to 1	15 1	0 0	(2) 1 to 2	1 2	0 0
	Attending court to hear deferred award	78	0	5	0	0	6	8	0 to 0	6 10	8 0
	Fee to counsel on same	90	1	3	6	1 to 2	3 4	6 6	(4) 2 to 3	4 5	6 6
Special case.	Where special case stated by arbitrator, Sched. II., par. 4, and rule 34... Attending registrar bespeaking copy of special case	83	0	2	0	0 to 0	3 6	4 8	0	6	8
	Paid										
	Perusing same, cf. rule 76 (4) ...	53	0	2	0	0	3	4	0	6	8
	Or per folio		0	0	2	0	0	4	0	0	4

PRECEDENT No. 3—*continued.* *Scale.*

	Item.	A. £	A. *s.*	A. *d.*	B. £	B. *s.*	B. *d.*	C. £	C. *s.*	C. *d.*	
									(7)		
Instructions for brief	28	0	6	8	0	10	6	1	1	0	
(The minimum will rarely be			to			to			to		
exceeded.)		0	10	0	1	11	6	3	3	0	
Drawing same, per folio	34	0	1	0	0	1	0	0	1	0	
		not									
		exceeding									
		0	10	0							
Copy for counsel, per folio	44	0	0	2	0	0	4	0	0	4	
Copy special case and of arbitrator's notes to accompany, per folio ...	43	0	0	2	0	0	4	0	0	4	
									(4)		
Fee to counsel, not to exceed... ...	85	2	4	6	3	5	6	5	10	0	
Attending on counsel with brief ...	67	0	3	4	0	3	4	0	6	8	
Attending to appoint conference and attending thereon	68		—		0	6	8	0	13	4	
									(4)		
Fee to counsel	87		—		1	6	0	1	6	0	
Attending court on hearing of special									(2) and (3)		
case with counsel	71	0	10	0	0	15	0	1	1	0	
						to			to		
					1	1	0	2	2	0	
Attending court on hearing of special case without counsel	69	0	15	0	1	1	0	1	1	0	
									to		
								2	2	0	
Or by order of judge instead of last item...	70	1	1	0	2	2	0	3	3	0	
Or at discretion of registrar, subject to review by judge or by special order of judge (Ord. LIII. r. 8 (2)) may be increased to...								5	5	0	
Drawing bill of costs and copy for registrar, per folio	42	0	0	4	0	0	8	0	0	8	Drawing bill.
Copy for respondents	44	0	0	2	0	0	4	0	0	4	
Attending registrar lodging bill and papers and obtaining appointment for taxation	83	0	2	0	0	3	4	0	6	8	
Notice of taxation and copy	12	0	1	6	0	2	0	0	2	6	
Service by post...	19	0	1	0	0	1	6	0	1	6	
Attending taxation	82	0	3	4	0	6	8	0	6	8	
									to		
								0	13	4	
Paid taxing fee	B. I. 26 (16)	0	10	0	0	10	0	0	10	0	
Letters, &c.	101	0	2	6	0	5	0	0	10	0	
Paid Witnesses.											Witnesses.
Expert and scientific witnesses, if allowed by judge.											
			(1)						(6)		
J. K. for qualifying to give evidence		1	1	0	1	1	0	1	1	0	
			to			to			to		
		3	3	0	3	3	0	5	5		

PRECEDENT No. 3—*continued.* *Scale.*

	Item.	A.			B.			C.		
		£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
			(1)						(6)	
Attending court on hearing		1	1	0	1	1	0	1	1	0
			to			to			to	
		2	2	0	2	2	0	3	3	0
Plans, charts, or models for use of judge, if allowed by order of judge, not exceeding	95	2	(1) 2	0	2	2	0	3	(6) 3	0

The word "judge" in Ord. LIII. rr. 7 and 8, includes a committee and an arbitrator.

(1) Workmen's Compensation Act, Rule 76 (2).

(2) May be increased to 3*l.* 3*s.* Ord. LIII. r. 8 (2).

(3) The minimum must not be exceeded if the solicitor does not attend in person.

(4) Reasonable fees in excess may be allowed. Ord. LIII. r. 8 (3) (*a*).

(5) As the Workmen's Compensation Act Rules provide for service by post, the items relating to personal service will only be allowed in special cases.

(6) Reasonable fees in excess may be allowed, Ord. LIII. r. 8 (3) (*c*).

(7) May be increased to £5 5*s.* 0*d.*

MEMO.—Although W.C.A. Rule 76 (1) states that proceedings under W.C.A. shall be within Ord. LIII. rr. 7 and 8, this is now unnecessary, as Ord. LIII. rr. 7 and 8 relate to any action or matter.

PRECEDENT No. 4.

ARBITRATIONS UNDER THE WORKMEN'S COMPENSATION ACT, 1906.

RESPONDENT'S COSTS.

(See notes (1), (2), (3) at the end of this Precedent.)

Scale.

		Item.	A.			B.			C.		
			£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Instructions to defend.	Instructions to defend	20	0	3	4	0	6	8	0	13	4
	Perusing particulars of claim	45	0	2	0	0	3	4	0	6	8
	Or per folio		0	0	2	0	0	4	0	0	4
Answer.	Drawing answer, including necessary copies	32	0	3	0	0	5	0	0	6	8
	Or per folio beyond three ...			—		0	1	0	0	1	0
	Attending to file	55	0	2	0	0	3	4	0	3	4
	Fee to counsel to settle answer, if allowed by order of judge	93		—		1	3	6	1	(1) 3	6
										to	
									2	4	6
Notice for medical examination.	*Proceed as in Precedent No.* 3. Notice requiring applicant to submit himself to medical examination and service	12 and 19	0	2	6	0	3	6	0	4	0

PRECEDENT No. 4—*continued.*

	Item.	Scale A. £	s.	d.	Scale B. £	s.	d.	Scale C. £	s.	d.	
The workman having refused to submit himself for examination by employer's medical man, drawing notice of application to court to suspend weekly payments until examination has taken place, and copies	11	0	2	0	0	3	0	0	5	0	Suspension of weekly payments.
Service by post	19	0	1	0	0	1	6	0	1	6	
Instructions for brief, if counsel allowed	27	0	3	4	0	6	8	0	6 to 0	8 10 0	
Drawing brief on application... ...	35	0	5	0	0	6	8	0	6 to 0	8 13 4	
Copy, per folio	44	0	0	2	0	0	4	0	0	4	
Copy documents to accompany, per folio	43	0	0	2	0	0	4	0	0 (1)	4	
Paid counsel, if allowed by judge ...	91	1	3	6	1	3	6	2	4	6	
Attending court with counsel ...	65	0	3	4	0	6	8	0	6 to 0	8 10 0	
Attending making application without counsel	64	0	5 to 0	0 10 0	0	6 to 0	8 13 4	0	10 to 1	0 1 0	
Claim for contribution from other employers, Section 8 (1) (*c*), III. Rules 41 (5) and 20—24, 26 and 27. See Rule 24 as to directions of judge.											
Instructions for claim for contribution from other employers, not exceeding	(3) 20	0	3	4	0	6	8	0	13	4	Claim for contribution.
Drawing notice of claim for contribution, not exceeding	(3) 2	0	6	0	0	12	0	1	1	0	
Attending registrar with documents to be sealed	83	0	2	0	0	3 to 0	4 6 8	0	6	8	
Copy applicant's request and particulars and notice of claim for contribution and copies to file with affidavit of service per folio ...	44	0	0	2	0	0	4	0	0	4	
(2) Personal service of notice upon third party	14	0	5	0	0	5	0	0	5	0	
(2) Mileage after two miles, but not to exceed ten miles, per mile ...	15	0	0	6	0	0	6	0	1	0	
(2) Service through an agent, if in consequence of distance it is proper to do so, for correspondence, in addition	16	0	4	0	0	7	0	0	7	0	
(2) Substituted service, in addition ...	17	0	10	0	1	0	0	1	5	0	
Service by post...	19	0	1	0	0	1	6	0	1	6	
Affidavit of service	39	0	3	4	0	5	0	0	6	8	
Paid hearing fee (cf. Sched. of Fees, Sched. A. 46 (*c*))	—		—			—			—		

PRECEDENT NO. 4—*continued.* *Scale.*

	Item.	A. £	A. s.	A. d.	B. £	B. s.	B. d.	C. £	C. s.	C. d.
Adding respondent. Adding respondent under Section 8 (1) (*c*), II. of Act, and Rule 41 (4) (*a*). See Rule 41 (4) (*d*) as to judge's order as to costs.										
Drawing notice that respondents allege that disease contracted whilst applicant was in the employ of E. F., including copies not exceeding ...	(3) 2	0	6	0	0	12	0	1	1	0
Attending to file and obtain order ...	83	0	2	0	0	3 to 6	4 to 8	0	6	8
Copy order adding E. F. respondent, applicant's request and particulars, and notice served on original respondent for service on added respondents and copies to file with affidavit of service, per folio	44	0	0	2	0	0	4	0	0	4
(2) Personal service of notice upon added respondent	14	0	5	0	0	5	0	0	5	0
(2) Mileage after two miles, but not to exceed ten miles, per mile ...	15	0	0	6	0	0	6	0	1	0
(2) Service through an agent, if in consequence of distance it is proper to do so, for correspondence, in addition	16	0	4	0	0	7	0	0	7	0
(2) Substituted service, in addition...	17	0	10	0	1	0	0	1	5	0
Service by post	19	0	1	0	0	1	6	0	1	6
Affidavit of service, unless answer filed in due time	39	0	3	4	0	5	0	0	6	8
Perusing answer filed by added respondent	45	0	2	0	0	3	4	0	6	8
Hearing fee (when paid) (cf. Sched. of Fees, Sched. A. 46)	—		—			—			—	

The word "judge" in O. LIII., rr. 7 and 8, includes a committee and an arbitrator.

NOTE.—Rule 41 (*c*). The provisions of rules as to respondents apply to added respondents from date of service on them.

(1) Reasonable fee in excess may be allowed. Ord. LIII. r. 8 (3) (*a*).

(2) As the Workmen's Compensation Act Rules provide for service by post the items relating to personal service will only be allowed in special cases.

(3) See Ord. LIII. r. 8 (4).

PRECEDENT No. 5.

COSTS UNDER WORKMEN'S COMPENSATION ACT, 1906.

COSTS OF APPLICATION THAT MEMORANDUM OF AGREEMENT BE RECORDED.

Scale.

	Item.	A.			B.			C.		
		£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Perusing notice disputing genuineness of the memorandum...	45	0	2	0	0	3	4	0	6	8
Or per folio	—	0	0	2	0	0	4	0	0	4
Instructions for application for an order that memorandum be recorded	20	0	3	4	0	6	8	0	13	4
Preparing notice of application to court, including necessary copies ...	11	0	2	0	0	3	0	0	5	0
Attending obtaining date for hearing and filing notice	54	0	3	4	0	6	8	0	6	8
Service upon respondents by post ...	19	0	1	0	0	1	6	0	1	6
Follow Precedent 3 *as to other costs.*										
Taxing fee	B.I. 26 (17)	0	5	0	0	5	0	0	5	0

PRECEDENT No. 6.

COSTS UNDER WORKMEN'S COMPENSATION ACT, 1906.

COSTS OF OPPOSING APPLICATION THAT MEMORANDUM OF AGREEMENT BE RECORDED.

Scale.

	Item.	A.			B.			C.		
		£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Perusing memorandum and notice ...	45	0	2	0	0	3	4	0	6	8
Or per folio	—	0	0	2	0	0	4	0	0	4
Instructions to file notice disputing genuineness of memorandum [or objecting to the recording of the memorandum]	20	0	3	4	0	6	8	0	13	4
Preparing notice and copies	12	0	1	6	0	2	0	0	2	6
Attending filing same and copy ...	55	0	2	0	0	3	4	0	3	4
Or by post	19	0	1	0	0	1	6	0	1	6
Having received notice of application to judge that memorandum be recorded, attending client taking instructions to oppose	20	0	3	4	0	6	8	0	13	4
Follow Precedent 3 *as to other costs.*										
Taxing fee	B.I. 26 (17)	0	5	0	0	5	0	0	5	0

PRECEDENT No. 7.

COSTS UNDER WORKMEN'S COMPENSATION ACT, 1906.

COSTS AFTER RECEIPT OF NOTICE OF SUBMISSION OR PAYMENT INTO COURT WHEN SUM SUBMITTED OR PAID ACCEPTED.

Scale.

	Item.	A.			B.			C.		
Costs as in Precedent 3 *to receipt of notice.*		£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Drawing notice of acceptance of weekly payment, or of amount paid into court, and of application for costs ...	12	0	1	6	0	2	0	0	2	6
Service upon respondents by post ...	19	0	1	0	0	1	6	0	1	6
Service upon registrar by post ...	19	0	1	0	0	1	6	0	1	6
Attending court applying for award and costs	64	0	5 to	0	0	6 to	8	0	10 to	0
		0	10	0	0	13	4	1	1	0
Follow Precedent 3 *as to costs of taxation.*										
Taxing fee	B. I. 26 (16)	0	10	0	0	10	0	0	10	0

PRECEDENT No. 8.

COSTS UNDER WORKMEN'S COMPENSATION ACT, 1906.

COSTS OF INQUIRY BY JUDGE AS TO WHETHER MEMORANDUM OF AGREEMENT SHOULD BE RECORDED.

Scale.

	Item.	A.			B.			C.		
		£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Having received notice from registrar that an inquiry would be held as to agreement, receiving instructions from client	20	0	3	4	0	6	8	0	13	4
Follow Precedent 3 *as to other costs.*										
Taxing fee	B. I. 26 (17)	0	5	0	0	5	0	0	5	0

PART V.

JURISDICTION UNDER STATUTES.

INTRODUCTORY CHAPTER.

General Observations on the Special Jurisdiction given to the County Court by Special Statutes.

Numerous statutes, other than those which deal exclusively with county courts or their jurisdiction, have from time to time been passed since 1846 which confer some jurisdiction, or impose some duty, on county courts or their judges or their registrars. These jurisdictions and duties have been conferred without regard to any recognised system, hence it is most difficult to classify or arrange the Acts which confer them in any satisfactory manner. The obligations created or dealt with by these special statutes are of a most varied kind, giving to county courts a jurisdiction sometimes limited and sometimes unlimited, sometimes exclusive of and sometimes concurrent with the High Court. In addition certain statutes of general application, but frequently used in county courts, such as the Sale of Goods Act are set out in different parts of this book, and will be found in the following list of statutes. The War Emergency Statutes are also included in the list.

In editions of the practice prior to that of 1914 it had been considered that a question of first importance for a practitioner was to know the nature and extent of the jurisdiction; consequently, so far as any classification could be attempted, jurisdiction was made the basis of that classification. But this classification, though most instructive to the student who desired to make himself master of the subject of county court jurisdiction, was found not to be convenient for those practitioners who in the press of business desired to ascertain as quickly as possible the jurisdiction and practice of the county court on any one particular statute.

It was therefore decided in all future editions to alter the arrangement of the practice and to deal with each subject in alphabetical order, bringing the notes, the Acts and the rules as far as possible together, setting out in notes to each statute the

limit (if any) to the jurisdiction given to the county court, in which court proceedings ought to be brought, and whether those proceedings should be by action or petition, whether an appeal lay to the High Court, and how that appeal ought to be presented. As the classification of the statutes according to the jurisdiction they respectively confer is interesting and instructive, a list of the statutes thus classified is added at the end of these observations.

Appeal.]—The question of whether an appeal could be prosecuted was at one time a matter of considerable difficulty, but is much simplified since *The Delano* (C. A.), (1895) P. 40 ; 64 L. J. P. 8, in which case the Court of Appeal decided that wherever the words of sect. 120 of the County Courts Act, 1888, were wide enough to include a case under a special Act, the right of appeal was given by that section in every action or matter which could come before a county court. As, by sect. 186 of the County Courts Act, 1888, "action" includes suit and means every proceeding which may be commenced by plaint, and "matter" means every proceeding which may be commenced otherwise than by plaint, it will be at once realised how wide a field is covered by the *Delano* decision (see *Williams* v. *Wallis & Cox*, (1914) 2 K. B. 478; 83 L. J. K. B. 1296. Where the special Act does give an appeal it is now settled that the appeal must be by motion (*Kirkheaton Local Board* v. *Ainley* (C. A.), (1892) 2 Q. B. 274 ; 61 L. J. Q. B. 812).

Prohibition.]—The general power which the High Court possesses to restrain all inferior courts from exceeding their jurisdiction no doubt enables it to restrain by prohibition any excess of jurisdiction under any special Act, whether the jurisdiction be concurrent or exclusive (*Hull* v. *McFarlane*, (1857) 2 C. B. N. S. 796 ; 27 L. J. (N. S.) C. P. 41, where it seems to have been assumed that prohibition may be ordered in the mode prescribed by sect. 128 of the County Courts Act, 1888, instead of in the more cumbrous method still prevailing for other cases ; *Smith* v. *Pryse*, (1857) 7 E. & B. 339 ; 26 L. J. (N. S.) Q. B. 95).

Order in lieu of Mandamus.]—Whether a judge can be compelled by order in lieu of by *mandamus* to do an act to the performance of which a suitor is entitled is not clear, but it seems to have been so considered in a case under the Bills of Exchange Act (*Holborow* v. *Jones*, (1868) L. R. 4 C. P. 14 ; 38 L. J. (N. S.) C. P. 22) ; whilst where a county court judge refused to hear disputes which he was bound to hear under the terms of a local Act, it was held that *mandamus* and not an order was the proper remedy (*Re Brighton Sewers Act*, (1882) 9 Q. B. D. 723).

In what Court Proceedings commenced.]—Where the special Act is silent as to the court in which proceedings under it may be brought, the safest course is to proceed under sect. 74 of the County Courts Act, 1888, in the court of the district in which the defendant dwells or carries on business. In *The Hero*, (1891) P. 294; 60 L. J. P. 99, it was held that the general provisions of the said sect. 74 gave jurisdiction in admiralty to the court in which the defendant carried on business, although the Admiralty Jurisdiction Acts contain express provisions inconsistent with such general provisions.

When by Action and when by Petition.]—The general practice of the court prescribed by the rules applies to all proceedings authorised by any Act to be commenced or taken in a county court, except in so far as such practice may be inconsistent with the provisions of any such Act or of any particular rules made as to the procedure under any such Act (Order L. r. 36). It is also provided that where by any Act, for which particular rules have not been prescribed, proceedings are authorised or directed to be taken in a county court, the proceedings must be commenced by action where the object of the proceedings is to obtain relief against any person, or to compel any person to do or abstain from doing any act. Where there is no person against whom an action can be brought, proceedings must be taken either by petition or in accordance with the rules for the time being in force as to interlocutory applications, and must be supported by affidavit; the judge has power, in any case in which an interlocutory application is made, to direct an application to be filed (Order L. r. 35).

The Act and rules help one step further by providing that the word "action" means every proceeding which may be commenced by plaint (51 & 52 Vict. c. 43, s. 186). It may therefore shortly be said that wherever there is anyone who can be made defendant the proceeding should be by action commenced by plaint in the ordinary way. Where there is no such person then the proceeding should be as provided by Order L. r. 35 (above).

Classification.]—The following is a classification of the statutes giving special jurisdiction to county courts or those with which they are often called upon to deal:—

ACTS IMPOSING EXCEPTIONAL DUTIES ON THE COURT OR ON JUDGES OR REGISTRARS.

	PAGE
Allotment Extension Act, 1882	1765
Army Act, 1881 and Amending Acts	1766
Bills of Sale Act, 1882	1770
Clergy Discipline Act, 1892	1810

PAGE
Coal Mines Acts, 1911, 1914 1810
Customs Consolidation Act, 1876 2006
Deeds of Arrangement Act, 1914 2007
Distress, Law of, Amendment Acts, 1888, 1895, and 1908 . . 2009
Explosives Act, 1875 2022
Fines and Recoveries Act, 1833, and Married Women's Reversionary Estates Act 306
Inebriates Acts, 1879, 1888, 1898 2074
Licensing Act, 1910 2091
London Building Acts, 1894 and 1905 2104
Lunacy Act, 1890 2109
Matrimonial Causes Act, 1857 2136
Mental Deficiency Act, 1913 2109
National Insurance Acts, 1911 and 1913. 2139
Railway Regulation Act, 1871 2220
Small Dwellings Acquisition Act, 1899 2253
Telegraph Act, 1878 2276
Trade Union Act, 1913. 2317

ACTS GIVING SOME JURISDICTION.

Agricultural Holdings Acts, 1908, 1913, 1914 1706
Alkali Works Regulation Act, 1906 1751
Allotments and Cottage Gardens (Compensation for Crops) Act, 1887 (extended by Tenants Compensation Act, 1890) . . . 1764
Ballot Act, 1872 1767
Bills of Exchange Act, 1855 309
Brine Pumping Act, 1891 1773
Employers' Liability Act, 1880 . . . . . Part IV.
Employers' and Workmen's Act, 1875 2019
Factory and Workshop Act, 1901 2023
Hosiery Manufacture (Wages) Act, 1874 2061
Housing of the Working Classes Acts, 1903, 1909 2063
Local Government (England and Wales) Act, 1888 2155
Parliamentary Elections (Returning Officers) Act, 1875, Amendment Act, 1886 2155
Pharmacy Acts, 1852, 1868, 1869; Poisons and Pharmacy Act, 1908 . 2178
Poor Law Board Acts, 1834, 1846 and 1867 2186
Removal of Poor Persons Act 2222
Riot (Damages) Act, 1886 (up to 100*l.*) 2223
Rivers Pollution Prevention Acts, 1876, 1893, 1898. . . . 2233
Sale of Exhausted Parish Lands Act, 1876 (up to 50*l.*) . . . 2242
Solicitors Act, 1860, Penalty 2256
Solicitors Act, 1870 (as to work done in county court) . . . 2257
Stannaries Court (Abolition) Act, 1896 (as to mines in Cornwall) . 2264
Tithe Act, 1891 2280
Workmen's Compensation Act, 1906 . . . . . Part IV.

ACTS GIVING LIMITED EXCLUSIVE JURISDICTION CONFINED TO PARTICULAR COUNTY COURTS.

Admiralty . . . . . Part III.
Companies (Consolidation) Act, 1908, and Limited Partnership Act, 1907 1820

ACTS GIVING IN SOME MATTERS EXCLUSIVE JURISDICTION, IN OTHERS LIMITED EXCLUSIVE JURISDICTION.

Building Societies Acts, 1874, 1894 1775
Collecting Societies and Industrial Assurance Companies Act, 1896 . 1815
Friendly Societies Acts, 1896, 1908 2034
Industrial and Provident Societies Acts, 1893, 1913. . . . 2066

ACTS GIVING JURISDICTION CONCURRENT WITH THE HIGH COURT OR SOME OTHER COURT, BUT NOT LIMITED.

	PAGE
Common Law Procedure Act, 1860	1818
Commons Act, 1876	1818
Companies Clauses Act, 1863	1820
Debtors' Act, 1869	235
Extraordinary Tithe Redemption Acts, 1886 and 1897	2022
Government Annuities Acts, 1864, 1882	2057
Guardianship of Infants Act, 1886	2057
Inclosure, etc., Expenses Act, 1868	2065
Judicature Acts, 1873, 1875, 1884	225
Literary and Scientific Institutions Act, 1854	2098
Married Women's Property Act, 1882	2133
Money-Lenders Acts, 1900 and 1911	253
Municipal Elections (Corrupt and Illegal Practices) Act, 1884	2136
Oaths Acts, 1888, 1889, 1909	2152
Open Spaces Act, 1906	2154
Perjury Act, 1911	232
Poor Law Amendment Act, 1834, 1848, 1867	2186
Small Holdings and Allotments Act, 1908	2256

ACTS GIVING LIMITED JURISDICTION CONCURRENT WITH THE HIGH COURT OR SOME OTHER COURT.

Charitable Trusts Acts, 1853, 1855, 1860, 1869, 1891, 1894	1786
Electric Lighting Clauses Act, 1899	2019
Finance Acts, 1894, 1896	2025
Finance Act, 1910	2028
Finance Act, 1912	2033
Intestate Widows and Children Acts, 1873, 1875	2076
Judicial Trustees Act, 1896	2078
Land Transfer Acts, 1875, 1897	2091
Loan Societies Act, 1840	2101
Local Loans Act, 1875	2099
Locomotives Act, 1898	2102
Merchant Shipping Act, 1894	Part III.
Money-Lenders Act, 1900	253
Partition Acts, 1868, 1876	2170
Pilotage Act, 1913	Part III.
Private Streets Works Act, 1892	2187
Probate (Court of) Acts, 1857, 1858	2192
Public Authorities Protection Act, 1893	26
Public Health Act, 1875	2203
Public Health (London) Act, 1891	2214
Public Trustee Act, 1906	2219
Settled Lands Acts, 1882, 1884, 1890	2244
Shipowners' Negligence Act, 1905	Part III.
Stamp Act, 1891	233
Succession Duty Act, 1853	2275
Summary Jurisdiction Acts, 1848 and 1879	866
Trustee Acts, 1893, 1894	2322
Wages Attachment Abolition Act, 1870	235
Waterworks Clauses Act, 1863	2338

GENERAL STATUTES.

Bankruptcy Acts	268
Borough and Local Courts Act, 1872	263
Inferior Courts Judgments Extension Act, 1882	264
London (City) Small Debts Extension Act, 1852	260
Liverpool (Court of Passage) Act, 1896	48
Sale of Goods Act, 1893	318

EMERGENCY STATUTES.

	PAGE
Army Act, 1881 (as amended)	999
Courts (Emergency Powers) Act, 1914	951
Execution of Trusts (War Facilities) Acts, 1914, 1915	1020
Injuries in War Compensation Acts, 1914	1015
Ministry of Munitions Act, 1915	1018
Naval Billeting Act, 1914	1003
Postponement of Payments Acts, 1914	937
Trading with the Enemy (Amendment) Acts, 1914	1011
Trading with the Enemy (Amendment) Act, 1916	1013
Courts (Emergency Powers) (No. 2) Act, 1916	956
War Loan (Trustee's) Act, 1915	1019
Statutory Companies Act, 1915	1017
Registration of Business Names Act, 1916	1024
Companies (Foreign Interests) Act, 1917	1026
Billeting of Civilians Act, 1917	1028
Courts Emergency Powers (Amendment) Acts, 1916	955
Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915	980
War Risks (Insurance by Trustees) Act, 1916	1023
Courts (Emergency Powers) Act, 1917	958
Companies (Particulars as to Directors) Act, 1917	1034

[For ADMIRALTY AND MERCHANT SHIPPING ACTS, see Part III.]

AGRICULTURAL HOLDINGS ACT, 1908.

8 EDW. VII. c. 28.

AGRICULTURAL HOLDINGS ACT, 1913.

2 & 3 GEO. V. c. 21.

AGRICULTURAL HOLDINGS ACT, 1914.

4 & 5 GEO. V. c. 7 (31ST JULY, 1914).

Jurisdiction.]—Under the Agricultural Holdings Acts, 1908 and 1914, which repealed the Agricultural Holdings Acts, 1883, 1900 and 1906, and the Market Gardeners Compensation Act, 1895, the county courts exercise a jurisdiction identical with that which they exercised under the Agricultural Holdings Act, 1900, and the Market Gardeners Compensation Act, 1905, which is exclusive.

The cases in which the county court has jurisdiction may be classed under four heads :—

A. As to arbitration and awards, in deciding points of law submitted by the arbitrator in the form of a special case (sect. 13 (3)); in the removal of an arbitrator who has misconducted himself (Schedule II. (6)); in directing an arbitrator on the application of either party to state a special case on any question of law arising in an arbitration (Schedule II. (9)); in setting aside an award when an arbitrator has misconducted himself or when an arbitration or award has been improperly procured (Schedule II. (13)); and in the taxation by the registrar, subject to review by the judge, of the costs of and incidental to an arbitration or award (Schedule II. (14)).

B. In enforcing payment of compensation awarded (sect. 14).

C. In deciding disputes as to distresses. These may also be determined by a court of summary jurisdiction (sect. 30; Order XL. r. 8, p. 1739).

D. To appoint, where necessary, a guardian of an infant or person of unsound mind (sect. 32); and to take separate examinations of married women under the Act (sect. 33).

Procedure.] — For procedure in the arbitration, see sect. 13 and Schedule II.; in the county court, see Order XL., *post*, p. 1732. Proceedings are to be taken in the county court within the district of which the holding, or the larger part thereof, is situate (sect. 48).

Practice.]—For the practice in county court, see Order XL., p. 1732, viz. for—

Appointment or change of guardian (see Rule 1).

Application for order to state a special case and the statement and hearing thereof (see Rules 2, 3, and Forms 415, 416, 417).

Application for removal of arbitrator or to set aside an award (see Rule 4, Forms 418, 419, 420).

Application for taxation of costs of arbitration (Rules 5, 6, Forms 423, 424).

Application for the recovery of money, awarded or agreed to be paid (Rules 7, 8, Forms 421, 422).

Appeal from county court judge on case stated by an arbitrator is to the Court of Appeal whose decision is final (sect. 13 (3)) (see procedure in such appeal, R. S. C. Order 58, r. 20), *ante*, p. 229, in other cases to Divisional Court; see *Williams* v. *Wallis & Cox*, (1914) 2 K. B. 478; 83 L. J. K. B. 1296.

Costs in proceedings in county court are in discretion of the court (sect. 44 (1)).

8 EDW. VII. c. 28.

COMPENSATION FOR IMPROVEMENTS ON HOLDINGS.

Right of tenant to compensation for improvements.

1.—(1) Where a tenant of a holding has made thereon any improvement comprised in the first schedule to this Act he shall, subject as in this Act mentioned, be entitled, at the determination of a tenancy, on quitting his holding to obtain from the landlord as compensation under this Act for the improvement such sum as fairly represents the value of the improvement to an incoming tenant.

(2) In the ascertainment of the amount of the compensation payable to a tenant under this section there shall be taken into account—

(*a*) Any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement; and

(*b*) As respects manuring as defined by this Act, the value of the manure required by the contract of tenancy or by custom to be returned to the holding in respect of any crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed.

(3) Nothing in this section shall prejudice the right of a tenant to claim any compensation to which he may be entitled under custom, agreement, or otherwise, in lieu of any compensation provided by this section.

Section 2.

Consent of landlord as to improvement in First Schedule, Part I.

2. Compensation under this Act shall not be payable in respect of any improvement comprised in Part I. of the first schedule hereto, unless the landlord of the holding has, previously to the execution of the improvement, consented in writing to the making of the improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation or otherwise as may be agreed upon between the landlord and the tenant, and if any such agreement is made, any compensation payable under the agreement shall be substituted for compensation under this Act.

A consent in writing given under the terms of a lease (and *semble*, a similar consent under the Agricultural Holdings Act, 1908) by a landlord to a tenant making improvements during his tenancy, for which improvements, being made with such consent, he becomes entitled to compensation, is a term of the tenancy within a condition of sale affecting purchasers with notice of the terms of all existing tenancies; and if any claim for compensation for such improvements arises after the date fixed for completion of the sale, it must be borne by the purchaser. *Derby (Earl of) and Fergusson's Contract, In re,* (1912) 1 Ch. 479; (1911) 81 L. J. Ch. 567.

Notice to landlord as to improvement in First Schedule, Part II.

3.—(1) Compensation under this Act shall not be payable in respect of any improvement comprised in Part II. of the first schedule hereto, unless the tenant of the holding has, not more than three nor less than two months before beginning to execute the improvement, given to the landlord notice in writing of his intention so to do, and of the manner in which he proposes to do the intended work, and upon such notice being given, the landlord and the tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed.

(2) If any such agreement is made, any compensation payable under the agreement shall be substituted for compensation under this Act.

(3) In default of any such agreement the landlord may, unless the notice of the tenant is previously withdrawn, execute the improvement in any reasonable and proper manner which he thinks fit, and recover from the tenant as rent a sum not exceeding five per cent. per annum on the outlay incurred, or not exceeding such annual sum payable for a period of twenty-five years as will repay that outlay in that period, with interest at the rate of three per cent. per annum:

Provided that, if the landlord fails to execute the improvement within a reasonable time, the tenant may execute the improvement, and shall in respect thereof be entitled to compensation under this Act.

(4) The landlord and the tenant may by the contract of tenancy or otherwise agree to dispense with any notice under this section, and any such agreement may provide for anything for which an

agreement after notice under this section may provide, and in such case shall be of the same validity and effect as such last-mentioned agreement.

Agreements as to improvement in First Schedule, Part III.

4. Where any agreement in writing secures to the tenant of a holding for any improvement comprised in Part III. of the first schedule hereto, fair and reasonable compensation, having regard to the circumstances existing at the time of making the agreement, the compensation so secured shall as respects that improvement be substituted for compensation under this Act.

Avoidance of contract inconsistent with Act.

5. Subject to the foregoing provisions of this Act, any contract (whether under seal or not) made by a tenant of a holding, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement comprised in the first schedule hereto, shall be void so far as it deprives him of that right.

Determination of claims to compensation.

6.—(1) If the tenant of a holding claims to be entitled to compensation, whether under this Act, or under custom or agreement, or otherwise, in respect of any improvement comprised in the first schedule to this Act, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of the compensation, the difference shall be settled by arbitration.

(2) A claim by the tenant of a holding for compensation under this Act in respect of any improvement comprised in the first schedule to this Act shall not be made unless notice of intention to make the claim has been given before the determination of the tenancy :

Provided that, where the claim relates to an improvement executed after the determination of the tenancy but while the tenant lawfully remains in occupation of part of the holding, the notice may be given at any time before the tenant quits that part.

(3) Where any claim by a tenant of a holding for compensation in respect of any improvement comprised in the first schedule to this Act is referred to arbitration, and any sum is claimed to be due to the tenant from the landlord in respect of any breach of contract or otherwise in respect of the holding, or to the landlord from the tenant in respect of any waste wrongfully committed or permitted by the tenant, or in respect of breach of contract or otherwise in respect of the holding, the party claiming that sum may, if he thinks fit, by notice in writing given to the other party not later than seven days after the appointment of the arbitrator, require that the arbitration shall extend to the determination of the claim to that sum, and thereupon the provisions of this Act with respect to arbitration shall apply accordingly.

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(4) Where a claim for compensation under this Act has been referred to arbitration, and the compensation payable under an agreement is by this Act to be substituted for compensation under this Act, such compensation as is to be so substituted shall be awarded in respect of any improvements provided for by the agreement.

This section extends the subject matter of a claim; *Holmes and Formby, In re*, (1895) 1 Q. B. 174; 64 L. J. Q. B. 391 (where it was held that a landlord could not avail himself of a cross claim for waste and breach of covenant further than as a defence against a claim by the tenant) is no longer law. Under the Act of 1883 it was held that a claim for compensation which had not been assessed by arbitration under the Act could not be set up by way of set-off or counter-claim in an action by the landlord (*Gas Light Co. v. Holloway*, (1885) 52 L. T. 434).

Right of tenant who has paid compensation to outgoing tenant.

7. Where an incoming tenant of a holding has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, the incoming tenant shall be entitled on quitting the holding to claim compensation in respect of the improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding, and quitted it at the time at which the incoming tenant quits it.

Provision as to change of tenancy.

8. A tenant who has remained in his holding during two or more tenancies shall not, on quitting his holding, be deprived of his right to claim compensation under this Act in respect of improvements by reason only that the improvements were not made during the tenancy on the determination of which he quits the holding.

Restriction in respect of improvements by tenant about to quit.

9.—(1) A tenant of a holding shall not be entitled to compensation under this Act in respect of any improvements, other than manuring as defined by this Act, begun by him,—

(*a*) In the case of a tenant from year to year, within one year before he quits the holding, or at any time after he has given or received notice to quit which results in his quitting the holding; and

(*b*) In any other case, within one year before the expiration of his contract of tenancy:

Provided that this section shall not apply in the case of any improvement—

(i.) Where the tenant, previously to beginning the improvement, has served notice on his landlord of his intention to begin it, and the landlord has either assented or has failed for a month after the receipt of the notice to object to the making of the improvement; or

(ii.) In the case of a tenant from year to year, where the tenant has begun the improvement during the last year of his tenancy, and, in pursuance of a notice to quit thereafter given by the landlord, quits his holding at the expiration of that year. Section 9.

Compensation for Damage by Game and for Disturbance.

10.—(1) Where a tenant of a holding has sustained damage to his crops from game the right to kill and take which is vested neither in him nor in anyone claiming under him other than the landlord, and which the tenant has not permission in writing to kill, he shall subject as hereinafter mentioned be entitled to compensation from his landlord for such damage if it exceeds in amount the sum of one shilling per acre of the area over which the damage extends, and any agreement to the contrary, or in limitation of such compensation, shall be void. Compensation for damage by game.

(2) The amount of compensation payable under this section shall, in default of agreement made after the damage has been suffered, be determined by arbitration, but no compensation shall be recoverable under this section unless notice in writing is given to the landlord as soon as may be after the damage was first observed by the tenant and a reasonable opportunity is given to the landlord to inspect the damage—

(*a*) in the case of damage to a growing crop, before the crop is begun to be reaped, raised, or consumed; and

(*b*) in the case of damage to a crop reaped or raised before it is begun to be removed from the land—

and unless notice in writing of the claim, together with the particulars thereof, is given to the landlord within one month after the expiration of the calendar year, or such other period of twelve months as by agreement between the landlord and tenant may be substituted therefor, in respect of which the claim is made.

(3) Where the landlord proves that, under a contract of tenancy made before the commencement of this Act, any compensation for damage by game is payable by him, or that in fixing the rent to be paid under such contract allowance in respect of such damage to an agreed amount was expressly made, the arbitrator shall make such deduction from the compensation which would otherwise be payable under this section as may appear just.

(4) Where the right to kill and take the game is vested in some person other than the landlord, the landlord shall be entitled to be indemnified by such other person against all claims for compensation under this section.

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(5) For the purposes of this section the expression "game" means deer, pheasants, partridges, grouse, and black game.

Compensation for unreasonable disturbance.

11. Where—

(*a*) the landlord of a holding, without good and sufficient cause, and for reasons inconsistent with good estate management, terminates the tenancy by notice to quit, or, having been requested in writing, at least one year before the expiration of a tenancy, to grant a renewal thereof, refuses to do so : or

(*b*) it has been proved that an increase of rent is demanded from the tenant of a holding, and that such increase was demanded by reason of an increase in the value of the holding due to improvements which have been executed by or at the cost of the tenant, and for which he has not, either directly or indirectly, received an equivalent from the landlord, and such demand results in the tenant quitting the holding,

the tenant upon quitting the holding shall, in addition to the compensation (if any) to which he may be entitled in respect of improvements, and notwithstanding any agreement to the contrary, be entitled to compensation for the loss or expense directly attributable to his quitting the holding which the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods, or his implements of husbandry, produce, or farm stock, on or used in connection with the holding :

Provided that no compensation under this section shall be payable—

(*a*) unless the tenant has given to the landlord a reasonable opportunity of making a valuation of such goods, implements, produce, and stock as aforesaid ;

(*b*) unless the tenant has within two months after he has received notice to quit or a refusal to grant a renewal of the tenancy, as the case may be, given to the landlord notice in writing of his intention to claim compensation under this section ;

(*c*) Where the tenant with whom a contract of tenancy was made has died within three months before the date of the notice to quit, or in the case of a lease for years before the refusal to grant a renewal ;

(*d*) if the claim for compensation is not made within three months after the time at which the tenant quits the holding (*a*).

In the event of any difference arising as to any matter under

(*a*) Verbal notice sufficient : *Sylvester* v. *Brown*, (1916) 85 L. J. K. B. 1173.

this section the difference shall, in default of agreement, be settled by arbitration. Section 11.

As to "good and sufficient cause," see *In re Arbitration between Bonnett and Fowler* (C. A.), (1913) 2 K. B. 537; 82 L. J. K. B. 713.

NOTE.—Since the 31st July, 1914, sect. 11 has been extended by sect. 1 of the 4 & 5 Geo. V. c. 7, to include compensation for disturbance in connection with sale, see p. 1731.

COMPENSATION IN CASE OF TENANCY UNDER MORTGAGOR.

12. Where a person occupies a holding under a contract of tenancy with a mortgagor, which is not binding on the mortgagee, then— Compensation to tenants when mortgagee takes possession.

(1) The occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or would but for the mortgagee taking possession be, due to the occupier from the mortgagor as respects crops, improvements, tillages, or other matters connected with the holding, whether under this Act or custom or an agreement authorised by this Act;

(2) If the contract of tenancy is for a tenancy from year to year or for a term of years, not exceeding twenty-one, at a rackrent, the mortgagee shall, before he deprives the occupier of possession otherwise than in accordance with the contract of tenancy, give to the occupier six months' notice in writing of his intention so to do, and, if he so deprives him, compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of remaining in the holding for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived.

(3) Any sum ascertained to be due to the occupier for compensation, or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the holding, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance with the provisions of this Act relating to the recovery of compensation due from a landlord who is a trustee.

PROCEDURE IN ARBITRATIONS.

13.—(1) All questions which under this Act or under the contract of tenancy are referred to arbitration shall, whether the matter to which the arbitration relates arose before or after the passing of this Act, be determined, notwithstanding any agreement under the contract of tenancy or otherwise providing for a different method of arbitration, by a single arbitrator in accord- Procedure in arbitrations.

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ance with the provisions set out in the second schedule to this Act.

(2) Where any claim which is referred to arbitration relates to an improvement executed or matter arising after the determination of the tenancy, but while the tenant lawfully remains in occupation of part of the holding, the arbitrator may, if he thinks fit, make a separate award in respect of that claim.

(3) If in any arbitration under this Act the arbitrator states a case for the opinion of the county court on any question of law, the opinion of the court on any question so stated shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal, from whose decision no appeal shall lie.

An appeal lies to a Divisional Court under s. 120 of the County Courts Act, 1888, upon a question of law in an application to set aside an award (*Williams* v. *Wallis & Cox*, (1914) 2 K. B. 478; 83 L. J. K. B. 1296).

52 & 53 Vict. c. 49.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this Act.

(5) *Repealed.*

Recovery of compensation and other sums due.

14. Where any sum agreed or awarded under this Act to be paid for compensation costs or otherwise by a landlord or tenant of a holding is not paid within fourteen days after the time when the payment becomes due, it shall, subject as in this Act provided, be recoverable upon order made by the county court as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable.

That is as a judgment debt can be recovered; as to this, see County Courts Act, 1888, s. 146, Order XXV., and Order XL., r. 7.

Charge on Holding for Compensation.

Power for landlord on paying compensation to obtain charge.

15.—(1) A landlord, on paying to the tenant the amount due to him under this Act, or under custom or agreement, or otherwise in respect of compensation for an improvement comprised in the first schedule hereto, or on expending after notice given in accordance with this Act such amount as may be necessary to execute an improvement comprised in Part II. of the first schedule hereto, shall be entitled to obtain from the Board an order in favour of himself, his executors, administrators, and assigns, charging the holding, or any part thereof, with repayment of the amount paid or expended, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the Board think fit.

Landlord includes his executor (*Gough* v. *Gough* (C. A.), (1891) 2 Q. B. 665; 60 L. J. Q. B. 726).

(2) Where the landlord obtaining the charge is not absolute

owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement in respect whereof compensation is paid will, in the opinion of the Board, have become exhausted. Section 15.

(3) Where the estate or interest of a landlord is determinable or liable to forfeiture by reason of his creating or suffering any charge thereon, that estate or interest shall not be determined or forfeited by reason of his obtaining a charge under this Act, anything in any deed, will, or other instrument to the contrary thereof notwithstanding.

16. The sum charged by the order of the Board under this Act shall be a charge on the holding, or the part thereof charged, for the landlord's interest therein and for all interests therein subsequent to that of the landlord; but so that, in any case where the landlord's interest is an interest in a leasehold, the charge shall not extend beyond the interest of the landlord, his executors, administrators, and assigns. Incidence of charge.

17. Any company now or hereafter incorporated by Parliament, and having power to advance money for the improvement of land, may take an assignment of any charge made by the Board under this Act, or made under any enactment hereby repealed, upon such terms and conditions as may be agreed upon between the company and the person entitled to the charge, and may assign any charge so acquired by them. Advance made by a company.

18. Where a charge may be made under this Act for compensation due under an award, the person making the award shall, at the request and cost of the person entitled to obtain the charge, certify the amount to be charged and the term for which the charge may properly be made, having regard to the time at which each improvement in respect of which compensation is awarded is to be deemed to be exhausted. Certificate as to charges.

19. A charge made by the Board under this Act shall be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888, as amended by any subsequent enactment, and may be registered accordingly. Registration of charges. 51 & 52 Vict. c. 51.

Capital Money applicable for Compensation.

20. Capital money arising under the Settled Land Acts, 1882 to 1890, may be applied— Capital money applicable for compensation.

(1) In payment as for an improvement authorised by those Acts of any money expended and costs incurred by a

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landlord under or in pursuance of this Act or any enactment hereby repealed, or under custom or agreement or otherwise, in or about the execution of any improvement comprised in Part I. or Part II. of the first schedule hereto; and

(2) In discharge of any charge in respect of any such improvement created on a holding under this Act or any enactment hereby repealed, as if the charge were an incumbrance authorised by those Acts to be discharged out of that capital money.

Fixtures and Buildings.

Tenant's property in fixtures and buildings.

21.—(1) Any engine, machinery, fencing, or other fixture affixed to a holding by a tenant, and any building erected by him thereon for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, shall be the property of and be removable by the tenant before or within a reasonable time after the determination of the tenancy:

Provided that—

(i.) Before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect of the holding:

(ii.) In the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding:

(iii.) Immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal:

(iv.) The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of his intention to remove it:

(v.) At any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay to the tenant the fair value thereof to an incoming tenant of the holding; and any difference as to the value shall be settled by arbitration.

(2) The provisions of this section shall apply to a fixture or

building acquired since the thirty-first day of December nineteen hundred by a tenant in like manner as they apply to a fixture or building affixed or erected by a tenant, but shall not apply to any fixture or building affixed or erected before the first day of January eighteen hundred and eighty-four. Section 21.

MISCELLANEOUS RIGHTS OF LANDLORD AND TENANT.

Time of notice to quit.

22. Where a half-year's notice, expiring with a year of tenancy is by law necessary and sufficient for the determination of a tenancy of a holding from year to year, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for such determination, unless the landlord and the tenant agree in writing that this section shall not apply, in which case a half-year's notice shall be sufficient; but nothing in this section shall extend to a case where a receiving order in bankruptcy is made against the tenant.

This section reproduces sect. 33 of the 1883 Act which was held not to apply to any demise in which any stipulation for the determination of the tenancy by notice is contained (*Barlow* v. *Teal* (C. A.), (1885) 15 Q. B. D. 501; 54 L. J. Q. B. 564). Where by custom a tenant was entitled to hold part of the land for four months after the expiration of his notice to quit, it was held that his tenancy was not determined until the expiration of the four months, hence notice of claim for compensation given two months before that time was good (*In re Paul*, (1889) 24 Q. B. D. 247; 59 L. J. Q. B. 30). In *Morley* v. *Carter*, (1898) 1 Q. B. 8; 66 L. J. Q. B. 843, where the tenancy of the land expired on February 2nd, and of the buildings on May 1st, it was held that the notice ought to be given with reference to the first date, establishing the principle that the expiration of the tenancy of the land determines when the notice should be given.

A notice to quit under sect. 83 of the 1883 Act might be sent by registered letter (see sect. 45 of this Act): *Van Grutten* v. *Trevenen* (C. A.), (1902) 2 K. B. 82; 71 L. J. K. B. 544.

Resumption of possession for cottages, &c.

23. Where a notice to quit is given by the landlord of a holding to a tenant from year to year with a view to the use of land for any of the following purposes:—

(i.) The erection of farm labourers' cottages or other houses with or without gardens;

(ii.) The provision of gardens for farm labourers' cottages or other houses;

(iii.) The provision of allotments for labourers;

(iv.) The provision of small holdings as defined by the Small Holdings and Allotments Act, 1907; 7 Edw. VII. c. 54.

(v.) The planting of trees;

(vi.) The opening or working of any coal, ironstone, limestone, brick earth, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connection therewith;

(vii.) The making of a watercourse or reservoir;

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(viii.) The making of any road, railway, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith;

and the notice states that it is given with a view to any such use—

(*a*) it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding; and

(*b*) the provisions of this Act respecting compensation shall apply as if the part to which the notice relates were a separate holding; and

(*c*) the tenant shall be entitled to a reduction of rent proportionate to the part to which the notice relates, and in respect of any depreciation of the value to him of the residue of the holding caused by the severance, or by the use to be made of the part severed, and the amount of that reduction shall be settled as in case of compensation under this Act:

Provided that the tenant may at any time within twenty-eight days after service of the notice to quit serve on the landlord a notice in writing to the effect that he accepts it as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy; and the notice to quit shall have effect accordingly.

Power of entry by landlord.

24. The landlord of a holding or any person authorised by him may at all reasonable times enter on the holding for the purpose of viewing the state of the holding.

Penal rent and liquidated damages.

25. Notwithstanding any provision in a contract of tenancy making the tenant of a holding liable to pay a higher rent or other liquidated damages in the event of any breach or nonfulfilment of a term or condition in the contract, a landlord shall not be entitled to recover, by distress or otherwise, any sum in consequence of any such breach or nonfulfilment in excess of the damage actually suffered by him in consequence of the breach or nonfulfilment.

Provided that this section shall not apply to any term or condition in a contract against the breaking up of permanent pasture, the grubbing of underwoods, or the felling, cutting, lopping, or injuring of trees, or regulating the burning of heather.

NOTE.—Penalty cannot be recovered, but liquidated damages can to extent of the actual damage suffered (*Willson* v. *Love*, (1896) 1 Q. B. 626; 65 L. J. Q. B. 474).

Freedom of cropping and disposal of produce.

26.—(1) Notwithstanding any custom of the country, or the provisions of any contract of tenancy or agreement respecting the method of cropping of arable lands, or the disposal of crops, a tenant of a holding shall have full right to practise any system of cropping of the arable land on the holding and to dispose of the

roduce of the holding without incurring any penalty, forfeiture, r liability :

Provided that he shall previously have made, or, as soon as may e, shall make, suitable and adequate provision to protect the olding from injury or deterioration, which provision shall in the ase of disposal of the produce of the holding consist in the return o the holding of the full equivalent manurial value to the holding f all crops sold off or removed from the holding in contravention f the custom, contract, or agreement :

This sub-section shall not apply—

(*a*) in the case of a tenancy from year to year, as respects the year before the tenant quits the holding or any period after he has given or received notice to quit which results in his quitting the holding ; or

(*b*) in any other case, as respects the year before the expiration of the contract of tenancy.

NOTE.—Where there is an agreement prohibiting defendant from selling or disposing of hay, straw, or roots during the term, this section does not enable him to sell any such produce off the holding after he has given or received notice to quit which results in his quitting the holding, even though such produce existed before the last year of the tenancy (*Meggeson v. Groves*, (1917) 86 L. J. Ch. 145).

(2) If the tenant exercises his rights under this section in such a manner as to injure or deteriorate the holding, or to be likely to injure or deteriorate the holding, the landlord shall, without prejudice to any other remedy which may be open to him, be entitled to recover damages in respect of such injury or deterioration at any time, and, should the case so require, to obtain an injunction restraining the exercise of the rights under this section in that manner, and the amount of such damages may, in default of agreement, be determined by arbitration.

(3) A tenant shall not be entitled to any compensation in respect of improvements comprised in Part III. of the first schedule to this Act which have been made for the purpose of making such provision to protect the holding from injury or deterioration as is required by this section.

(4) In this section the expression "arable land" shall not include land in grass which by the terms of any contract of tenancy is to be retained in the same condition throughout the tenancy.

Record of holding.

27. If at the commencement of a tenancy of a holding entered into after the commencement of this Act either party so requires, a record of the condition of the buildings, fences, gates, roads, drains, ditches, and cultivation of the holding shall be made within three months after the commencement of the tenancy by a person to be appointed in default of agreement by the Board,

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and in default of agreement the cost of making such record shall be borne by the landlord and the tenant in equal proportions.

Distress.

Limitation of distress in respect of amount and time.

28. It shall not be lawful for a landlord entitled to the rent of a holding to distrain for rent which became due in respect of that holding more than one year before the making of the distress :

Provided that, where it appears that according to the ordinary course of dealing between the landlord and the tenant of the holding the payment of rent has been deferred until the expiration of a quarter or half year after the date at which the rent legally became due, the rent shall for the purpose of this section be deemed to have become due at the expiration of that quarter or half year, and not at the date at which it legally became due.

This section reproduces in substance sect. 44 of the 1883 Act, which was held merely to take away the right of the landlord to distrain for rent which had been due for more than twelve months, but to leave him his other remedies. Thus, where by the course of dealing payment of rent due in advance on June 24th was deferred for three months, it was held that the landlord was enabled by the proviso in sect. 44 of the 1883 Act to distrain in the middle of September for two years' rent, one in arrear and one in advance (*Ex parte Bull*, (1887) 18 Q. B. D. 642; 56 L. J. Q. B. 270).

Limitation of distress in respect of things to be distrained.

29.—(1) Where live stock belonging to another person has been taken in by the tenant of a holding to be fed at a fair price, the stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found, and, if so distrained by reason of other sufficient distress not being found, there shall not be recovered by that distress a sum exceeding the amount of the price agreed to be paid for the feeding, or any part thereof which remains unpaid.

(2) The owner of the stock may, at any time before it is sold, redeem the stock by paying to the distrainer a sum equal to such amount as aforesaid, and any payment so made to the distrainer shall be in full discharge as against the tenant of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding.

(3) Any portion of the stock so long as it remains on the holding shall continue liable to be distrained for the amount for which the whole of the stock is distrainable.

(4) Agricultural or other machinery which is the property of a person other than the tenant, and is on the holding under an agreement with the tenant for the hire or use thereof in the conduct of his business, and live stock which is the property of a person other than the tenant and is on the holding solely for breeding purposes, shall not be distrained for rent.

"Fair price" in the 1883 Act was held to mean a "fair equivalent," so that cows agisted on terms that the agister should take payment in

milk were privileged from distress to the extent mentioned in the section (*London and Yorkshire Bank* v. *Belton*, (1885) 15 Q. B. D. 457; 54 L. J. Q. B. 568). An "exclusive right to feed the grass on the land for four weeks" in consideration of 2*l.* was held not an agreement to agist cattle, but in the nature of rent for use and occupation, and not within protection given by the section (*Masters* v. *Green*, (1888) 20 Q. B. D. 807). **Section 29 Notes.**

Remedy for wrongful distress.

30.—(1) Where any dispute arises—

(*a*) in respect of any distress having been levied on a holding contrary to the provisions of this Act; or

(*b*) as to the ownership of any live stock distrained, or as to the price to be paid for the feeding of that stock; or

(*c*) as to any other matter or thing relating to a distress on a holding:

the dispute may be heard and determined by the county court or by a court of summary jurisdiction, and any such court may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid for feeding, or may make any other order which justice requires.

(2) Any such dispute shall be deemed to be a matter in which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts; but any person aggrieved by any decision of a court of summary jurisdiction under this section may appeal to a court of quarter sessions.

Set-off of compensation against rent.

31. Where the compensation for any improvement due under this Act or any enactment repealed by this Act, or under custom or agreement, to a tenant of a holding has been ascertained before the landlord distrains for rent, the amount of the compensation may be set off against the rent, and the landlord shall not be entitled to distrain for more than the balance.

NOTE.—No set-off of unascertained claim (*Gas Light Co.* v. *Holloway*, (1885) 52 L. T. 434).

PERSONS UNDER DISABILITY, TRUSTEES, &C.

Appointment of guardian.

32. Where a landlord or a tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the county court on the application of any person interested may appoint a guardian of the infant or person of unsound mind for the purposes of this Act, and may revoke the appointment and appoint another guardian if and as occasion requires.

Provisions respecting married women. 45 & 46 Vict. c. 75.

33. Where a woman married before the commencement of the Married Women's Property Act, 1882, is entitled to land, her title to which accrued before that commencement, then—

(*a*) if she is entitled to the land for her separate use and is not restrained from anticipation, she shall, for the purposes of this Act, be in respect of the land as if she were a feme sole; and

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(*b*) in any other case her husband's concurrence shall be requisite, and she shall for the purposes of this Act be examined apart from him by the county court, or by the judge of the county court for the place where she is, touching her knowledge of the nature and effect of the intended Act, and it shall be ascertained that she is acting freely and voluntarily.

Provision as to limited owners.

34. Subject to the provisions of this Act in relation to Crown, duchy, ecclesiastical, and charity lands, a landlord of a holding, whatever may be his estate or interest in the holding, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act, which he might give or make or do or have done to him if he were owner in fee simple, or, if his interest is an interest in a leasehold, were absolutely entitled to that leasehold.

Recovery of compensation, &c. from trustee.

35. Where any sum agreed or awarded to be paid for compensation, or any sum awarded under this Act to be paid by a landlord, is due from a landlord entitled to receive the rents and profits of the holding otherwise than for his own benefit, whether as trustee or in any other character, the sum due shall be charged and recovered as follows and not otherwise (that is to say) :—

(i.) The amount so due shall not be recoverable personally against the landlord, nor shall he be under any liability to pay that amount, but it shall be a charge on and recoverable against the holding only ;

(ii.) The landlord shall, either before or after having paid to the tenant the amount due to him, be entitled to obtain from the Board a charge on the holding to the amount of the sum which is required to be paid or which has been paid, as the case may be, to the tenant ;

(iii.) If the landlord neglects or fails to pay to the tenant the amount due to him for one month after it has become due, the tenant shall be entitled to obtain from the Board a charge on the holding to the amount of the sum due to him, and of all costs properly incurred by him in obtaining the charge ;

(iv.) Charges under this section shall be made in like manner as other charges under this Act.

Estimation of best rent.

36. In estimating the best rent, or reservation in the nature of rent, of a holding for the purposes of any Act of Parliament, deed, or other instrument, authorising a lease to be made, provided that the best rent, or reservation in the nature of rent, is reserved, it

shall not be necessary to take into account against the tenant any increase in the value of the holding arising from any improvements made or paid for by the tenant. Section 36.

Crown or Duchy Lands.

37.—(1) This Act shall apply to land belonging to His Majesty in right of the Crown. Application to Crown lands.

(2) With respect to any such land, for the purposes of this Act, the Commissioners of Woods, or other the proper officer or body having charge of the land for the time being, or, in case there is no such officer or body, then such person as His Majesty may appoint in writing under the Royal Sign Manual, shall represent His Majesty, and shall be deemed to be the landlord.

(3) The power given to the Treasury by section 1 of the Crown Lands Act, 1866 (being a power to direct the cost of certain improvements to be charged to capital and repaid out of income) shall extend to any compensation under this Act payable by the Commissioners of Woods in respect of an improvement comprised in Part I. or Part II. of the first schedule hereto. 29 & 30 Vict. c. 62.

(4) Any compensation under this Act payable by those commissioners, in respect of an improvement comprised in Part III. of the first schedule hereto, shall be paid as part of the expenses of the management of the land revenues of the Crown.

38.—(1) This Act shall apply to land belonging to His Majesty in right of the Duchy of Lancaster. Application to land of Duchy of Lancaster.

(2) With respect to any such land for the purposes of this Act, the Chancellor of the Duchy shall represent His Majesty, and shall be deemed to be the landlord.

(3) The amount of any compensation under this Act payable by the Chancellor of the Duchy in respect of an improvement comprised in Part I. or Part II. of the first schedule to this Act shall be raised and paid as an expense incurred in improvement of land belonging to His Majesty in right of the duchy within section 25 of the Act of the fifty-seventh year of King George the Third, chapter ninety-seven.

(4) The amount of any compensation under this Act payable by the Chancellor of the Duchy in respect of an improvement comprised in Part III. of the first schedule to this Act shall be paid out of the annual revenues of the duchy.

39.—(1) This Act shall apply to land belonging to the Duchy of Cornwall. Application to land of Duchy of Cornwall.

(2) With respect to any such land, for the purposes of this Act, such person as the Duke of Cornwall, or the possessor for the time

Section 39.

being of the Duchy of Cornwall, appoints, shall represent the Duke of Cornwall or other the possessor aforesaid, and be deemed to be the landlord, and may do any act or thing under this Act which a landlord is authorised or required to do thereunder.

(3) Any compensation under this Act payable by the Duke of Cornwall, or other the possessor aforesaid, in respect of an improvement comprised in Part I. or Part II. of the first schedule to this Act, shall be paid, and advances therefor made, in the manner and subject to the provisions of section 8 of the Duchy of Cornwall Management Act, 1863, with respect to improvements of land mentioned in that section.

Ecclesiastical and Charity Lands.

26 & 27 Vict. c. 49.

Application to ecclesiastical land.

40.—(1) Where lands are assigned or secured as the endowment of a see, the powers by this Act conferred on a landlord (other than that of entering on a holding for the purpose of viewing the state of the holding) shall not be exercised by the bishop in respect of those lands, except with the previous approval in writing of the Estates Committee of the Ecclesiastical Commissioners.

(2) Where a landlord is incumbent of an ecclesiastical benefice, the powers by this Act conferred on a landlord (other than as aforesaid) shall not be exercised by him in respect of the glebe land or other land belonging to the benefice, except with the previous approval in writing of the patron of the benefice, that is, the person or authority who, in case the benefice were vacant, would be entitled to present thereto, or of Queen Anne's Bounty.

(3) Queen Anne's Bounty may, if they think fit, on behalf of the incumbent, out of any money in their hands, pay to the tenant the amount of compensation due to him in respect of any improvement comprised in the first schedule hereto; and thereupon they may, instead of the incumbent, obtain from the Board a charge on the holding in respect thereof in favour of themselves, and every such charge shall be effectual notwithstanding any change of the incumbent.

Application to charity land.

41. The powers by this Act conferred on a landlord in respect of charging the land shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the approval in writing of the Charity Commissioners or the Board of Education, as the case may require.

Special Provisions as to Market Gardens.

Special provisions as to market gardens.

42.—(1) In the case of a holding in respect of which it is agreed by an agreement in writing made on or after the first day of

January, eighteen hundred and ninety-six, that the holding shall be let or treated as a market garden— Section 42.

(i.) The provisions of this Act shall apply as if the improvements comprised in the third schedule to this Act were comprised in Part III. of the first schedule to this Act:

Provided that—

(*a*) In the case of Crown lands, compensation in respect of an improvement comprised in paragraphs (1), (2) and (5) of the said third schedule shall be paid in the same manner and out of the same funds as if it were an improvement comprised in Part I. of the said first schedule; and

(*b*) In the case of duchy lands, compensation in respect of any improvement comprised in the said third schedule shall be paid in the same manner and out of the same funds as if it were comprised in Part I. of the said first schedule;

(*c*) The right of an incoming tenant to claim compensation in respect of the whole or part of an improvement which he has purchased may be exercised although his landlord has not consented in writing to the purchase:

(ii.) The provisions of this Act relating to tenants' property in fixtures and buildings shall extend to every fixture or building affixed or erected by the tenant to or upon the holding, or acquired by him since the thirty-first day of December, nineteen hundred, for the purposes of his trade or business as a market gardener:

(iii.) It shall be lawful for the tenant to remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out; but, if the tenant does not remove such fruit trees and fruit bushes before the determination of his tenancy, they shall remain the property of the landlord, and the tenant shall not be entitled to any compensation in respect thereof. 8 Edw. VII. c. 28.

(2) Where under a contract of tenancy current on the first day of January, eighteen hundred and ninety-six, a holding was at that date in use or cultivation as a market garden with the knowledge of the landlord, and the tenant thereof has then executed thereon, without having received previously to the execution thereof any written notice of dissent by the landlord, any improvement comprised in the third schedule to this Act, the provisions of this section shall apply, in respect of that holding, as if it had been agreed in writing after that date that the holding should be let or treated as a market garden, so however that the improvements in respect of which compensation is payable under those provisions

Section 42.

as so applied shall include improvements executed before as well as improvements executed after that date.

Residue of sub-section repealed by 2 & 3 Geo. V., c. 21, s. 1, *infra*.

(3) Where the land to which such agreement relates, or so used and cultivated, consists of part of a holding only, this section shall apply as if that part were a separate holding.

Sub-s. 2 of sect. 42 must be read as explained by

2 & 3 GEO. V. c. 21, s. 1.

Removal of doubts as to effect of 8 Edw. VII. c. 28, s. 42 (2), &c.

1.—(1) For removing doubts as to the effect of sub-section (2) of section forty-two of the Agricultural Holdings Act, 1908, and any enactment which is re-enacted by that sub-section, it is hereby declared that a tenancy from year to year under a contract of tenancy current on the first day of January, eighteen hundred and ninety-six, shall not be deemed to have been determined thereafter by virtue of any provision contained in section sixty-one of the Agricultural Holdings (England) Act, 1883, and the said sub-section shall be repealed from the words "Provided that" to the end of the sub-section.

46 & 47 Vict. c. 61.

(2) This Act shall apply to any claim for compensation which has not before the passing of this Act been determined by any judgment or order of a court of competent jurisdiction or award or agreement, whether the improvement to which the claim relates was made or begun before or after the commencement of the Agricultural Holdings Act, 1908.

SUPPLEMENTAL PROVISIONS.

Exclusion of certiorari.

43. An order of the county court or of a court of summary jurisdiction under this Act shall not be quashed for want of form, or be removed by certiorari or otherwise into any superior court.

Costs in county court.

44.—(1) The costs of proceedings in the county court under this Act shall be in the discretion of the court.

(2) The Lord Chancellor may prescribe scales of costs for those proceedings, and of costs to be taxed by the registrar of the court.

Service of notice, &c.

45. Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and in the case of a notice to a landlord "the person to whom it is to be given" shall include any agent of the landlord duly authorised in that behalf.

A notice to quit under sect. 83 of the 1883 Act, may be sent by registered letter (*Van Grutten* v. *Trevenen* (C. A.), (1902) 2 K. B. 82; 71 L. J. K. B. 544).

Section 46.

General saving of rights.

46. Except as in this Act expressed, nothing in this Act shall prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exerciseable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvements, waste, emblements, tillages, away-going crops, fixtures, tax, rate, tithe rent-charge, rent, or other thing.

Improvements executed under repealed enactments.

47. Except as otherwise expressly provided by this Act, the compensation in respect of an improvement made or begun before the commencement of this Act, or made upon a holding held under a contract of tenancy, other than a tenancy from year to year, current on the first day of January, eighteen hundred and eighty-four, shall be such (if any) as could have been claimed if this Act had not been passed, but the procedure for the ascertainment and recovery thereof shall be such as is provided by this Act, and the amount so ascertained shall be payable, recoverable, and chargeable as if it were compensation under this Act.

Interpretation.

48.—(1) In this Act, unless the context otherwise requires,—

"Contract of tenancy" means a letting of or agreement for letting land for a term of years, or for lives, or for lives and years, or from year to year;

"Determination of tenancy" means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause;

"Landlord" means any person for the time being entitled to receive the rents and profits of any land;

"Tenant" means the holder of land under a contract of tenancy and includes the executors, administrators, assigns, guardian, committee of the estate, or trustee in bankruptcy, of a tenant or other person deriving title from a tenant;

"Holding" means any parcel of land held by a tenant, which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment, or employment held under the landlord;

"Market garden" means a holding cultivated, wholly or mainly, for the purpose of the trade or business of market gardening;

"Board" means the Board of Agriculture and Fisheries;

"County court," in relation to a holding, means the county court within the district whereof the holding, or the large part thereof, is situate;

"Live stock" includes any animal capable of being distrained;

Section 48.

"Manuring" means any of the improvements numbered twenty-three, twenty-four, and twenty-five in Part III. of the first schedule hereto;

"Agreement" includes an agreement arrived at by means of valuation or otherwise, and "agreed" has a corresponding meaning.

(2) The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation for improvements, or under any agreement made in pursuance of this Act.

Repeal.

49. The enactments specified in the fourth schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule:

Provided that—

(*a*) All orders, rules, scales of costs, and instruments issued and notices and consents given and having effect under any enactment hereby repealed shall have effect as if they had been made or given under this Act; and

(*b*) References in any conveyance, lease, or other document to any enactment so repealed shall have effect as if they had been references to the corresponding provisions of this Act.

Commencement.

50. This Act shall come into operation on the first day of January, nineteen hundred and nine.

Short title and extent.

51.—(1) This Act may be cited as the Agricultural Holdings Act, 1908.

(2) This Act shall not extend to Scotland or Ireland.

SCHEDULES.

FIRST SCHEDULE.

Sections 1, 2, 5, 6, 15, 20, 37, 38, 39, 40, 42.

PART I.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED.

(1) Erection, alteration, or enlargement of buildings.
(2) Formation of silos.
(3) Laying down of permanent pasture.
(4) Making and planting of osier beds.
(5) Making of water meadows or works of irrigation.
(6) Making of gardens.
(7) Making or improvement of roads or bridges.
(8) Making or improvement of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
(9) Making or removal of permanent fences.
(10) Planting of hops.
(11) Planting of orchards or fruit bushe

(12) Protecting young fruit trees.
(13) Reclaiming of waste land.
(14) Warping or weiring of land.
(15) Embankment and sluices against floods.
(16) Erection of wirework in hop gardens.

[N.B.—*This part is subject as to market gardens to the provisions of the third schedule.*]

PART II. Sections 3, 15, 20, 37, 38, 39.

IMPROVEMENT IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED.

(17) Drainage.

PART III. Sections 4, 26, 37, 38, 42, 48.

IMPROVEMENTS IN RESPECT OF WHICH CONSENT OF OR NOTICE TO LANDLORD IS NOT REQUIRED.

(18) Chalking of land.
(19) Clay-burning.
(20) Claying of land or spreading blaes upon land.
(21) Liming of land.
(22) Marling of land.
(23) Application to land of purchased artificial or other purchased manure.
(24) Consumption on the holding by cattle, sheep, or pigs, or by horses, other than those regularly employed on the holding, of corn cakes, or other feeding stuff not produced on the holding.
(25) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn proved by satisfactory evidence to have been produced and consumed on the holding.
(26) Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the determination of the tenancy.
(27) Repairs to buildings, being buildings necessary for the proper cultivation or working of the holding, other than repair, which the tenant is himself under an obligation to execute:

Provided that the tenant, before beginning to execute any such repairs, shall give to the landlord notice in writing of his intention, together with particulars of such repairs, and shall not execute the repairs unless the landlord fails to execute them within a reasonable time after receiving such notice.

SECOND SCHEDULE. Section 13.

RULES AS TO ARBITRATION.

Appointment of Arbitrator.

1. A person agreed upon between the parties, or in default of agreement nominated by the Board on the application in writing of either of the parties shall be appointed arbitrator. 1900, Sch. 2, 1906, s. 1 (3).

2. If a person appointed arbitrator dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

3. Neither party shall have power to revoke the appointment of the arbitrator without the consent of the other party.

4. Every appointment, notice, revocation, and consent under this part of these rules must be in writing.

Time for Award.

5. The arbitrator shall make and sign his award within twenty-eight days of his appointment or within such longer period as the Board may (whether the time for making the award has expired or not) direct.

Removal of Arbitrator.

6. Where an arbitrator has misconducted himself the county court may remove him.

NOTE.—Rejection of evidence by an arbitrator may constitute misconduct (*Williams* v. *Wallis & Cox*, (1914) 2 K. B. 478; 83 L. J. K. B. 1296).

Evidence.

7. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator all samples, books, deeds, papers, accounts, writings, and documents, within their possession or power respectively, which may be required or called for, and do all other things which during the proceedings the arbitrator may require.

8. The arbitrator shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbitrator thinks fit, be examined on oath or affirmation.

Statement of Case.

9. The arbitrator may at any stage of the proceedings, and shall if so directed by the judge of the county court (which direction may be given on the application of either party), state in the form of a special case for the opinion of that court any question of law arising in the course of the arbitration.

Award.

10. The arbitrator shall, on the application of either party, specify the amount awarded in respect of any particular improvement or any particular matter the subject of the award, and the award shall fix a day not sooner than one month or later than two months after the delivery of the award for the payment of the money awarded as compensation, costs, or otherwise, and shall be in such form as may be prescribed by the Board.

11. The award to be made by the arbitrator shall be final and binding on the parties and the persons claiming under them respectively.

12. The arbitrator may correct in an award any clerical mistake or error arising from any accidental slip or omission.

13. When an arbitrator has misconducted himself, or an arbitration or award has been improperly procured, the county court may set the award aside.

Costs.

14. The costs of and incidental to the arbitration and award shall be in the discretion of the arbitrator, who may direct to and by whom and in what manner these costs or any part thereof are to be paid, and the costs shall be subject to taxation by the registrar of the county court on the application of either party, but that taxation shall be subject to review by the judge of the county court.

15. The arbitrator shall, in awarding costs, take into consideration the reasonableness or unreasonableness of the claim of either party, either in respect of amount or otherwise, and any unreasonable demand for particulars or refusal to supply particulars, and generally all the circumstances of the case, and may disallow the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily (*a*).

NOTE.—(*a*) The discretion of the arbitrator as to costs is absolute, he being given absolute discretion by the Act itself (*supra*). He may direct the successful party to pay the costs of the arbitration. Decision of the House of Lords reversing that of the Court of Appeal (*Gray* v. *Lord Ashburton*, (1917) A. C. 26; 86 L. J. K. B. 224).

Forms.

16. Any forms for proceedings in arbitrations under this Act which may be prescribed by the Board shall, if used, be sufficient.

THIRD SCHEDULE.

Section 42.

IMPROVEMENTS SUBJECT TO SPECIAL PROVISIONS IN THE CASE OF MARKET GARDENS.

(1) Planting of standard or other fruit trees permanently set out;
(2) Planting of fruit bushes permanently set out;
(3) Planting of strawberry plants;
(4) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years;
(5) Erection or enlargement of buildings for the purpose of the trade or business of a market gardener.

FOURTH SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 61.	The Agricultural Holdings (England) Act, 1883.	The whole Act.
53 & 54 Vict. c. 57.	The Tenants' Compensation Act, 1890.	In section one the words "the Agricultural Holdings Act, 1883, and". Section two, except so far as relates to compensation under the Allotments and Cottage Gardens (Compensation for Crops) Act, 1887. Section three and section four.
58 & 59 Vict. c. 27.	The Market Gardeners' Compensation Act, 1895.	The whole Act.
63 & 64 Vict. c. 50.	The Agricultural Holdings Act, 1900.	The whole Act, except so far as it relates to Scotland.
6 Edw. 7, c. 56.	The Agricultural Holdings Act, 1906.	The whole Act, except so far as it relates to Scotland.
7 Edw. 7, c. 54.	The Small Holdings and Allotments Act, 1907.	Section thirty-eight.

Extension of sect. 11 of the 1908 Act.

AGRICULTURAL HOLDINGS ACT, 1914.

4 & 5 GEO. V. c. 7.

Compensation for disturbance in connection with sale.

1.—(1) Notwithstanding any agreement to the contrary, where the tenancy of a holding is terminated after the passing of this Act by notice to quit given after that date—

(*a*) in view of the sale or offering for sale of the holding or any part thereof; or

(*b*) by or at the request of the purchaser of the holding before the expiration of one calendar year after completion of the purchase of the holding for any reason other than the wrongful act or default of the tenant in relation to the holding;

the tenant shall be entitled to recover compensation in terms of, and subject to the provisions of, section eleven of the Agricultural Holdings Act, 1908, except that the notice by the tenant of his intention to claim compensation required by that section may be given at any time not less than two months before the determination of the tenancy.

8 Edw. 7, c. 28.

(2) Compensation under this section shall not be payable in any case to which the Small Holdings Act, 1910, applies.

10 Edw. 7, & 1 Geo. 5, c. 34.

(3) In the event of any difference arising as to any matter under this section the difference shall, in default of agreement, be settled by arbitration.

THE COUNTY COURT (AGRICULTURAL HOLDINGS) RULES, 1909.

ORDER XL.

THE AGRICULTURAL HOLDINGS ACT, 1908.

Appointment or change of guardian. 8 Edw. VII. c. 28, s. 32.

1.—(1) An application for the appointment of a guardian of an infant or person of unsound mind not so found by inquisition for the purposes of the Agricultural Holdings Act, 1908 (in this order referred to as the said Act), or for the revocation of any such appointment and the appointment of another guardian, shall be intituled in the matter of the Act and of the arbitration or intended arbitration, and shall be made in accordance with the rules for the time being in force as to interlocutory applications.

Affidavit. [*Conf.* Forms 50, 51.]

(2) Any such application shall be supported by affidavit, and accompanied by a written consent of the proposed guardian to act as such.

Applications *ex parte*.

(3) An application on behalf of an infant or person of unsound mind for the appointment of a guardian may be made *ex parte*.

Applications on notice. [*Conf.* Forms 54, 55, 56.]

(4) An application by any other person interested for the appointment of a guardian of an infant or person of unsound mind shall be made to the judge on notice in writing; and such notice, together with a copy of the affidavit in support of the application, shall three clear days at least before the day in such notice named for hearing the application be served on the person with whom or under whose care such infant or person of unsound mind is residing, and also, in the case of an infant not residing with or under the care of his father or guardian, on the father or guardian (if any) of such infant: Provided that the registrar may dispense with such last mentioned service. Service may be effected in accordance with the provisions of section 45 of the said Act.

8 Edw. VII. c. 28, s. 45.

(5) An application for the revocation of the appointment of a guardian and the appointment of another guardian shall be made

to the judge on notice in writing, which shall be served on the guardian proposed to be removed, or his solicitor, in accordance with the last preceding paragraph. Rule 1.

2.—(1) An application to the judge under the said Act for an order directing an arbitrator to state in the form of a special case for the opinion of the court any question of law arising in the course of the arbitration shall be made in court on notice in writing, which shall be intituled in the matter of the Act and of the arbitration, and shall state concisely the question of law which the applicant desires to be stated for the opinion of the court, and shall be supported by an affidavit setting forth the facts of the case and the question of law arising thereon. Application for order to state case. 8 Edw. VII. c. 28, Sched. II. par. 9. Form 415.

(2) The application and affidavit shall be filed with the registrar, and shall be marked by the registrar with a reference number, and all subsequent proceedings shall bear the reference number.

(3) Copies of the application and affidavit shall be served by the applicant on the parties to the arbitration, and on the arbitrator, or on their respective solicitors (if any), ten clear days at least before the hearing of the application, unless the judge or registrar shall give leave for shorter service, in which case a copy of the order giving such leave shall be served with the copy of the application. Such service may be effected in accordance with the provisions of section 45 of the said Act; and service on any party who does not appear on the hearing of the application shall be proved before an order is made. 8 Edw. VII. c. 28, s. 45.

(4) Any affidavit intended to be used by any party in opposition to the application shall be filed and a copy thereof shall be served on the applicant or his solicitor four clear days at least before the hearing of the application, or, if leave has been given for short service of the notice of the application, in such reasonable time before the hearing as the date of service of such notice will allow.

(5) A deponent to an affidavit shall on notice from the other side served in accordance with paragraph 3 attend the hearing for cross-examination; and witnesses may be orally examined on the hearing of the application in the same manner as on the hearing of an action.

(6) The order of the judge on the application shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on the arbitrator in accordance with the provisions of section 45 of the said Act, and on all other persons affected thereby in accordance with rule 7 of Order XXIII. 8 Edw. VII. c. 28, s. 45.

3.—(1) Where an arbitrator under the said Act states in the form of a special case for the opinion of the court any question of Statement of case.

Rule 3.

8 Edw. VII. c. 28, Sched. II. par. 9.

law arising in the course of the arbitration (whether on his own motion or in pursuance of a direction of the court to that effect), such case shall be intituled in the matter of the Act and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of such case the judge and the parties shall be at liberty to refer to the whole contents of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the hearing of an arbitration.

Signing and filing.

(2) Such special case shall be signed by the arbitrator, and may be filed by the arbitrator or any of the parties to the arbitration with the registrar, and a copy shall be filed therewith for the use of the judge; and such case shall be marked by the registrar with a reference number (which, where a case is stated in pursuance of a direction of the court to that effect, shall be the same as that on the application for such direction) and all subsequent proceedings shall bear the reference number.

Fixing day for hearing.

(3) On a case being filed the registrar shall transmit a copy thereof to the judge, who shall, as soon as conveniently may be, appoint a day and hour for hearing the case, and instruct the registrar to give notice thereof forthwith to the parties. Such day shall be so fixed as to allow such notice to be given ten clear days at least before the day fixed for the hearing, unless the judge shall, with the consent of all parties, fix an earlier day; and such notices may be served in accordance with the provisions of section 45 of the said Act.

Form 416.

8 Edw. VII. c. 28, s. 45.

Copies of case.

(4) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case.

Order on hearing.

(5) On the hearing of the case an order in accordance with the opinion of the judge shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on all parties to the arbitration in accordance with rule 7 of Order XXIII.; and a sealed copy thereof shall be sent in like manner to the arbitrator, for him to proceed in accordance with the opinion of the judge.

Form 417.

Remitting case for restatement.

(6) The judge may remit the case to the arbitrator for restatement or further statement.

Application for removal

4.—(1) When application is made to the court under the said Act for the removal of an arbitrator on the ground of his mis-

conduct, or for an order setting aside an award on the ground of misconduct of the arbitrator, or on the ground that the arbitration or award has been improperly procured, the party making the application shall be called " the applicant " ; and all other parties to the arbitration, and the arbitrator (*a*), shall be made parties to the application, and shall be called " the respondents."

Rule 4.

of arbitrator, or to set aside award.

8 Edw. VII. c. 28, Sched. II., pars. 6, 13.

NOTE.—(*a*) This provision of this rule calling on the arbitrator to be present is not *ultra vires* (*Lendon* v. *Keen and Another*, (1916) 1 K. B. 994; 85 L. J. K. B. 1237).

(2) Proceedings shall be commenced by filing an application, intituled in the matter of the Act and of the arbitration, which shall be entered and numbered as a plaint.

Proceedings how commenced.

Form 418.

(3) Particulars shall be appended or annexed to the application, containing

Particulars and affidavit.

(*a*) A concise statement of the relief or order which the applicant claims, and of the grounds on which the application is made;

(*b*) The full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor:

and the application shall be supported by an affidavit setting forth the circumstances in which and the grounds on which the application is made.

(4) The applicant shall deliver to the registrar with the application, particulars, and affidavit a copy thereof for the judge, and a copy for each respondent to be served: and where the application is to set aside an award, the applicant shall file a copy of the award for the use of the judge.

Copies for judge and respondents.

(5) On the filing of the application the registrar shall fix the hearing thereof before the judge for any court appointed to be held within twenty-eight days from the date of the application, but the date of hearing shall be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents at least ten clear days before the date so fixed.

Fixing day of hearing by registrar.

(6) If there is no such court available, the registrar shall send notice of the application to the judge, who shall, as soon as conveniently may be, appoint a day and place for the hearing of the application. Such day shall be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents at least ten clear days before the date so fixed. The place of hearing shall be the place at which the court is held, or, if the judge so orders, any other convenient court of which he is judge.

Fixing day and place of hearing by judge.

(7) On the day for the hearing of the application being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on

Notice to parties.

Forms 419, 420.

Rule 4.

and at which the application will be heard, and shall issue the copies of the application, particulars, and affidavit, under the seal of the court, for service on the respondents, together with notices signed by the registrar himself and under the seal of the court, stating the place at which and the day and hour on and at which the application will be heard, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

Service on respondents.

(8) The copies and notices mentioned in the last preceding paragraph shall be served on each respondent ten clear days at least before the day fixed for the hearing, unless such respondent, or his solicitor on his behalf, agrees to accept shorter notice.

By whom service may be effected.

(9) Such copies and notices may be served—

(*a*) By a bailiff of a court;

or, at the request of the applicant or his solicitor,

(*b*) By the applicant, or some clerk or servant in his permanent and exclusive employ; or

(*c*) By the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them.

Mode of service.

8 Edw. VII. c. 28, s. 45.

(10) Service may be effected either in accordance with the rules as to service of default summonses, or by registered post in accordance with the provisions of section 45 of the said Act.

Where service effected otherwise than by bailiff.

(11) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service endorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant or his solicitor. The applicant or his solicitor shall also deliver or transmit to the registrar an affidavit of the service of such document, according to the form in the Appendix, with such variations as the circumstances of the case may require.

Form 37.

Affidavits by respondents.

(12) Any affidavit intended to be used by any respondent on the hearing of the application shall be filed and a copy thereof shall be served on the applicant or his solicitor four clear days at least before the hearing of the application, or, if short service of the notice of the application has been accepted, in such reasonable time before the hearing as the date of service will allow.

Attendance or cross-examination.

8 Edw. VII. c. 28, s. 45.

(13) A deponent to an affidavit shall on notice from the other side served in accordance with the provisions of section 45 of the said Act, attend the hearing for cross-examination; and witnesses may be orally examined on the hearing of the application in the same manner as on the hearing of an action.

Rule 4.

Procedure on application.

(14) Subject to the special provisions of this rule, the procedure on an application shall be the same as the procedure in an action commenced in the court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such application accordingly; and in the application of such provisions and rules the application shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the application shall be deemed to be the return day, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively.

"Costs."]—If an arbitrator, on being served with notice of proceedings to set aside his award on the ground of misconduct, appears and takes part in the proceedings he makes himself an active party and may be ordered to pay costs. If guilty of real misconduct justifying the setting aside of his award costs may, and ought to be given against him, whether he appears in the proceedings or not. If he is only guilty of technical misconduct the county court judge is not entitled to order him to pay the applicant's costs (*Lendon* v. *Keen and Another*, (1916) 1 K. B. 994; 85 L. J. K. B. 1237).

Order.

(15) The order of the judge on any application shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on all persons affected thereby in accordance with rule 7 of Order XXIII.; and such order shall be enforceable in the same manner as a judgment or order of the court.

Where hearing is to take place in another court.

(16) Where the hearing is to take place at another court, the registrar of the court in which the proceeding is pending shall forthwith send notice to the registrar of such other court that the judge has ordered the hearing to take place there; and he shall, in sufficient time before the hearing, transmit the papers to the registrar of the court at which the hearing is to take place, who shall act at the hearing for such first mentioned registrar, and shall, after the hearing, return the papers to him, with a minute of the order made; and such order shall be prepared, settled, signed, sealed, filed, served, and proceeded on in the court in which the proceeding is pending, in like manner as if the hearing had taken place there.

Application for taxation of costs of arbitration. 8 Edw. VII. c. 28, Sched. II. par. 14. [*Conf.* Form 423.]

5.—(1) An application to the registrar to tax the costs of and incidental to an arbitration and award under the said Act shall be made in writing, and shall state on whose behalf the application is made.

(2) On receipt of such application the registrar shall fix a place and time for proceeding with such taxation, and shall give or send by post notice in writing to the applicant and to the parties whose

See p. 2166.

Rule 5.

Notice of time and place for taxation. [*Conf.* Form 424.] *See* p. 2168.

costs are to be taxed, signed by the registrar himself and under the seal of the court, stating the place, day, and hour at and on which the taxation will be proceeded with, and requiring the parties to attend and produce documents and be examined, and warning them that if they do not attend either in person or by their solicitors such order will be made and proceedings taken as to the registrar shall seem fit. Such notices shall be given or sent four clear days at least before the day fixed for the taxation.

Certificate of taxation.

(3) On the completion of the taxation, or in the case of review by the judge, after such review, the registrar shall give or send by post to each party a certificate of the result of the taxation, stating the amount at which the costs have been allowed.

Review of taxation by judge. 8 Edw. VII. c. 28, Sched. II. par. 14.

6. An application to the judge to review any taxation by the registrar shall be made on notice in writing in accordance with the rules for the time being in force as to interlocutory applications.

Application for recovery of money awarded to be paid for compensation, &c. 8 Edw. VII. c. 28, s. 14. 50 & 51 Vict. c. 26, s. 17. Form 421.

7.—(1) An application to the judge under the said Act, or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, for an order that money awarded to be paid for compensation, costs, or otherwise, shall be recoverable as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable, shall be made in court on notice in writing, which shall be intituled in the matter of the Act and of the arbitration; and on filing the application the applicant shall produce to the registrar the original award (or a duplicate thereof) and shall file a copy thereof, together with an affidavit intituled as above, verifying both the original and the copy award, and the amount remaining due thereunder.

(2) Where the application is for the recovery of or includes the recovery of any money awarded to be paid for costs, the affidavit shall state the amount at which such costs have been agreed upon or allowed on taxation, and that a demand for payment of such amount with, in the case of taxation, a copy of the certificate of the result of the taxation, has been served on the party against whom the application is made fourteen days at least before the date of the application. Service of such demand may be effected in accordance with the provisions of section 45 of the said Act. 8 Edw. VII. c. 28, s. 45.

(3) The application shall not be numbered as a plaint, but shall be marked by the registrar with a reference number as a commencement of proceedings, and all subsequent proceedings shall bear the reference number.

(4) A copy of the application and affidavit shall be served on the party against whom the application is made, and proof of such service shall be made, in accordance with paragraph 3 of rule 2 of

this Order; and the provisions of paragraphs 4 and 5 of the last-mentioned rule shall apply to proceedings on an application under this rule. Rule 7.

(5) The order of the judge on the application shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on all persons affected thereby in accordance with rule 7 of Order XXIII.; and such order shall be enforceable in the same manner as a judgment or order of the court. Form 422.

Proceedings for recovery of money agreed to be paid under 8 Edw. VII. c. 28, s. 14; 50 & 51 Vict. c. 26, s. 17; or for settlement of disputes under 8 Edw. VII. c. 28, s. 30.

8. Proceedings for the recovery of money agreed to be paid for compensation, costs, or otherwise, under the said Act, or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, or for the settlement of a dispute under section 30 of the said Act, shall be by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed in any such action, stating concisely the nature of the claim or dispute and the relief or order which the plaintiff claims.

Application of Order to cases under Acts applying 8 Edw. VII. c. 28. [See 8 Edw. VII. c. 36, ss. 38, 58.]

9. This order shall, with the necessary modifications, apply to all cases in which by virtue of any other Act of Parliament questions referred to arbitration are to be determined in accordance with the said Act.

FORMS.

415.

Application for Order Directing Statement of Case. Order XL., Rule 2.

The Agricultural Holdings Act, 1908.

[*Not to be printed.*]

In the County Court of holden at .

[*Reference Number*]

In the matter of the Agricultural Holdings Act, 1908,

and

In the matter of an Arbitration between

A.B.,
of &c., Tenant,

and

C.D.,
of &c., Landlord.

TAKE NOTICE, that application will be made to the judge at on the day of 19 , at the hour of o'clock in the noon, on behalf of the above-named , for an order directing Mr. , the arbitrator appointed in the above-mentioned arbitration, to state in the form of a special case for the opinion of the court the following question of law arising in the course of the arbitration, viz.,

[*State the question of law.*]

And further take notice, that an affidavit of filed herewith [*in the*

notice served on any party substitute for these words a copy whereof is served herewith] will be read in support of the application.

Dated this day of 19 .

(Signed)

Applicant.
[*or* Applicant's Solicitor].

To the Registrar of the Court
and to [*the other parties to the arbitration and the arbitrator, naming them*].

Order XL., Rule 3 (3).

416.

Notice of Day on which Case will be heard.

The Agricultural Holdings Act, 1908.

[*Not to be printed.*]

In the County Court of holden at .

[*Heading as in Special Case.*]

TAKE NOTICE, that the judge of this court will hear the special case stated by Mr. , the arbitrator appointed in the above-mentioned matter, at a court to be holden at on the day of 19 , at the hour of in the noon; and that if you do not attend in person or by your solicitor at the time and place above-mentioned, such order will be made and proceedings taken as the judge may think just.

You may obtain a copy of the case upon application at my office, and upon prepayment of the costs of such copy.

The hearing fee must be paid before the case is called on.

Dated this day of 19 .

Registrar.

To
[*the parties to the arbitration.*]

Order XL., Rule 3 (5).

417.

Order on Hearing of Case.

The Agricultural Holdings Act, 1908.

[*Not to be printed.*]

[*Heading as in Special Case.*]

The special case stated by Mr. , the arbitrator appointed in the above-mentioned matter [*if stated pursuant to an order of the judge, add* in pursuance of an order of the judge made in the above-mentioned matter on the day of 19] coming on for hearing this day:

Now, upon reading the said case, and upon hearing the above-mentioned *A.B.* [or Mr. , solicitor [*or* of counsel] for the above-named *A.B.*] and the above-named *C.D.* [*or* Mr. , solicitor [*or* of counsel] for the above-named *C.D.*] [*or if either party does not appear*, no one appearing for the above-named *A.B.* [*or C.D.*], and upon debate of the matter, the judge of this court doth declare his opinion on the question of law stated for the opinion of the court as follows:—

[*State Opinion.*]

And it is ordered that a copy of this order be sent by the registrar to the said Mr. , for him to proceed in accordance with the opinion so declared as aforesaid.

[*Add directions as to costs, if any.*]

Dated this day of 19 .

To Registrar.

[*the parties to the arbitration and the arbitrator.*]

418.

Application for Removal of Arbitrator, or to set aside Award. Order XL., Rule 4 (2).

The Agricultural Holdings Act, 1908.

[*Not to be printed.*]

In the County Court of holden at .

No. of Plaint

In the matter of the Agricultural Holdings Act, 1908,

and

In the matter of an Arbitration between

A.B.,
of &c., Tenant,

and

C.D.,
of &c., Landlord.

Application is hereby made on behalf of the above-named

(1) for the removal of Mr. , the arbitrator appointed in the above-mentioned arbitration, on the ground of his misconduct.

Particulars are hereto appended [*or* annexed].

[*or* (2) to set aside the award made by Mr. , the arbitrator appointed in the above-mentioned arbitration, on the day of , on the ground of the misconduct of the said Mr. [*or* on the ground that the said arbitration [*or* award] was improperly procured].]

Particulars are hereto appended [*or* annexed].

An affidavit of in support of the application is filed herewith.

Application is hereby made to the court to fix a day for the hearing of the said application.

The names and addresses of the applicant and his solicitor are :—

Of the applicant

Of his solicitor

The names and addresses of the respondents to be served with this application are

Dated this day of 19 .

(Signed)

Applicant
[*or* Applicant's Solicitor].

419.

Notice to Applicant of Day on which Application will be heard. Order XL. Rule 4 (7).

The Agricultural Holdings Act, 1908.

[*Not to be printed.*]

[*Heading as in Application.*]

TAKE NOTICE, that the judge of this court will hear the application in this matter at [*state place of hearing*] on the day of 19 at the hour of in the noon.

Dated this day of 19 .

To

of Registrar.

420.

Order XL., Rule 4 (7).

Notice to Respondents of Day on which Application will be heard.

The Agricultural Holdings Act, 1908.

[*Not to be printed.*]

[*Heading as in Application.*]

TAKE NOTICE, that the judge of this court will hear the application a sealed copy of which, with the particulars thereunto appended [*or* annexed] and a sealed copy of an affidavit filed in support thereof, is served herewith at [*state place of hearing*] on the day of 19 , at the hour of in the noon; and that if you do not attend either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of 19 .

To Registrar.
of
[*naming all the respondents*].

421.

Order XL., Rule 7 (1).

Application for Order for Recovery of Money awarded to be paid.

The Agricultural Holdings Act, 1908.

[*Or* **The Allotments and Cottage Gardens Compensation for Crops Act, 1887.**]

[*Not to be printed.*]

In the County Court of holden at .

[*Reference number* .]

In the matter of the Agricultural Holdings Act, 1908 [*or* In the matter of the Allotments and Cottage Gardens Compensation for Crops Act, 1887]

and

In the matter of an Arbitration between

A.B.,
of, &c. Tenant,

and

C.D.,
of, &c., Landlord.

TAKE NOTICE, that application will be made to the judge at on the day of 19 , at the hour of in the noon, on behalf of the above-named *A.B.* for an order that the sum of £ , being the total amount [*or* the balance of the total amount] of (1) a sum of £ which by an award made in the above-mentioned matter on the day of 19 , was awarded to be paid by the above-named *C.D.* to the above-named *A.B.* , and of (2) a further sum of £ for costs which by the said award were awarded to be paid by the said *C.D.* to the said *A.B.* , and which costs were subsequently agreed upon [*or* allowed on taxation] at the sum of £ , and which said first-mentioned sum of £ remains unpaid shall be recoverable as money ordered by the court under its ordinary jurisdiction to be paid is recoverable

And further take notice, that an affidavit of filed herewith [*in the notice to be served on the opposite party, substitute for these words* a copy whereof is served herewith] will be read in support of the application.

Dated this day of 19 .

(Signed)

Applicant
[*or* Applicant's Solicitor].

To the Registrar of the Court
and to [*naming the party against whom the application is made*].

422.

Order for Recovery of Money awarded to be paid.

Order XL., Rule 7 (5).

The Agricultural Holdings Act, 1908.

[*Or* **The Allotments and Cottage Gardens Compensation for Crops Act, 1887.**]

[*Not to be printed.*]

[*Title as in Application.*]

Upon the application of , and upon reading an award made in the above-mentioned matter on the day of 19 , and an affidavit of sworn on the day of 19 , and filed on the day of 19 , and upon hearing [*the opposite party*] [*or if the opposite party does not appear* and no one appearing for [*the opposite party*] though proof has been made of his having been duly served with notice of this application];

It is ordered by the judge of this court that the above-named *A.B.* do recover from the above-named *C.D.* the sum of £ , being the total amount [*or* the balance of the total amount] of (1) a sum of £ which by the said award was awarded to be paid by the above-named *C.D.* to the above-named *A.B.* , and of (2) a further sum of £ for costs which by the said award were awarded to be paid by the said *C.D.* to the said *A.B.* , and which costs were subsequently agreed upon [*or* allowed on taxation] at the sum of £ , and which said first-mentioned sum of £ remains unpaid, together with the sum of £ for the costs of this application; and that in default of payment of the said sums of £ and £ by the said *C.D.* to the said *A.B.* within days from the date of this order, the said sums or so much thereof as shall remain unpaid shall be recoverable as money ordered by this court under its ordinary jurisdiction to be paid is recoverable.

Dated this day of 19 .

Registrar.

AGRICULTURAL HOLDINGS ACTS.

ORDER OF THE LORD CHANCELLOR, DATED NOVEMBER 27, 1900, AS TO COSTS.

I, the Right Honourable Hardinge Stanley, Earl of Halsbury, Lord High Chancellor of Great Britain, do, by virtue of the powers vested in me by the twenty-seventh section of the Agricultural Holdings (England) Act, 1883, hereby prescribe the following scales of costs for proceedings in the county court under the Agricultural Holdings (England) Acts, 1883 to 1900, and of costs to be taxed by registrars of county courts under the said Acts, (that is to say):

1. Costs of proceedings in the county court under the said Acts shall be taxed according to such one of the scales of costs applicable to actions in the county court as the judge shall direct, and in default of such direction they shall be taxed under column B of such scales.

2. Costs of and incidental to an arbitration and award awarded by an arbitrator under the said Acts shall be taxed according to such one of the scales of costs applicable to actions in the county court as the arbitrator shall direct, and in default of such direction they shall be taxed under column B of such scales.

Dated this 27th day of November, 1900.

NOTE.—Applied by sect. 49 of Agricultural Holdings Act, 1908.

COURT FEES.

SCHEDULE B.—PART I. (*a*).

Registrar's Fees.

	£	*s.*	*d.*
(4) On proceedings under the Agricultural Holdings (England) Acts, 1883 to 1900, or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, and Order XL.—			
On every application for the appointment or change of a guardian under Order XL., rule 1, including drawing, sealing, and issuing the order on such application	0	5	0
For filing every application or special case under Order XL., rule 2 (1, 2), rule 3 (2), or rule 7 (1) . .	0	2	6
For every order for short service under Order XL., rule 2 (3) or rule 7 (4), including copy for service .	0	2	6
If more than one copy of such order to be served, for each additional copy, per folio	0	0	4
For every notice under Order XL., rule 3 (3), to be paid by the party filing the case, or on whose application the case is stated	0	2	6
For every notice under Order XL., rule 4 (7), to be paid by the applicant	0	2	6

(*a*) These apply to proceedings under the Act of 1908 (see sect. 49 of that Act).

	£	s.	d.
For filing every affidavit under Order XL., rule 2 (4), rule 4 (12), or rule 7 (4)	0	1	0
Where hearing takes place at another court under Order XL., rule 4 (16), to the registrar of such other court, for his duties under that rule.	0	10	0
For settling, sealing, and filing every order under the following rules or any of them, including copy for service :— Order XL., rule 2 (6) Order XL., rule 3 (5), to be paid by the party filing the case, or on whose application the case is stated Order XL., rule 4 (15) Order XL., rule 7 (5)	0	5	0
If more than one copy of such order to be served, for each additional copy, per folio	0	0	4
For every notice under Order XL., rule 5 (2) to be paid by the applicant	0	2	6
For every taxation of costs of an arbitration and award including certificates of result of taxation, where the amount of the account to be taxed does not exceed 50*l.*	0	10	0
And for every additional 50*l.* or fractional part of 50*l.*	0	10	0
For every taxation of costs on an application for the removal of an arbitrator, or to set aside an award	0	5	0

COSTS.

Drawing.	A.			B.			C.		
	£	s.	d.	£	s.	d.	£	s.	d.
Item 32. Any statement under the Agricultural Holdings Act, including necessary copies	0	3	0	0	5	0	0	6	8
Or per folio beyond three		—		0	1	0	0	1	0

AGRICULTURAL HOLDINGS (ENGLAND) RULES OF 1908. (Dated 28th November, 1908.)

The Board of Agriculture and Fisheries, by virtue and in exercise of the powers in them vested under the Agricultural Holdings Act, 1908, do hereby prescribe as follows :—

1. An award in an arbitration under the Agricultural Holdings Act, 1908, shall be in the form set forth in the first schedule hereto, or to the like effect, with such modifications of the recitals contained in such form as circumstances may require.

2. The several forms for proceedings in arbitrations under the said Act, which are set forth in the Second Schedule hereto, shall, if used, be sufficient.

3. These Rules extend to England and Wales only.

4. The Agricultural Holdings (England) Rules of 1900 shall remain in force for the purpose only of arbitrations under the Agricultural Holdings (England) Acts, 1883 to 1900.

5. These Rules may be cited as the Agricultural Holdings (England) Rules of 1908.

In witness whereof the Board of Agriculture and Fisheries have hereunto set their Official Seal this 28th day of November nineteen hundred and eight.

L.S.

A. W. ANSTRUTHER,
Assistant Secretary.

The First Schedule to the above Rules.

FORM A.

Form of Award where Compensation is claimed for Tenant's Improvements.

Agricultural Holdings Act, 1908.

Insert name (if any) and description of holding.

In the matter of a holding known as , lately in the occupation of *A.B.*, of (*the quitting tenant*).

To all to whom these presents shall come I, *F.G.*, of , send greeting.

Whereas *C.D.*, the landlord of the above-mentioned holding, and the said *A.B.*, the tenant thereof, have failed to agree as to the amount and time and mode of payment of the compensation to which the said *A.B.* claims to be entitled in respect of the improvements made on the above-mentioned holding, which are comprised in the First Schedule to this Award.

(*Here insert recital of appointment of Arbitrator. See Form C.*)

And whereas the said *A.B.*, by written notice to the said *C.D.*, has required [*or* the said *A.B.* and *C.D.* have agreed] that the arbitration shall extend to the determination of certain further claims by the said *A.B.* against the said *C.D.* in respect of the said holding, the short particulars of which claims are set forth in the Second Schedule to this Award.

And whereas the said *C.D.*, by written notice to the said *A.B.*, has required [*or* the said *A.B.* and *C.D.* have agreed] that the arbitration shall extend to the determination of certain claims by the said *C.D.* against the said *A.B.* in respect of the said holding, the short particulars of which claims are set forth in the Third Schedule to this Award.

And whereas application has been duly made to me to specify the amount awarded in respect of such of the claims set forth in the said Schedules as are therein marked with an asterisk.

[And whereas the time for making my Award has been extended by the Board of Agriculture and Fisheries to the day of , 19 .]

Now know ye that I, the said *F.G.*, having taken upon myself the burden of the said reference, and having heard, examined, and considered the witnesses and evidence concerning the said matters so referred to me as aforesaid, do make and publish this my Award of and concerning the same in manner following, that is to say :—

1. I award and determine that the said *A.B.* is entitled to receive from the said *C.D.* the sum of pounds shillings and pence, as compensation in respect of the improvements comprised in the First Schedule to this Award.

2. I award and determine that the said *A.B.* is entitled to receive from the said *C.D.* the sum of pounds shillings and pence in respect of the claims mentioned in the Second Schedule to this Award.

3. I award and determine that the said *C.D.* is entitled to receive from the said *A.B.* the sum of pounds shillings and pence, in respect of the claims mentioned in the Third Schedule to this Award.

4. I hereby declare that the amounts awarded by me in respect of such of the said claims as are marked with an asterisk are the amounts set against such claims in such Schedules.

5. I award and determine that the said sum[s] of pounds shillings and pence [and pounds shillings and pence] awarded by me shall, subject to the provisions of the Agricultural Holdings Act, 1908, be paid by the said *C.D.* to the said *A.B.* on the day after the delivery of this Award; and that the said sum of pounds shillings and pence awarded by me shall, subject as aforesaid, be paid by the said *A.B.* to the said *C.D.* on the same day.

NOTE.—The date in paragraphs 5 and 6 must not be earlier than one calendar month, nor later than two calendar months, after the delivery of the award.

6. I award and direct that the costs of and incidental to the arbitration and this Award shall be paid by the said *A.B. or C.D. or* by the said *A.B.* and *C.D.* in the following proportions, namely, part thereof by the said *A.B.* and part thereof by the said *C.D.* [*or otherwise as may be directed*], *or* I award and direct that each party shall bear his own costs of and incidental to this arbitration, and shall pay part of my costs of this Award, and that any costs payable by the one party to the other party under or by virtue of this Award shall be so paid on the day after the delivery of this Award.

See note above.

In witness whereof I have hereunto set my hand this day of 19 .

Signed by the said *F.G.* in the presence of

F.G.

The First Schedule referred to in the above-written Award.

[*Here insert each of the improvements comprised in the First* [*or Third*] *Schedule* [*s*] *to the Agricultural Holdings Act*, 1908, *in respect of which a claim by the tenant has been referred to arbitration.*]

The Second Schedule referred to in the above-written Award.

[*Here insert short particulars of any further claim by the tenant to which the arbitration is extended.*]

The Third Schedule referred to in the above-written Award.

[*Here insert short particulars of any claim by the landlord to which the arbitration is extended.*]

[*If either party has required that the amount awarded in respect of any particular claim shall be specified, the person making the award will mark such claim with an asterisk, and place against it the amount awarded in respect thereof.*]

NOTE.—*The Award may be endorsed as follows:—*

This Award was delivered to *A.B.* [*or C.D.*] on the day of , 19 .

F.G.

FORM B.

Form of Award for cases in which Form A is inapplicable.

Agricultural Holdings Act, 1908.

Insert name (if any) and description of holding.

In the matter of a holding known as , [lately] in the occupation of *A.B.*, of (*the* [*quitting*] *tenant*).

To all to whom these presents shall come I, *F.G.*, of send greeting.

Whereas under the Agricultural Holdings Act, 1908, [*or* the contract of tenancy of the said holding *or* an agreement made between *C.D.* the landlord of the said holding and the said *A.B.* the tenant thereof] the questions and claims set forth in the Schedule to this Award are referred to arbitration in accordance with the provisions set out in the Second Schedule to the Agricultural Holdings Act, 1908.

(*Here insert recital of appointment of Arbitrator. See Form C.*)

And whereas application has been duly made to me to specify the amount awarded in respect of such of the claims set forth in the Schedule to this Award as are in such Schedule marked with an asterisk.

[And whereas the time for making my Award has been extended by the Board of Agriculture and Fisheries to the day of , 19 .]

Now know ye that I, the said *F.G.*, having taken upon myself the burden of the said reference, and having heard, examined, and considered the witnesses and evidence concerning the said questions and claims so referred to me as aforesaid, do make and publish this my Award of and concerning the same in manner following, that is to say :—

1. By this Award I determine the questions set forth in the Schedule hereto in the manner following (that is to say) : [*Here set out determinations.*]

2. I award and determine that the said *A.B.* is entitled to receive from the said *C.D.* the sum of pounds shillings and pence, as compensation in respect of the claims set forth in the first part of the Schedule to this Award.

3. I award and determine that the said *C.D.* is entitled to receive from the said *A.B.* the sum of pounds shillings and pence, in respect of the claims set forth in the second part of the Schedule to this Award.

4. I do hereby declare that the amounts awarded by me in respect of such of the said claims as are marked with an asterisk are the amounts set against such claims in such Schedule.

NOTE.—The date in paragraphs 5 and 6 must not be earlier than one calendar month, nor later than two calendar months, after the delivery of the award.

5. I award and determine that the said sum[s] of pounds shillings and pence [and pounds shillings and pence] awarded by me shall, subject to the provisions of the Agricultural Holdings Act, 1908, be paid by the said *C.D.* to the said *A.B.* on the day after the delivery of this Award ; and that the said sum of pounds shillings and pence awarded by me shall, subject as aforesaid, be paid by the said *A.B.* to the said *C.D.* on the same day.

6. I award and direct that the costs of and incidental to the arbitration and this Award shall be paid by the said *A.B. or C.D. or* by the said *A.B.* and *C.D.* in the following proportions, namely, part thereof by *A.B.* and part thereof by the said *C.D.* [*or otherwise as may be directed*], *or* I award and direct that each party shall bear his own costs of and incidental to this arbitration, and shall pay part of my costs of this Award, and that any costs payable by the one party to the other party under or by virtue of this Award shall be so paid on the day after the delivery of this Award.

See note above.

In witness whereof I have hereunto set my hand this day of 19 .

Signed by the said *F.G.* in the presence of

F.G.

The Schedule referred to in the above-written Award.

[*Here set forth questions and claims to be determined. If either party*

has required that the amount awarded in respect of any particular claim shall be specified, the person making the Award will mark such claim with an asterisk, and place against it the amount awarded in respect thereof.]

FORM C.

Recital of Appointment of Arbitrator.

And whereas by an appointment, dated the day of , 19 , signed by [*or* on behalf of] the said *A.B.* and *C.D.* [*or* sealed by the Board of Agriculture and Fisheries, *as the case may be*], I, the said *F.G.*, was duly appointed under the Agricultural Holdings Act, 1908, to act as arbitrator for the purpose of settling the said differences [questions and claims] in accordance with the provisions set out in the Second Schedule to that Act.

The Second Schedule to the above Rules.

FORM D.

Application for Appointment by Board of Agriculture and Fisheries of Arbitrator to determine the compensation for Tenants' Improvements, &c.

Agricultural Holdings Act, 1908.

TO THE BOARD OF AGRICULTURE AND FISHERIES.

In the matter of the holding known as , lately in the occupation of *A.B.*, of (*the quitting tenant*).

Insert name (if any) and description of holding.

Whereas the said *A.B.* claims to be entitled to compensation in respect of certain improvements comprised in the First [*or* Third] Schedule[s] to the above-mentioned Act which have been made on the above-mentioned holding.

And whereas *C.D.*, of , the landlord of the said holding, and the said *A.B.*, have failed to agree as to the amount and time and mode of payment of such compensation, and as to the person to act as arbitrator for the purpose of settling the differences that have so arisen.

And whereas there is not any provision in any agreement between the said *A.B.* and *C.D.* relating to the appointment of such arbitrator, and such arbitrator may accordingly be appointed by the Board of Agriculture and Fisheries on the application in writing of either of the parties.

Now I, the undersigned, do hereby apply to the Board of Agriculture and Fisheries for the appointment by them of an arbitrator for the purpose of settling the said differences, and for determining all other claims relating to such holding which are brought within such arbitration under Section 6, Sub-section 3, of the above-mentioned Act, or by agreement between the parties.

(Signature of *A.B. or C.D.*, or his duly authorised agent.)

19 .

NOTE.—*Delay in making the appointment will be avoided if the application is signed by or on behalf of both parties.*

Applications should be sent to the Board in duplicate.

FORM E.

Application for Appointment by Board of Agriculture and Fisheries of Arbitrator to determine questions or claims not relating to Tenant's Improvements.

Agricultural Holdings Act, 1908.

TO THE BOARD OF AGRICULTURE AND FISHERIES.

Insert name (if any) and description of holding.

In the matter of the holding known as , [lately] in the occupation of *A.B.*, of (*the* [*quitting*] *tenant*).

Whereas under the Agricultural Holdings Act, 1908, [*or* the contract of tenancy of the said holding *or* an agreement made between *C.D.* the landlord of the said holding and the said *A.B.* the tenant thereof] the questions and claims set forth in the Schedule to this application are referred to arbitration in accordance with the provisions set out in the Second Schedule to the Agricultural Holdings Act, 1908.

And whereas the said *A.B.* and *C.D.* have failed to agree as to the person to act as arbitrator for the purpose of settling the said questions and claims.

And whereas there is not any provision in any agreement between the said *A.B.* and *C.D.* relating to the appointment of such arbitrator, and such arbitrator may accordingly be appointed by the Board of Agriculture and Fisheries on the application in writing of either of the parties.

Now I, the said undersigned, do hereby apply to the Board of Agriculture and Fisheries for the appointment by them of an arbitrator for the purpose of settling the questions and claims set forth in the Schedule to this application.

(Signature of *A.B. or C.D.*, or his duly authorised agent.)

19 .

Schedule.

[*Here set forth precisely the questions or claims to be determined.*]

NOTE.—*Delay in making the appointment will be avoided if the application is signed by or on behalf of both parties.*

Applications should be made to the Board in duplicate.

FORM F.

Application to Board of Agriculture and Fisheries for extension of time for Award.

Agricultural Holdings Act, 1908.

TO THE BOARD OF AGRICULTURE AND FISHERIES.

Insert name (if any) and description of holding.

In the matter of an arbitration under the above-mentioned Act between *A.B.*, of (*the* [*quitting*] *tenant*), and *C.D.*, of (*the landlord*), relating to the holding known as , [lately] in the occupation of the said *A.B.*

Whereas the time for making the Award in the said arbitration will expire [*or* expired] on the day of , 19 .

Now I, the undersigned, do hereby apply to the Board of Agriculture and Fisheries to extend the time for making the said Award to the day of , 19 .

19 .

[*This may be signed by the arbitrator, or by either party to the arbitration or his duly authorised agent.*]

THE ALKALI, &c., WORKS REGULATION ACT, 1906.

[6 Edw. VII. c. 14.]

Jurisdiction.]—This Act, by sects. 1 to 7 and sect. 9, imposes certain fines (other fines, *e.g.*, fines under sect. 12, sub-s. 4, are recoverable on conviction under the Summary Jurisdiction Acts) which must be recovered by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed (sect. 17); except as to the above-mentioned fines summarily recoverable, the jurisdiction of the county court is exclusive.

Ordinary practice of the County Courts, both as to procedure and appeal.

Procedure.]—By sect. 20 the owner of a work (see sect. 18) shall be deemed responsible for the offence committed till the contrary has been proved. The fine shall be recovered by action in the county court having jurisdiction in the district where offence is alleged, but such action shall not be brought without the sanction of the central authority (sect. 17; for meaning of central authority see sect. 27), and only by the chief or other inspector as the Local Government Board may direct nor (except as to the registration of works) after the expiration of three months from the offence (sect. 17, sub-s. 2); the provisions of the County Courts Acts Rules and Orders are to apply (sect. 17, sub-s. 6). Time limit.

Appeal.]—Either party may appeal to the High Court on points of law or on merits, or in respect of the admission or rejection of evidence (sect. 17, sub-s. 5).

Service.]—Sect. 21 provides as to the service of notices and documents.

PART I.

Alkali Works and Alkali Waste.

Condensation of muriatic acid gas in alkali works.

1.—(1) Every alkali work shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, of the muriatic acid gas evolved in such work, to the extent of ninety-five per centum, and to such an extent that in each cubic foot of air, smoke, or chimney gases, escaping from the works into the atmosphere, there is not contained more than one-fifth part of a grain of muriatic acid.

(2) The owner of any alkali work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds.

Prevention of discharge of noxious and offensive gas in alkali works.

2.—(1) In addition to the condensation of muriatic acid gas as aforesaid, the owner of every alkali work shall use the best practicable means for preventing the escape of noxious or offensive gases by the exit flue of any apparatus used in any process carried on in the work, and for preventing the discharge, whether directly or indirectly, of such gases into the atmosphere, and for rendering such gases where discharged harmless and inoffensive, subject to

Section 2.

the qualification that, on the basis of the amount of acid gas per cubic foot, no objection shall be taken under this section by an inspector to any muriatic acid gas in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet where the amount of such acid gas in each cubic foot of air, smoke, or gases so discharged does not exceed the amount limited by the last preceding section.

(2) If the owner of any alkali work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

Separation of acids and other substances from alkali waste and drainage therefrom.

3.—(1) Every work of whatever description in which any liquid containing either acid or any other substance capable of liberating sulphuretted hydrogen from alkali waste or drainage therefrom is produced or used shall be carried on in such manner that the liquid shall not come in contact with alkali waste, or with drainage therefrom, so as to cause a nuisance.

(2) The owner of any work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

(3) On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off such liquid as aforesaid produced in such work into the sea or into any river or watercourse into which the liquid can be carried without contravention of the Rivers Pollution Prevention Act, 1876, as amended by any subsequent enactment; and the sanitary authority shall for the purpose of providing any such drain or channel have the like powers as they have for providing sewers whether within or without their district, under the Public Health Act.

39 & 40 Vict. c. 75.

(4) Compensation shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section.

Deposit or discharge of alkali waste.

4.—(1) Alkali waste shall not be deposited or discharged, without the best practicable means being used for effectually preventing any nuisance arising therefrom.

(2) Any person who causes or knowingly permits any alkali waste to be deposited or discharged in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

Prevention of nuisance from alkali waste already deposited or discharged.

5. Where alkali waste has been deposited or discharged, either before or after the commencement of this Act, and complaint is made to the chief inspector that a nuisance is occasioned thereby, the chief inspector, if satisfied of the existence of the nuisance, and that it is within the power of the owner or occupier of the land to abate it, shall serve a notice on such owner or occupier requiring him to abate the nuisance; and, if such owner or occupier fails to use the best practicable and reasonably available means for the abatement thereof, he shall be liable to a fine not exceeding twenty pounds, and, if he does not proceed to use such means within such time as may be limited by the court inflicting such fine, he shall be liable to a further penalty not exceeding five pounds for every day after the expiration of the time so limited during which such failure continues.

PART II.

Sulphuric Acid, Muriatic Acid, and other Specified Works.

Condensation of acid gases in sulphuric acid and muriatic acid works.

6.—(1) Every sulphuric acid work as defined in paragraph (1) of the first schedule to this Act shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, of the acid gases of sulphur or of sulphur and nitrogen which are evolved in the process of the manufacture of sulphuric acid in that work, to such an extent that the total acidity of those gases in each cubic foot of residual gases after completion of the process, and before admixture with air, smoke, or other gases, does not exceed what is equivalent to four grains of sulphuric anhydride.

(2) Every muriatic acid work as defined in paragraph (8) of the first schedule to this Act shall be carried on in such manner as to secure the condensation to the satisfaction of the chief inspector of the muriatic acid gas evolved in such work, to such extent that in each cubic foot of air, smoke, or chimney gases escaping from the work into the atmosphere there is not contained more than one-fifth part of a grain of muriatic acid.

(3) The owner of any sulphuric acid work or of any muriatic acid work which is carried on in contravention of this section shall be liable to a fine not exceeding in the case of the first offence

Section 6.

fifty pounds, and in the case of every subsequent offence one hundred pounds.

Prevention of discharge of noxious or offensive gas in scheduled works.

7.—(1) The owner of any work specified in the first schedule to this Act (hereinafter referred to as a scheduled work) shall use the best practicable means for preventing the escape of noxious or offensive gases by the exit flue of any apparatus used in any process carried on in the work, and for preventing the discharge whether directly or indirectly, of such gases into the atmosphere, and for rendering such gases where discharged harmless and inoffensive, subject to the qualification that, on the basis of the amount of acid gas per cubic foot, no objection shall be taken under this section by an inspector—

(*a*) To any muriatic acid gas in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet, where the amount of such acid gas in each cubic foot of air, smoke, or gases so discharged does not exceed the amount limited by the last preceding section :

(*b*) To any acid gases in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet receiving the residual gases from any process for the concentration or distillation of sulphuric acid, where the total acidity of such acid gases (including those from the combustion of coal) in each cubic foot of air, smoke, or gases so discharged does not exceed what is equivalent to one grain and a half of sulphuric anhydride.

(2) If the owner of any such work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

Provisional Order to prevent discharge of noxious or offensive gas in cement and smelting works.

8.—(1) An inspector may inquire whether, in any works in which aluminous deposits are treated for the purpose of making cement (hereinafter called cement works) or in any works in which sulphide ores, including regulus, are calcined or smelted (hereinafter called smelting works), means can be adopted at a reasonable expense for preventing the discharge from the furnaces or chimneys of such works into the atmosphere of any noxious or offensive gas evolved in such works, or for rendering such gas where discharged harmless or inoffensive.

(2) Where it appears to the Local Government Board that such means can be adopted at a reasonable expense, the board may by order require the owners of such works to adopt the best practicable means for the purpose, and may by the order limit the amount

Section 8.

or proportion, in the case of cement works or smelting works, of any noxious or offensive gas which is to be permitted to escape from such works into the chimney or into the atmosphere, and may also by the order extend to such works such provisions of this Act relating to scheduled works as they think fit.

(3) An order made under this section shall be provisional only, and shall not be of any validity until confirmed by Parliament, but when so confirmed shall have full effect, with such modifications as may be made therein by Parliament; and the expression "this Act" when used in this Act shall be deemed to include an order so confirmed, so far as is consistent with the tenor of that order.

(4) The Board shall take such steps as they may think fit for giving notice to persons interested of the provisions of any order made by them under this section before any bill for confirming the same is introduced into Parliament.

(5) An order made under this section may impose fines for a breach of its provisions of like amount as any fines imposed by this Act for offences against this Act.

(6) An order made under this section may be repealed, altered, or amended by any subsequent order made under this section, and confirmed by Parliament.

PART III.

(i.) Registration of Works.

Registration of works and stamp duty.

9.—(1) An alkali work, a scheduled work, a cement work, or a smelting work shall not be carried on unless it is certified to be registered.

(2) The work shall be registered in a register containing the prescribed particulars, and the register shall be conducted and the certificates issued in the prescribed manner.

(3) A certificate of registration, if issued at a time when a previous certificate is in force, shall be in force for one year after the time when that certificate ceases to be in force, and if issued at a time when no previous certificate is in force shall be in force until the following first day of April.

(4) An application for a certificate of registration of a work may, in the case of the first registration of that work, be made at any time, and an application for any subsequent certificate in respect of that work shall be made in the month of January or February.

(5) A certificate of registration shall be issued on application being made in the prescribed manner by the owner of the work, if the conditions of registration are complied with, and one of the

Section 9.

conditions, in the case of the first registration of an alkali or scheduled work, or the registration of such a work if the work has been closed for a period of twelve months previously, shall be that the work is at the time of registration furnished with such appliances as appear to the chief inspector or, on appeal, to the Local Government Board to be necessary in order to enable the work to be carried on in accordance with such of the requirements of this Act as apply to the work.

Provided that the Local Government Board may dispense with the last-mentioned condition in the case of works erected before the commencement of this Act which were not before the commencement of this Act required to be registered.

(6) There shall be charged upon every such certificate a stamp duty of five pounds in the case of an alkali work, and of three pounds in the case of any other work, and the Commissioners of Inland Revenue shall issue stamped forms of certificate for the purpose.

(7) Written notice of any change which occurs in the ownership of a work or in the other particulars stated in the register shall within one month after such change be sent by the owner to the Local Government Board, and the register and the certificate shall be altered accordingly in the prescribed manner without charge and without the issue of a new certificate. If such notice is not sent as so required the work shall not be deemed to be certified to be registered.

(8) The owner of a work which has been carried on in contravention of this section shall be liable to a fine not exceeding fifty pounds.

(ii.) Inspection.

Appointment of inspectors.

10.—(1) The Local Government Board shall, with the approval of the Treasury as to numbers and salaries or remuneration, appoint such inspectors (under whatever title they may fix) as the Board think necessary for the execution of this Act, and may assign them their duties and award them their salaries or remuneration, and shall constitute a chief inspector, and may regulate the cases and manner in which the inspectors are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors.

(2) Notice of the appointment of such inspector shall be published in the *London Gazette*, and a copy of the *Gazette* shall be evidence of the appointment.

(3) The salaries or remuneration of the inspectors, and such expenses of the execution of this Act as the Treasury may sanction, shall be paid out of moneys provided by Parliament.

Section 10.

(4) A person holding the office of chief inspector or inspector shall not be employed in any other work except with the sanction of the Local Government Board.

(5) In the case of the illness or other unavoidable absence of the chief inspector, the Local Government Board may appoint any other inspector to act as his deputy, and the inspector so appointed shall, whilst so acting, have all the powers by or under this Act conferred on the chief inspector.

Disqualification of certain persons for inspectors.

11. A person who—

(*a*) acts or practises as a land agent; or

(*b*) is engaged or interested directly or indirectly in any work to which this Act applies, or in any patent for any process or apparatus carried on or used in any such work, or in any process or apparatus connected with the condensation of acid gases, or with the treatment of alkali waste, or with preventing the discharge into the atmosphere or rendering harmless or inoffensive any noxious or offensive gas, or otherwise with any of the matters dealt with by this Act; or

(*c*) is employed in or about or in connection with any work to which this Act applies, or in any other chemical work for gain,

shall be disqualified to act as an inspector under this Act.

Inspection of works.

12.—(1) For the purpose of the execution of this Act, an inspector may at all reasonable times by day and night, without giving previous notice, but so as not to interrupt the process of the manufacture,—

(*a*) enter and inspect any work to which, in the opinion of the Local Government Board, any of the provisions of this Act applies; and

(*b*) examine any process causing the evolution of any noxious or offensive gas, and any apparatus for condensing any such gas, or otherwise preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged; and

(*c*) ascertain the quantity of gas discharged into the atmosphere, condensed or otherwise dealt with; and

(*d*) enter and inspect any place where alkali waste is treated or deposited, or where any liquid containing either acid or any other substance capable of liberating sulphuretted hydrogen from alkali waste or drainage therefrom is likely to come into contact with alkali waste or drainage therefrom; and

Section 12.

(*e*) apply any such tests and make any such experiments, and generally make all such inquiries, as seem to him to be necessary or proper for the execution of his duties under this Act.

(2) The owner of any such work shall, on the demand of the chief inspector, furnish him within a reasonable time with a sketch plan, to be kept secret, of those parts of such work in which any process causing the evolution of any noxious or offensive gas or any process for the condensation of such gas or for preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged, is carried on.

(3) The owner of every such work and his agents shall render to every inspector all necessary facilities for entry, inspection, examination, and testing in pursuance of this Act.

(4) Every owner of a work in which such facilities are not afforded to an inspector as are required by this Act, or in which an inspector is obstructed in the execution of his duty under this Act, and every person wilfully obstructing an inspector in the execution of his duty under this Act, shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding ten pounds.

* * * * *

(iv.) PROCEDURE.

Provision as to calculation of acid.

16. In calculating the proportion of acid to a cubic foot of air, smoke, or gases, for the purposes of this Act, such air, smoke, or gases shall be calculated at the temperature of sixty degrees of Fahrenheit's thermometer, and at a barometric pressure of thirty inches.

Recovery of fines for offences against act in county court.

17. The following regulations shall have effect with respect to the recovery of fines for offences under this Act other than fines recoverable summarily :

(1) Every such fine shall be recovered by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed :

(2) The action shall not be brought without the sanction of the central authority, nor by any person other than the chief inspector or such other inspector as the Local Government Board may in any particular case direct, nor, except as respects a fine for the contravention of the provisions of this Act as to the registration of works, after the expiration of three months from the commission of the offence, and for the purposes of such action the fine shall be deemed to be a debt due to such inspector :

Section 17.

(3) The plaintiff in any action for a fine under this Act shall be presumed to be an inspector authorised under this Act to bring action, until the contrary is proved by the defendant:

(4) The court may, on the application of either party, appoint a person to take down in writing the evidence of the witnesses, and may award to that person such remuneration as the court thinks just; and the amount so awarded shall be deemed to be costs in the action:

(5) If either party in any action under this Act feels aggrieved by the decision or direction of the court in point of law, or on the merits, or in respect of the admission or rejection of any evidence, he may appeal to the High Court:

(6) Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts, and to appeals shall apply as if the action related to a matter within the ordinary jurisdiction of the court.

Further provisions as to recovery of fines in county court.

18.—(1) In any proceeding under this Act in relation to a fine for an offence other than an offence against a special rule—

(*a*) It shall be sufficient to allege that any work is a work to which this Act applies, without more; and

(*b*) It shall be sufficient to state the name of the registered or ostensible owner of the work, or the title of the firm by which the employer of persons in such work is usually known.

(2) A person shall not be subject to a fine under this Act for more than one offence in respect of the same work or place in respect of any one day.

(3) Not less than twenty-one days before the hearing of any proceeding against an owner to recover a fine under this Act for failing to secure the condensation of any gas to the satisfaction of the chief inspector, or for failing to use the best practicable means as required by this Act, an inspector shall serve on the owner proceeded against a notice in writing stating, as the case requires, either the facts on which such chief inspector founds his opinion, or the means which such owner has failed to use, and the means which, in the chief inspector's opinion, would suffice, and shall produce a copy of such notice before the court having cognizance of the matter.

(4) A person shall not be liable under this Act to an increased fine in respect of a second offence or in respect of a third or any subsequent offence, unless a fine has been recovered within the

Section 18.

preceding twelve months against such person for the first offence, or for the second or other offence as the case may be.

Application of fines.

19. All fines recovered under this Act, other than those recovered summarily, shall be paid into the Exchequer.

Discharge of owner on conviction of actual offender.

20. The owner of a work in which an offence under this Act other than an offence against a special rule has been proved to have been committed shall in every case be deemed to have committed the offence, and shall be liable to pay the fine, unless he proves to the satisfaction of the court before which any proceeding is instituted to recover such fine that he has used due diligence to comply with and to enforce the execution of this Act, and that the offence in question was committed without his knowledge, consent, or connivance, by some agent servant or workman, whom he shall charge by name as the actual offender ; in which case such agent servant or workman shall be liable to pay the fine, and proceedings may be taken against him for the recovery thereof and of the costs of all proceedings which may be taken either against himself or against the owner under this Act ;

Provided that it shall be lawful for the inspector to proceed against the person whom he believes to be the actual offender, without first proceeding against the owner, in any case where the inspector is satisfied that the owner has used all due diligence to comply with and to enforce the provisions of this Act, and that the offence has been committed by that person without the knowledge, consent, or connivance of the owner.

Service of notices.

21. Any notice, summons, or other document required or authorised for the purposes of this Act to be delivered to or served on or sent to the owner of any work, may be served by post or by delivering the same to the owner, or at his residence or works ; and the document shall be deemed to be properly addressed if addressed to the registered address of an owner, or, when required to be served on or sent to the owner of any works, if addressed to the owner of the works at the works, with the addition of the proper postal address, but without naming the person who is the owner.

* * * * *

Interpretation of terms.

27.—(1) In this Act, unless the context otherwise requires,—the expression " alkali work " means every work for—

(*a*) the manufacture of sulphate of soda or sulphate of potash, or

(*b*) the treatment of copper ores by common salt or other chlorides whereby any sulphate is formed,

in which muriatic acid gas is evolved :

Section 27.

The expression " noxious or offensive gas " includes the following gases and fumes :—

Muriatic acid ;
Sulphuric acid ;
Sulphurous acid, except that arising solely from the combustion of coal ;
Nitric acid and acid-forming oxides of nitrogen ;
Sulphuretted hydrogen ;
Chlorine, and its acid compounds
Fluorine compounds ;
Cyanogen compounds;
Bisulphide of carbon;
Chloride of sulphur ;
Fumes from cement works ;
Fumes containing copper, lead, antimony, arsenic, zinc, or their compounds ;
Fumes from tar works ;

The expression " owner " includes any lessee, occupier, or any other person carrying on any work to which this Act applies :

The expression " best practicable means," where used with respect to the prevention of the escape of noxious and offensive gases, has reference not only to the provision and the efficient maintenance of appliances adequate for preventing such escape, but also to the manner in which such appliances are used and to the proper supervision, by the owner, of any operation in which such gases are evolved :

The expression " prescribed " means prescribed by the Local Government Board :

The expression " Local Government Board " means the Local Government Board established by the Local Government Board Act, 1871 : 34 & 35 Vict. c. 70.

The expression " central authority " means as regards England the Local Government Board, as regards Ireland the Local Government Board for Ireland, and as regards Scotland the Secretary for Scotland :

The expression " sanitary authority " means any local authority entrusted with the execution of the Public Health Act :

The expression " the Public Health Act " means, as regards England the Public Health Act, 1875, or in the case of London the Public Health (London) Act, 1891 ; and as regards Scotland the Public Health (Scotland) Act, 1897 ; and as regards Ireland the Public Health (Ireland) Act, 1878, and includes any enactment amending those Acts. 38 & 39 Vict. c. 55. 54 & 55 Vict. c. 76. 60 & 61 Vict. c. 38. 41 & 42 Vict. c. 52.

(2) Nothing in this Act shall be construed as exempting any work from any of the provisions of this Act applicable to the work

Section 27.

as being a work of a certain class or description by reason only that the work is subject to other provisions of this Act as being a work of some other class or description.

* * * * *

Repeals.

30. The Acts specified in the second schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Provided that—

(*a*) Nothing in this Act shall affect any certificate, special rule, or notice issued, made, or served before the commencement of this Act, in pursuance of any enactment so repealed, but every such certificate, special rule, and notice shall continue in force as if issued, made, or served in pursuance of this Act; and

(*b*) Nothing in this Act shall affect the tenure of office of any inspector appointed under any enactment so repealed, but every such inspector shall hold office as if appointed under this Act; and

(*c*) Nothing in this Act shall affect any liability of a sanitary authority incurred under any enactment so repealed to pay any proportion of the salary or remuneration of an additional inspector.

Section 6, 7.

SCHEDULES.

FIRST SCHEDULE.

List of Works.

(1) Sulphuric acid works, that is to say, works in which the manufacture of sulphuric acid is carried on by the lead chamber process, namely, the process by which sulphurous acid is converted into sulphuric acid by the agency of oxides of nitrogen and by the use of a lead chamber.

(2) Sulphuric acid (Class II.) works, that is to say, works in which the manufacture of sulphuric acid is carried on by any process other than the lead chamber process, and works for the concentration or distillation of sulphuric acid.

(3) Chemical manure works, that is to say, works in which the manufacture of chemical manure is carried on, and works in which any mineral phosphate is subjected to treatment involving chemical change through the application or use of any acid.

(4) Gas liquor works, that is to say, works (not being sulphate of ammonia works or muriate of ammonia works) in which sulphuretted hydrogen or any other noxious or offensive gas is evolved by the use of ammoniacal liquor in any manufacturing process, and works in which any such liquor

is desulphurised by the application of heat in any process connected with the purification of gas.

(5) Nitric acid works, that is to say, works in which the manufacture of nitric acid is carried on and works in which nitric acid is recovered from oxides of nitrogen.

(6) Sulphate of ammonia works and muriate of ammonia works, that is to say, works in which the manufacture of sulphate of ammonia or of muriate of ammonia is carried on.

(7) Chlorine works, that is to say, works in which chlorine is made or used in any manufacturing process.

(8) Muriatic acid works, that is to say—

(*a*) Muriatic acid works, or works (not being alkali works as defined in this Act) where muriatic acid gas is evolved either during the preparation of liquid muriatic acid or for use in any manufacturing process.

(*b*) Tin plate flux works, that is to say, works in which any residue or flux from tin plate works is calcined for the utilisation of such residue or flux, and in which muriatic acid gas is evolved; and

(*c*) Salt works, that is to say, works (not being works in which salt is produced by refining rock salt, otherwise than by the dissolution of rock salt at the place of deposit) in which the extraction of salt from brine is carried on, and in which muriatic acid gas is evolved.

(9) Sulphide works, that is to say, works in which sulphuretted hydrogen is evolved by the decomposition of metallic sulphides, or in which sulphuretted hydrogen is used in the production of such sulphides.

(10) Alkali waste works, that is to say, works in which alkali waste or the drainage therefrom is subjected to any chemical process for the recovery of sulphur or for the utilisation of any constituent of such waste or drainage.

(11) Venetian red works, that is to say, works for the manufacture of Venetian red, crocus, or polishing powder, by heating sulphate or some other salt of iron.

(12) Lead deposit works, that is to say, works in which the sulphate of lead deposit from sulphuric acid chambers is dried or smelted.

(13) Arsenic works, that is to say, works for the preparation of arsenious acid, or where nitric acid or a nitrate is used in the manufacture of arsenic acid or an arseniate.

(14) Nitrate and chloride of iron works, that is to say, works in which nitric acid or a nitrate is used in the manufacture of nitrate or chloride of iron.

(15) Bisulphide of carbon works, that is to say, works for the manufacture of bisulphide of carbon.

(16) Sulphocyanide works, that is to say, works in which the manufacture of any sulphocyanide is carried on by the reaction of bisulphide of carbon upon ammonia or any of its compounds.

(17) Picric acid works, that is to say, works in which nitric acid or a nitrate is used in the manufacture of picric acid.

(18) Paraffin oil works, that is to say, works in which crude shale oil is refined.

(19) Bisulphite works, that is to say, works in which sulphurous acid is used in the manufacture of acid sulphites of the alkalis or alkaline earths.

(20) Tar works, that is to say, works where gas or coal tar is distilled or is heated in any manufacturing process.

(21) Zinc works, that is to say, works in which, by the application of heat, zinc is extracted from the ore, or from any residue containing that metal.

SECOND SCHEDULE.

Section 30.

REPEALS.

Session and Chapter.	Short Title.	Extent of Repeal.
44 & 45 Vict. c. 37.	The Alkali, &c., Works Regulation Act, 1881.	The whole Act.
47 & 48 Vict. c. clvii.	The Local Government Board's Provisional Order Confirmation (Salt Works) Act, 1884.	The whole Act.
55 & 56 Vict. c. 30.	The Alkali, &c., Works Regulation Act, 1892.	The whole Act.

ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.

[50 & 51 VICT. C. 26.]

Under this Act the tenant of an allotment, *i.e.*, a parcel of land of not more than two acres, cultivated as a garden or as a farm (see *Cooper* v. *Pearse*, (1896) 1 Q. B. 562; 65 L. J. M. C. 95), upon the determination of his tenancy is entitled, notwithstanding any agreement to the contrary, to obtain from the landlord (or his mortgagee in possession; see sect. 2, 53 & 54 Vict. c. 57), *post*, p. 2279, compensation for certain crops, labour and drains (see sect. 5); which failing agreement was to be determined by an arbitrator appointed by justices. The mode of recovery of the agreed or awarded compensation is by order of the county court judge (sect. 17). For sect. 2 of 53 & 54 Vict. c. 57 (Tenants Compensation Act, 1890), see *post*, p. 2279.

Recovery of compensation money.

17. Where any money agreed or awarded to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded to be paid, it shall be recoverable upon order made by the judge of the county court within the district of which the holding is situated, as money ordered to be paid by a county court under its ordinary jurisdiction is recoverable.

For the means of enforcing a judgment or order of the county court, see Part I., Execution, pp. 172 *et seq.*

Practice in the county court is determined by Order XL. rr. 7, 8, *ante*, p. 1738, and Forms 421, 422, pp. 1742–3.

ALLOTMENTS EXTENSION ACT, 1882.

[45 & 46 Vict. c. 80.]

The purpose of the Act is to compel trustees of lands vested for the benefit of the poor to let some portion of such lands as allotments. Certain public notices are to be given of the setting apart of a field or of a portion of land for such purpose, and of the amount of the land to be let, of the rent per acre or rod to be paid, and of the time and place at which applications for the same are to be made.

Jurisdiction.]—The county court is given jurisdiction by the schedule to the Act, in case of default by the trustees, to fix the time for giving such notices; this is the extent of their jurisdiction.

SCHEDULE.

Regulations as to Public Notices and Lettings.

1. Public notice, for the purposes of this Act, shall be given by fixing the notice on the doors of the church of the parish in which the land referred to in the notice is situate, and if there is no church, then on some public building or conspicuous place therein.

2. Public notice of the setting apart under this Act of a field or portion of land shall be given in the month of February, or such other month as the trustees may fix, and the first notice shall be given in the said month next after the passing of this Act, and if not so given shall be given as soon as may be afterwards, at such time as may be fixed by the trustees, or, in case of their default, by the county court judge for the district in which the land is situate, or by the Charity Commissioners.

Letting.

3. The public notice of the intention to let an allotment out of land when set apart shall specify the amount of land to be let, and the rent per acre or rod to be paid, and the place and time at which applications are to be made, and shall be given annually in the month of June, or in such other month as may be fixed by, or in pursuance of, rules under this Act: Provided that in any year in which there will be no allotment vacant out of land already set apart, it shall not be necessary to give such notice.

4. The first public notice of the intention to let an allotment shall be given in the month of June next after the trustees obtain possession of the allotment, or at such other time, not more than one month later, as may be fixed by or in pursuance of rules under this Act; and, if not so given, shall be given at such time as may be fixed by the county court judge for the district in which the land is situate, or by the Charity Commissioners.

5. The time for applications for allotments out of land when already set apart shall be the month of August, or such other month as may be fixed by or in pursuance of rules under this Act.

6. The allotments shall be let to persons in the order in which they apply, or in accordance with such other order as may be provided by rules under this Act, so that there shall be no undue preference shown as regards the persons to whom they are let.

7. Each allotment shall be let on a yearly tenancy beginning at Michaelmas day, or at such other day as may be fixed by or in pursuance of rules under this Act.

Practice is governed by the following rule :—

ORDER L. RULE 15.

Applications under 45 & 46 Vict. c. 86, Schedule, pars 2, 4.

An application to the judge under paragraph 2 or paragraph 4 in the schedule to the Allotments Extension Act shall be intituled in the matter of the Act and of the land, and shall be made in accordance with the rules for the time being in force as to interlocutory applications, and supported by affidavit. If an application is made by any other person than the trustees in whom the land is vested, it shall be made on notice to such trustees.

THE ARMY ACT, 1881.

See "EMERGENCY LEGISLATION."

[44 & 45 VICT. c. 58.]

Under this Act His Majesty may by order stating that a case of emergency exists, authorise certain military officers to issue requisitions for the provision, and, as extended by sect. 5 of 51 & 52 Vict. c. 31, for the sale of carriages, animals, and vessels (*a*). On such requisition a justice shall issue his warrant to enforce the furnishing or sale of the carriages, animals, or vessels requisitioned.

Sect. 115, sub-s. 4, provides :—

(4) A Secretary of State shall cause due payment to be made for carriages, animals, and vessels furnished in pursuance of this section, and any difference respecting the amount of payment for any carriage, animal, or vessel shall be determined by a county court judge having jurisdiction in any place in which such carriage, animal, or vessel was furnished or through which it travelled in pursuance of the requisition.

Jurisdiction.]—The judge's jurisdiction is confined to the determination of a difference respecting amount, and would not extend to any other question. Such jurisdiction must be exercised by the judge himself, and could not, except by consent, be referred to the registrar or any other person.

NOTE.—(*a*) Many other things are now included. See "Emergency Legislation," "Army Act," p. 999.

Practice is provided for by Order L. r. 14 (new rule dated May 19, 1915) and statutory rules. See "Emergency Legislation."

NOTE.—The old rules, Order L. r. 14, and Order L. r. 59 (dated March 22nd, 1915), are annulled, and new rules (still numbered Order L. r. 14) have been substituted, dated May 19th, 1915. See these rules and special Form, under heading "Emergency Legislation," *ante*, pp 1002–1003.

THE BALLOT ACT, 1872.

[35 & 36 Vict. c. 33.]

Jurisdiction.]—Applications for orders for the inspection and production of ballot papers and documents used in a municipal election for the purpose of a prosecution or petition must be made to the county court having jurisdiction in the borough, or some part thereof, or to the tribunal in which an election is questioned, in short, putting the county court as to municipal elections into the position occupied as to parliamentary elections by the House of Commons and the Superior Court (Schedule I. r. 64), applying rr. 40—43 to municipal elections.

An Appeal lies from the county court to the High Court (Schedule I. r. 64).

Practice is governed by Order L. r. 5, p. 1769; the application must be made in writing, intituled in the matter of the Act, and of the particular matter. Costs to be taxed on such scale as the judge directs.

For the form of the Order, see *R.* v. *Beardsall*, (1876) 1 Q. B. D. 452; 45 L. J. M. C. 157.

Sch. I. r. 40. No person shall be allowed to inspect any rejected ballot papers in the custody of the Clerk of the Crown in Chancery, except under the order of the House of Commons or under the order of one of Her Majesty's Superior Courts, to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the House or court making the same may think expedient, and shall be obeyed by the Clerk of the Crown in Chancery. Any power given to a court by this rule may be exercised by any judge of such court at chambers.

41. No person shall, except by order of the House of Commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the Clerk of the Crown in Chancery; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the House or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he

Rule 41.

has been proved to have voted, and his vote has been declared by a competent court to be invalid.

42. All documents forwarded by a returning officer in pursuance of this Act to the Clerk of the Crown in Chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the Clerk of the Crown in Chancery, with the consent of the Speaker of the House of Commons, and the Clerk of the Crown shall supply copies of or extracts from said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

43. Where an order is made for the production by the Clerk of the Crown in Chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such Clerk of the Crown or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

Rules for Municipal Elections.

64. In the application of the provisions of this schedule to municipal elections the following modifications shall be made:—

(*a*) The expression "register of voters" means the burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor shall provide true copies of such register for each polling station:

(*b*) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the Clerk of the Crown in Chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough; and the provisions of part one of this schedule

with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications; namely, Rule 64.

(*a*) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons, or of one of Her Majesty's Superior Courts; but an appeal from such county court may be had in like manner as in other cases in such county court;

(*b*) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty's Principal Secretaries of State; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough:

(*c*) Nothing in this Schedule with respect to the day of the poll shall apply to a municipal election.

COUNTY COURT RULE, ORDER L. RULE 5.

THE BALLOT ACT, 1872.

5. An application to the Court under rule 40 or rule 41 in the first schedule to the Ballot Act, 1872, as applied by rule 64 in the said schedule, may be made in writing and shall be intituled in the matter of the Acts and of the particular matter. Such application shall be made in accordance with the rules for the time being in force as to interlocutory applications, save that, unless by consent or otherwise ordered only oral evidence shall be admitted. Costs if allowed shall be taxed on such scale as the judge shall direct. Application under 35 & 36 Vict. c. 33, Sched. I. rules 40, 41, 64.

[For BILLS OF EXCHANGE ACT, 1855, see *ante*, p. 309.]

BILLS OF SALE ACT, 1882.

[45 & 46 Vict. c. 43.]

Sect. 11 of this Act casts a ministerial duty upon the registrar of county courts outside the London bankruptcy district to file, keep and index in the prescribed manner the abstract sent to him by the registrar of bills of sale of bills of sale given by persons residing in the county court district. The county court registrar's duties and the remuneration are prescribed by the rules of the Supreme Court, *infra*.

An omission to transmit the abstract to the county court registrar does not invalidate the registration (*Trinder* v. *Raynor*, (1887) 56 L. J. Q. B. 422).

Local registration of contents of bill of sale.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same, or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars, to each such registrar.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

RULES OF THE SUPREME COURT.

BILLS OF SALE ACTS, 1878 AND 1882.

ORDER LXI.

Local Registration of Bills of Sale.

3. *Abstract.*—The abstract of the contents of a bill of sale, required by the Bills of Sale Act (1878) Amendment Act, 1882, to

be transmitted to the registrar of a county court, shall be in the form given in the appendix hereto. Section 3.

4. *Abstract to be Sealed and Dated.*—The abstract shall be sealed with the seal of the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, and dated on the day on which it is transmitted by post to the registrar of the county court named therein.

5. *Abstract of re-registered Bills of Sale.*—Where a bill of sale has been re-registered since the 31st October, 1882, or shall be re-registered hereafter under section 11 of the Bills of Sale Act, 1878, an abstract of the re-registration, sealed and dated, shall be transmitted by post to the registrar of the county court to which such abstract should have been transmitted had the bill of sale been registered under the Bills of Sale Act (1878) Amendment Act, 1882.

6. *Notice of a satisfaction of a Bill of Sale to be Transmitted to Local Registry.*—Where a memorandum of satisfaction has been or shall be written under section 15 of the Bills of Sale Act, 1878, upon any registered or re-registered copy of a bill of sale, an abstract of which has been transmitted to any registrar of a county court, a notice of such satisfaction, in the form in the Appendix hereto, duly sealed and dated, shall be transmitted to each of the registrars to whom an abstract of such bill of sale shall have been transmitted.

7. *Abstracts to be Numbered and Filed.*—The registrar shall number the abstracts and notices of satisfaction in the order in which they shall respectively be received by him, and shall file and keep them in his office.

8. *Index, how to be kept.*—The registrar shall keep an index, alphabetically arranged, in which he shall enter under the first letters of the surname of the mortgagor or assignor such surname, with his Christian name or names, address, and description, and the number which has been affixed to the abstract.

9. *Satisfaction to be Noted in Index.*—Upon the receipt of a notice of satisfaction, the registrar shall enter the notice of satisfaction on the abstract of the Bill to which it relates, and shall note in the index against the name of the mortgagor or assignor the fact of the satisfaction having been entered.

10. *Search and Inspection of Abstract.*—The registrar shall allow any person to search the index at any time during which he is required by the County Court Rules for the time being to keep his office open, upon payment by such person of one shilling; and to

Section 10.

make extracts from the abstract or notice of satisfaction upon payment of one shilling for each abstract or notice of satisfaction inspected.

11. *Office Copy of Abstract.*—The registrar shall also, if required, cause an office copy to be made of any abstract or notice of satisfaction, and shall be entitled for making, marking and sealing the same to the same fee as is payable in the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, viz., sixpence per folio.

12. *Authority to Take Oaths.*—[*Refers to Central Office.*]

ABSTRACT.

LOCAL REGISTRATION OF BILLS OF SALE.

Satisfaction entered.	Number.	Mortgagor or Assignor.	Residence and Occupation.	Mortgagee or Assignee.	Nature of Instrument and Consideration.	Nature of Property assigned.	Amount secured and how repayable.	Rate of Interest.	Date of Instrument.	Date of Registration.	Date of Filing Affidavit of Renewal.
									19	19	19

To the Registrar of the County Court of , holden at .
Sent on the day of , 19 . (L.S.)

NOTICE OF SATISFACTION.

Bills of Sale Registry,
Royal Courts of Justice,
London.

to

Registered [*or* re-registered] 19 .
Abstract transmitted 19 .
Satisfaction entered 19 .

TAKE NOTICE THAT

A memorandum of satisfaction to the above Bill of Sale was entered on the register on the above date.

(Signed)

To the Registrar of the County Court of , holden at .
Sent on the day of .

[FOR BOROUGH AND LOCAL COURTS OF RECORD ACT, 1872; see *ante*, p. 263.]

BRINE PUMPING (COMPENSATION FOR SUBSIDENCE) ACT, 1891.

[54 & 55 VICT. c. 40.]

This Act enables an owner or owners of land of a rateable value of 2,000*l.* alleging subsidence of such land by brine pumping operations, to apply to the Local Government Board for the formation of a compensation district (sect. 1). Every district formed under the Act shall have a compensation board (sect. 9). Such board, if and when appointed, shall form and maintain (sect. 21) a compensation fund for the district solely applicable to compensation for damage arising from subsidence. Such fund is derived from the assessment and levy of a rate per thousand gallons of brine pumped within the district.

Jurisdiction.]—The jurisdiction of county courts is limited (1) to the recovery as a debt of the sum awarded (sect. 26); (2) in allowing or disallowing a claim on the ground that the claimant had or had not such title or interest in the property damaged by subsidence as would entitle him to recover (sect. 27).

Practice in County Court.]—This is governed by Order L. rr. 19—21, *post*, p. 1774.

Appeal.]—An appeal from the county court under sect. 27 will be as provided by sect. 120 of the County Courts Act, 1888, (sect. 27 (5)).

Recovery of sums awarded.

26. Any sum awarded by a compensation board to be paid under any of the provisions of this Act shall be certified by the clerk of the board under his hand, and may, subject to the provisions of this Act, be recovered as a debt at the expiration of three months from the date of such certificate in the county court within whose jurisdiction the property to which the claim relates is situate.

Appeal on questions of title.

27.—(1) If a board disallow a claim or any item thereof on the ground that the claimant had not, as respects such claim or item, such title or interest in the property damaged by subsidence as would entitle him to recover under this Act, the claimant may appeal in manner in this section mentioned on the ground that he had such title or interest.

(2) If a board allow a claim or any item thereof, any person assessed to the last rate made under this Act in and for the district may appeal in manner in this section mentioned against such allowance on the ground that the board ought to have decided that the claimant had not (as respects such claim or item) such title or interest as hereinbefore mentioned.

(3) Notice of appeal under this section must be given in writing to the board at the meeting at which the decision appealed against is given, or within three weeks afterwards.

Section 27.

(4) The appeal shall be brought in the county court within whose jurisdiction the land is situate, in manner prescribed by rules made or to be made by the authority for the time being empowered to make rules for the procedure and practice of county courts.

Appeal from County Court.

(5) The judgment of the county court shall be binding on all persons, subject to an appeal to the Supreme Court according to the practice for the time being in use with respect to appeals from county courts.

(6) The costs of any appeal under this section shall be in the discretion of the court in which the same are incurred.

(7) If as a consequence of any decision on appeal under this section any damage is to be assessed, increased, or reduced, the claim shall stand remitted to the board to be adjudicated, and allowed, altered, increased, or reduced as the case may require.

Special case.

28. Any person aggrieved who desires to question an order or determination of the board on the ground that it is erroneous in point of law, may apply to the board to state a special case, setting forth the facts of the case and the grounds on which the order or determination is questioned, and if the board decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated.

The application shall be made and the case stated, heard, and determined in accordance with the provisions of section thirty-three, sub-section two of the Summary Jurisdiction Act, 1879, as if the case stated by the board were a case stated by a court of summary jurisdiction.

42 & 43 Vict. c. 49.

Limit of appeal.

29. In no case shall there be any appeal, by special case or otherwise, where the amount claimed does not exceed one hundred pounds.

COUNTY COURT RULES, ORDER L., RR. 19—21.

Appeals under 54 & 55 Vict. c. 40, s. 7.

19. Any person desirous of appealing to the court under sect. 27 of the Brine Pumping (Compensation for Subsidence) Act, 1891, shall within fourteen days from the date of giving notice of appeal file with the registrar a written statement of the decision of the board and of the grounds of appeal against such decision, together with as many copies thereof as there are respondents to the appeal.

Entry of plaint and issue of summons. [*Conf.* Form 446.]

20. The registrar shall forthwith on the filing of the said statement and copies enter a plaint and issue a summons calling upon the board and (in the case of an appeal against the allowance of a claim or any item thereof) upon the claimant to show cause why the decision of the board should not be reversed or modified, and

shall annex to the summons for service on each respondent a copy of the said statement, which copy shall be deemed to be part of the summons. O. L. r. 20.

21. The practice, procedure, and costs in an action shall be applicable to an appeal under the said section. Practice and costs.

THE BUILDING SOCIETIES ACTS, 1874 AND 1894.

[37 & 38 VICT. c. 42; 57 & 58 VICT. c. 47.]

Jurisdiction of the county court under these Acts is partly exclusive and partly concurrent with the High Court, and relates to four different matters: (1) as to defaults of officers (sect. 24); (2) as to winding-up (sect. 32); (3) as to enforcing awards of arbitrators (sect. 34); (4) as to decision of disputes between a society and its members (sect. 35).

"The Court" in the 1874 Act means the county court of the district in which the chief office or place of meeting for business of the society is situate. See sect. 4.

Appeal.]—Every determination of a dispute by arbitrators or by the court or by the registrar shall be binding on all parties and shall be final, provided that the arbitrators or registrar or the court may at the request of either party state a case for the opinion of the Supreme Court on any question of law (sect. 36), but are not compelled to do so (sect. 20, 1894 Act).

37 & 38 VICT. c. 42.

4. The court in this Act means,— Definition of court.

In England, the county court of the district in which the chief office or place of meeting for the business of the society is situate. . . .

16. The rules of every society hereafter established under this Act shall set forth:— Matters to be set forth in the rules.

(9) Whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the court, or to the registrar, or to arbitration.

20. Any certificate of incorporation or of registration, or other document relating to a society under this Act, purporting to be signed by the registrar, shall in the absence of any evidence to the contrary, be received by the court, and by all courts of law and equity and elsewhere, without proof of the signature; and a printed copy of the rules of a society, certified by the secretary or other officer of the society to be a true copy of its registered rules, shall, in the absence of any evidence to the contrary, be received as evidence of the rules. Evidence of registration.

24. Every such officer, his executors or administrators, shall, upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by Officers to account.

Section 24.

the board of directors or committee of management of the society to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all the moneys remaining in his hands, and deliver all securities and effects, books, papers, and property of the society in his hands or custody, to such person as the society appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys, or to deliver such securities and effects, books, papers, and property, in manner aforesaid, the society may sue upon the bond or may apply to the court, who may proceed thereupon in a summary way, and make such order thereon as to the court in its discretion shall seem just, which order shall be final and conclusive.

Practice.]—The jurisdiction under sect. 24 is exclusive. Proceedings should be by action commenced by plaint and summons, the society being plaintiffs and the officer in default defendant (Order XLI. r. 7, *post*, p. 1782) Particulars of demand must be filed (*ib.* rr. 8, 9, 10).

Proceedings necessary for the termination or dissolution of a society.

32. A society under this Act may terminate or be dissolved—

(1) Upon the happening of any event declared by its rules to be the termination of the society.

(2) By dissolution in manner prescribed by its rules.

(3) By dissolution with the consent of three-fourths of the members holding not less than two-thirds of the number of shares in the society, testified by their signatures to the instrument of dissolution. The instrument of dissolution shall set forth—

(*a*) The liabilities and assets of the society in detail.

(*b*) The number of members, and the amount standing to their credit in the books of the society.

(*c*) The claims of depositors and other creditors, and the provision to be made for their payment.

(*d*) The intended appropriation or division of the funds and property of the society.

(*e*) The names of one or more persons to be appointed trustees for the special purpose, and their remuneration.

Alterations in the instrument of dissolution may be made with the like consent, testified in the same manner. The instrument of dissolution and all alterations therein shall be registered in the manner provided for the registration of rules, and shall be binding upon all the members of the society.

Winding-up.

(4) By winding-up, either voluntarily under the supervision of the court or by the court, if the court shall so order, on the petition of any member authorised by three-fourths of the members present at a general meeting of the society specially called for the purpose to present the same on

behalf of the society, or on the petition of any judgment creditor for not less than fifty pounds, but not otherwise. General orders for regulating the proceedings of the court under this section may be from time to time made by the authority for the time being empowered to make general orders for the court. Section 32.

Notice of the commencement and termination of every dissolution or winding up shall be sent to the registrar, and registered by him.

The effect of sect. 32 is considerably altered by sect. 8 of the 1894 Act, (*infra*) as since the passing of that section **Jurisdiction** in winding-up is limited to a society the amount of whose capital paid up, or credited as paid up, does not exceed 10,000*l*.

57 & 58 VICT. c. 47.

8.—(1) Notwithstanding anything in the Building Societies Acts, every society under those Acts shall be deemed to be a company within the meaning of the Companies (Winding-up) Act, 1890. Application of 53 & 54 Vict. c. 63, to building societies.

(2) Any proceedings in the winding up of any such society which at the passing of this Act are pending in any county court may, on application by or on behalf of the registrar, with the consent of the secretary of state, be transferred to the High Court and thereupon the Companies (Winding-up) Act, 1890, shall, so far as applicable, apply thereto accordingly.

Although the Companies (Winding-up) Act, 1890, has been repealed by the Companies (Consolidation) Act, 1908, yet sects. 286 to 291 of the said Act make it clear that the winding-up of building societies must be effected under the provisions of the 1908 Act, hence the jurisdiction is limited as above-mentioned. For winding-up the county court will be the county court to which the district in which the chief office or place of meeting for business of the society is situate is attached for the *purpose of jurisdiction in bankruptcy* (see Order XLIA., p. 1893, and Lord Chancellor's Order, November 29th, 1890, p. 1894).

Three-fourths, how computed.]—In computing the three-fourths mentioned in sect. 32, members who have given notice of withdrawal, but have not been paid out, must be counted (*Sibun* v. *Pearce* (C. A.), (1890) 44 Ch. D. 354; see also *Pepe* v. *City and Suburban Building Society*, (1893) 2 Ch. 311; 62 L. J. Ch. 501).

Costs.]—These in the winding-up are taxed according to the scale of costs for the time being in use in the Supreme Court (Order XLI. r. 12, p. 1783).

An Instrument of dissolution is not equivalent in its operation to a winding-up order. Upon such instrument advanced members who have covenanted to pay their advances by instalments cannot be compelled to pay forthwith the balances due from them (*Kemp* v. *Wright*, (1895) 1 Ch. 121; 64 L. J. Ch. 59).

Claims against Society.]—Many difficult questions arise in the course of a winding-up as to the claims admissible against the society and the various priorities of claimants, and also as to the distribution of assets when there is a surplus after payment of debts. The particular words used in the rules generally make provision as to the rights of members: subject to them the following rules appear to be supported by the authorities.

Section 8. Notes.

Debts. Loan to Society.]—The debts payable by the society must be satisfied first. The most important item under this head is that of loans. Prior to the Act of 1874 no society could borrow money so as to create a debt from the society unless its rules authorised borrowing (*Ex parte Williamson*, (1870) L. R. 5 Ch. 309). If the rules gave a limited or unlimited power to borrow, borrowing pursuant thereto created debts enforceable against the society (*Murray* v. *Scott*, (1884) 9 App. Cas. 519; 53 L. J. Ch. 745). The Act limits the power of borrowing (sect. 15), and any borrowing beyond that limit, or in societies not under the Act, beyond the limit imposed by the rules, or for purposes other than those authorised by the rules, will create no debt enforceable against the society, by action (*Chapleo* v. *Brunswick Building Society* (C. A.), (1881) 6 Q. B. D. 696; 50 L. J. Q. B. 372; *Re Professional Building Society*, (1871) L. R. 6 Ch. 856), or in a winding-up (*In re Davies' Trusts*, (1871) L. R. 12 Eq. 516; 40 L. J. Ch. 566; *Cunliffe Brooks* v. *Blackburn Building Society*, (1884) 9 App. Cas. 857; 54 L. J. Ch. 562). See also *Sinclair* v. *Brougham and Another*, [1914] A. C. 398; 83 L. J. Ch. 465. If, however, a lender whose loan is thus invalid can prove that his money has been applied in satisfaction of any valid debt of or claim against the society, he will be entitled to that extent to maintain his claim against the society (*Cunliffe Brooks* v. *Blackburn Building Society*, *supra*); or if the money has been advanced to members on mortgage, he will be entitled to the benefit of the security (*Neath Building Society* v. *Luce* (1889), 43 Ch. D. 158; 59 L. J. Ch. 3). Where money has been lent to a society without borrowing powers, the directors have no power, after incorporation under the Act of 1874, to create a debt against the society in respect of such money by the issue of any form of security under seal (*Ex parte Watson*, (1888) 21 Q. B. D. 301; 57 L. J. Q. B. 609). As to personal liability of directors, see *Cross* v. *Fisher* (C. A.), (1892) 1 Q. B. 467; 61 L. J. Q. B. 609.

Lenders when not Members.]—A mere lender, who lends his money and gets a bond or promissory note as security for it, does not thereby become a member of the society, and, generally speaking, he and other lenders will be entitled to be paid in full before any member is entitled to participate in the assets, whether the member has given notice to withdraw or not (*Re Mutual Aid Building Society* (C. A.), (1885) 30 Ch. D. 434; 55 L. J. Ch. 111; *Murray* v. *Scott*, *supra*; *Sinclair* v. *Brougham and Another*, *supra*). But a member might, it is believed, lend money in the ordinary way, and, in regard to it, be an outside creditor. See *Sinclair* v. *Brougham*, *supra*.

Deposit, etc., Members.]—In many societies, persons, under the name of deposit members, or without any particular designation, are allowed to pay money into the society from time to time and receive a kind of pass-book in which they are described as members. When lenders of this kind received "deposit" shares they were held to rank after outside creditors, but before unadvanced members (*Murray* v. *Scott*, *supra*).

Advanced Members.]—Advanced members are, in the absence of special provisions to the contrary in the rules, entitled to redeem and pay up all moneys due from them to the society pursuant to the rules, including fines, etc. (no interest chargeable on fines (*Parker* v. *Butcher*, (1867) L. R. 3 Eq. 762; 36 L. J. Ch. 552)), at any time either before or after a winding-up, and on so doing generally cease to be liable to contribute to any deficiency in funds (*Parker* v. *Butcher*, *supra*; *Re Doncaster Building Society*, (1866) L. R. 3 Eq. 158; *Brownlie* v. *Russell*, (1883) 8 App. Cas. 235; *Tosh* v. *North British Building Society*, (1886) 11 App. Cas. 489). Where the rules, however, provide for their participation in losses, they cannot redeem without paying their share of the losses (*Re West Riding of Yorkshire Building Society* (No. 1), (1890) 43 Ch. D. 407; 59 L. J. Ch. 197).

Unadvanced Members.]—Unadvanced members supply the fund to which creditors ultimately resort. The extent of their liability is generally

Section 8. Notes.

limited by the rules, and such limit is expressly confirmed by the Act (sect. 14). Members of this class are, however, generally empowered to withdraw on giving a specified notice. When such notices have been given and have expired before the commencement of a winding-up, and the members have been paid out, they cease to be members and cannot be placed on the list of contributories (*Re Sheffield Building Society*, (1889) 22 Q. B. D. 470; 58 L. J. Q. B. 265, explained by *Sibun* v. *Pearce*, (1890) 44 Ch. D. 354); if not paid out they will generally be entitled to be paid out of the assets in priority to others who have not given notice, although there were no funds in hand for payment between the giving of notice and the winding-up (*Walton* v. *Edge*, (1884) 10 App. Cas. 33; 54 L. J. Ch. 362; *Re Alliance Society* (C. A.), (1885) 28 Ch. D. 559; 54 L. J. Ch. 540); unless, indeed, it has become patent that liquidation is inevitable, when notices then given are as inoperative as if given after the order to wind-up (*Re Sunderland Building Society* (No. 2), (1890) 24 Q. B. D. 394; 59 L. J. Q. B. 217. See this case also as to interest after notice).

Determination of disputes by arbitration.

34. Where the rules of a society under this Act direct disputes to be referred to arbitration, arbitrators shall be named and elected in the manner such rules provide, or if there be no such provision, at the first general meeting of the society, none of the said arbitrators being beneficially interested, directly or indirectly, in its funds; of whom a certain number, not less than three, shall be chosen by ballot in each such case of dispute, the number of the said arbitrators and mode of ballot being determined by the rules of the society; the names of such arbitrators shall be duly entered in the minute book of the society, and, in case of the death or refusal or neglect of any of the said arbitrators to act, the society, at a general meeting, shall name and elect an arbitrator to act in the place of the arbitrator dying, or refusing or neglecting to act; and whatever award shall be made by the arbitrators or the major part of them, according to the true purport and meaning of the rules of the society, shall determine the dispute; and should either of the parties to the dispute refuse or neglect to comply with or conform to such award within a time to be limited therein, the court, upon good and sufficient proof being adduced of such award having been made, and of the refusal of the party to comply therewith, shall enforce compliance with the same upon the petition of any person concerned. Where the parties to any dispute arising in a society under this Act agree to refer the dispute to the registrar, or where the rules of the society direct disputes to be referred to the registrar, the award of the registrar shall have the same effect as that of arbitrators.

Court may order compliance with the decision.

Determination of disputes by registrar.

Jurisdiction under this section is exclusive.

Practice.]—Every application to enforce an award must be by plaint and summons, the party claiming the benefit of the award to be plaintiff, the party against whom the award has been given, defendant; file particulars stating relief or order claimed (Order XLI. r. 4, *post*, p. 1782).

Determination of disputes by court.

35. The court may hear and determine a dispute in the following cases:—

(1) If it shall appear to the court, upon the petition of any

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person concerned, that application has been made by either party to the dispute to the other party, for the purpose of having the dispute settled by arbitration under the rules of the society, and that such application has not within forty days been complied with, or that the arbitrators have refused or for a period of twenty-one days have neglected to make any award.

(2) Where the rules of the society direct disputes to be referred to the court or to justices.

Determination to be final.

36. Every determination by arbitrators or by the court or by the registrar under this Act of a dispute shall be binding and conclusive on all parties, and shall be final to all intents and purposes, and shall not be subject to appeal, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity; provided always, that the arbitrators, or the registrar, or the court, as the case may be, may, at the request of either party, state a case for the opinion of the Supreme Court of Judicature on any question of law, and shall have power to grant to either party to the dispute such discovery, as to documents and otherwise, as might now be granted by any court of law or equity, such discovery to be made on behalf of the society by such officer of the society as the arbitrators, registrar, or court may determine.

Members cannot, by giving notice to withdraw, sue in the ordinary courts (*Walker* v. *General Building Society* (C. A.), (1887) 36 Ch. D. 777; *Huckle* v. *Wilson*, (1877) 2 C. P. D. 410); if there is a "dispute" it must be disposed of according to the Act and rules. Where a member alleged that he was not bound by certain new rules and prayed the benefit of old ones, it was held that there was a dispute (*Thompson* v. *Planet Building Society*, (1873) L. R. 15 Eq. 333; 42 L. J. Ch. 364).

Disputes. What are.

But every contention is not a "dispute" to which the Act applies, *e.g.*, an action by a society against an officer to recover moneys received for and not paid over to the society (*Municipal Building Society* v. *Richards* (C. A.), (1888) 39 Ch. D. 372; 58 L. J. Ch. 8); or an action on a covenant in a mortgage deed (*Western Building Society* v. *Martin* (C. A.), (1886) 17 Q. B. D. 609; 55 L. J. Q. B. 382); or an action for redemption (*Mulkern* v. *Lord*, (1879) 4 App. Cas. 182; 48 L. J. Ch. 745), but this has been only since the passing of the Building Societies Act, 1884 (47 & 48 Vict. c. 41), s. 2, which defined the meaning of "dispute" in the Building Societies Acts, as follows:—

47 & 48 Vict. c. 41, s. 2.]—The word "disputes" in the Building Societies Acts or in the rules of any society thereunder, shall be deemed to refer only to disputes between the society and a member or any representative of a member, in his capacity of a member of the society, unless by the rules for the time being it shall be otherwise expressly provided; and in the absence of such express provision, shall not apply to any dispute between any such society and any member thereof, or other person whatever as to the construction or effect of any mortgage deed or any contract contained in any document, other than the rules of the society, and shall not prevent any society or any member thereof or any person claiming through or under him from obtaining in the ordinary course of law any remedy in respect o

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such mortgage or other contract to which he or the society would otherwise be by law entitled: Provided always that nothing in this Act shall apply to any dispute pending at any time before the passing of this Act between any such society or any member thereof or other person which before the passing of this Act shall have been actually referred or agreed to be referred to arbitration, or as to which the jurisdiction of any court of law shall have been adjudged to be excluded by any decision of any court of competent jurisdiction in any action or suit between the society and any member thereof or other person.

Practice on plaint for dispute.]—The dispute must be brought into court by plaint and summons (Order XLI. r. 1 (*infra*)). The aggrieved member or other person must be plaintiff and the society, either in its own name or in the name of such persons as are authorised by the Act to be sued on behalf of the society, defendants (*Ib.* r. 2), particulars must be filed with the required copies, which must state concisely the nature of the dispute referred and the relief or order claimed (*Ib.* r. 3).

The following section of the 1894 Act preserves the right of the arbitrators, or the court, or the registrar to refuse to state a special case.

Arbitrators not to be compelled to state special case on settlement of disputes.

20. Notwithstanding anything contained in the Arbitration Act, 1889, or in any other Act, the arbitrators, registrar, or court to whom a dispute is referred in pursuance of the Building Societies Act, 1874, shall not be compelled to state a special case on any question of law arising in the case, but may do so on the request of either party as provided in section thirty-six of the Building Societies Act, 1874.

COUNTY COURT RULES, ORDER XLI.

THE FRIENDLY SOCIETIES ACTS. THE BUILDING SOCIETIES ACTS. THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893. THE LITERARY AND SCIENTIFIC INSTITUTIONS ACT, 1854. WINDING-UP OF BUILDING AND INDUSTRIAL SOCIETIES.

Disputes under Friendly Societies and other Acts. 38 & 39 Vict. c. 60. 59 & 60 Vict. cc. 25, 26. 56 & 57 Vict. c. 39. 37 & 38 Vict. c. 42.

1. Any dispute referred to the Court under the Friendly Societies Act, 1875, the Friendly Societies Act, 1896, the Collecting Societies and Industrial Assurance Companies Act, 1896, the Industrial and Provident Societies Act, 1893, the Building Societies Act, 1874, or the Literary and Scientific Institutions Act, 1854 (in this order referred to as the said Acts), shall be so referred by plaint and summons in the ordinary way.

Parties.

2. In proceedings commenced pursuant to the last preceding rule, the claiming or aggrieved member (or other person) shall be plaintiff, and the society, either in its own name, or in the name of such persons as are authorised by the said Acts respectively to be sued on behalf of the society, shall be defendants.

Particulars.

3. Particulars of demand shall be filed in all cases of disputes under the said Acts, and shall state concisely the nature of the dispute referred, and the relief or order which the plaintiff claims.

O. XLI. r. 4.

Proceedings for enforcement of decisions on disputes given otherwise than by the Court, or of awards.

4. An application under any of the said Acts for the enforcement of a decision on a dispute given by any authority other than the Court, or for the enforcement of an award, shall be commenced by plaint and summons in the ordinary way, in which the party to the dispute or award entitled or claiming to be entitled to the benefit of such decision or award shall be plaintiff, and the party against whom such decision or award is given shall be defendant. Particulars of demand shall be filed with every such application, stating concisely the relief or order which the plaintiff claims.

Application for relief on amalgamation, transfer of engagements, or dissolution of friendly society or branch.
38 & 39 Vict. c. 60.
59 & 60 Vict. c. 25.

5. An application for relief or other order under the Friendly Societies Act, 1875, or the Friendly Societies Act, 1896, by any person dissatisfied with the provision made for satisfying his claim in the case of the amalgamation, transfer of engagements, or dissolution of any society or branch, shall be made by plaint and summons in the ordinary way, in which the person so dissatisfied shall be plaintiff, and the society or branch, either in its own name or in the name of such persons as are authorised by the said Acts respectively to be sued on behalf of the society or branch, shall be defendants. Particulars of demand shall be filed on every such application, stating concisely the relief or other order which the plaintiff claims.

Application against officer of friendly society.
38 & 39 Vict. c. 60, s. 20.
59 & 60 Vict. c. 25, s. 55.

6. An application to the Court by the trustees or authorised officers of a friendly society in respect of any of the matters mentioned in section 20 of the Friendly Societies Act, 1875, or section 55 of the Friendly Societies Act, 1896, shall, whether any bond be put in suit or not, be by action commenced by plaint and summons in the ordinary way, in which the society or the trustees or authorised officers thereof shall be plaintiffs, and the person against whom the application is made shall be defendant.

Application against officer of building or industrial society.
37 & 38 Vict. c. 42.
56 & 57 Vict. c. 39.

7. An application to the Court under the Building Societies Act, 1874, or the Industrial and Provident Societies Act, 1893, against an officer of any society, shall, whether any bond be put in suit or not, be by action commenced by plaint and summons in the ordinary way, in which the society shall be plaintiffs, and the officer against whom the application is made shall be defendant.

Particulars under Rules 6 and 7.

8. Particulars of demand shall be filed in all actions commenced pursuant to rules 6 and 7 of this order.

Where bond not in suit.

9. If the application is made by action without putting the bond in suit, the particulars shall state shortly the nature of the thing required to be done or the neglect complained of.

10. If the thing required to be done be the delivering up of any property, the particulars shall contain a description of the property required to be given up. O. XLI. r. 10. Where property is required to be delivered up.

11. Proceedings to set aside the dissolution of any society or branch under any of the said Acts shall be commenced by plaint and summons in the ordinary way, in which the person seeking to set aside such dissolution shall be plaintiff, and the society or branch, either in its own name or in the name of such persons as are authorised by the said Acts respectively to be sued on behalf of the society or branch, shall be defendants. Particulars of demand shall be filed in such proceedings, and shall state concisely the relief or order which the plaintiff claims. Proceedings to set aside dissolution of society or branch. 59 & 60 Vict. c. 25, s. 79 (6). 56 & 57 Vict. c. 39, s. 61 (*e*).

12. The provisions of the Companies (Consolidation) Act, 1908, and the rules made thereunder, so far as they relate to winding-up shall apply to the winding-up of societies registered under the Building Societies Act, 1874, and the Acts amending the same, or under the Industrial and Provident Societies Act, 1893; and the winding-up of any such societies shall be conducted in all respects as if such societies were companies registered under the said Companies (Consolidation) Act, 1908. Costs shall be taxed according to the scale of costs for the time being in use in the Supreme Court. Winding-up of building and industrial and provident societies. 8 Ed. VII., c. 69.

THE COMPANIES ACTS, 1862 TO 1890. THE BUILDING SOCIETIES ACT, 1874; AND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1876.

WHEREAS by Order XLI. rule 9 (*a*), of the County Court Rules, 1892, it is provided that the provisions of the Companies Acts, 1862 to 1890, and the rules made thereunder, so far as they relate to winding-up, shall apply to the winding-up of societies registered under the Building Societies Act, 1874, and the Industrial and Provident Societies Act, 1876, and that the winding-up of any such societies shall be conducted in all respects as if such societies were companies registered under any of the said Companies Acts. And whereas, as regards certain of the courts exercising jurisdiction under the said Building Societies Act, 1874, and the said Industrial and Provident Societies Act, 1876, official receivers are not attached to the said courts for bankruptcy purposes, inasmuch as the said courts do not exercise bankruptcy jurisdiction.

Now, therefore, the Board of Trade do hereby order that Charles John Stewart, who has been appointed by the Board of Trade

(*a*) Now Order XLI. r. 12.

the Official Receiver attached to the High Court for the purposes of the Companies (Winding-up) Act, 1890, shall also for the purposes of proceedings in the said courts for the winding-up of societies under the said Acts be the officer attached to such of the courts respectively as exercise jurisdiction under the said Building Societies Act, 1874, and the said Industrial and Provident Societies Act, 1876, within the London Bankruptcy District, as defined by section 96 of the Bankruptcy Act, 1883, and do appoint the said Charles John Stewart to be such officer accordingly.

And the Board of Trade do further order that as regards each of the courts exercising jurisdiction under the said Building Societies Act, 1874, and the said Industrial and Provident Societies Act, 1876, not being courts within the said London Bankruptcy District, or courts exercising bankruptcy jurisdiction the official receiver of the court to which the said court is attached for the purposes of bankruptcy jurisdiction shall be the officer attached to the said court for the purpose of proceedings in the said court for the winding-up of societies under the said Acts, and do appoint such official receivers respectively to be such officers accordingly.

Dated the 16th day of September, 1892.

HENRY G. CALCRAFT,
Secretary to the Board of Trade.

FORMS.

167.

Order under the Friendly Societies and other Acts.

[*Not to be printed.*]

Order XLI. Upon hearing this action at a court this day holden it is ordered that the defendant do [*here insert the terms of the order made by the court*] :

And it is further ordered, that [*recite terms of order*].

168.

Order for Warrant of Execution to issue under the Friendly Societies and other Acts.

[*Not to be printed.*]

Order XLI. Whereas at a court holden at on the day of 19 it was ordered by the said court [*here insert the terms of the order of the court*] :

And it was then further ordered, that [*recite terms of order*].

And whereas it appears to the court that the defendant has not obeyed

either of the said orders, although demand in that behalf was duly made upon him :

It is therefore ordered, that a warrant of execution issue for the said sum being the amount of such penalty and the costs thereof.

169.

Warrant of Execution against the Goods under the Friendly Societies and other Acts.

Whereas at a court holden at on the day of 19 it was ordered by the said court, that [*here insert the terms of the order of the court*] : Order XLI.

And it was then further ordered, that [*recite terms of order*] :

And whereas the defendant has not obeyed either of the said orders :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of the defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount of such penalty and costs, together with the costs of this execution, and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialities, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court, this day of 19 .

By the court,

Registrar of the court.

To the high bailiff of the said court, and others the bailiffs thereof.

	£	s.	d.
Amount ordered to be paid			
Costs adjudged			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed thereon] . . .			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized unless they be of a perishable nature, or at the request of the said defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

SEE BACK.

For indorsement of fees for execution of warrant, see Form 163, p. 749.

For all Fees, see Part II., Cap. III.

THE CHARITABLE TRUSTS ACTS.

THE CHARITABLE TRUSTS ACT, 1853 (16 & 17 VICT. c. 137). THE CHARITABLE TRUSTS AMENDMENT ACT, 1855 (18 & 19 VICT. c. 124). THE CHARITABLE TRUSTS ACT, 1860 (23 & 24 VICT. c. 136). THE CHARITABLE TRUSTS ACT, 1869 (32 & 33 VICT. c. 110). THE CHARITABLE TRUSTS (RECOVERY) ACT, 1891 (54 & 55 VICT. c. 17). THE CHARITABLE TRUSTS ACT, 1894 (57 & 58 VICT. c. 35).

Under the Act of 1853 four commissioners, a secretary, and two inspectors were appointed as Charity Commissioners for England and Wales, any two of whom might form a board to inquire into the condition and management of charities (sect. 9); and to require accounts and statements (sect. 10).

Jurisdiction.]—Where any charity whose gross annual income does not exceed 50*l.* is established wholly or partially within the district of a county court, any relief, order, or direction which may be made by the Court of Chancery, the same relief, order, or direction may be made by the county court (sect. 32 of the 1853 Act as amended by sect. 11 of the 1860 Act). Where two or more county courts have concurrent jurisdiction with respect to the same charity, application shall be made to only one court, and the board may order (and such order will be conclusive as to the jurisdiction) to which court (sect. 34).

Title.]—The county court has no power to determine the title to any real or personal property, or to determine the existence or extent of any charge or trust (sect. 41); but an action to recover arrears of rent-charge is not a proceeding within the section (*Bassano* v. *Bradley*, (1896) 1 Q. B. 645; 65 L. J. Q. B. 479).

Notice of legal proceedings by all persons, except the Attorney-General, to be given to the board, and no proceedings can be entertained except upon the certificate of the board (sect. 17).

Practice is fully set out in Order XLVIII., *post*, pp. 1801—1809, both as to proceedings by private persons and by the Attorney-General. By Rule 10 upon the requisition of the Charity Commissioners, and by Rule 11 on that of the Attorney-General, in proceedings instituted by him, the judge's note of the evidence shall be transmitted by the registrar. There is no rule requiring the judge to take a note, but it is expedient for him to do so.

Appeal.]—The board if dissatisfied with the order of the county court may remit the order for consideration or transfer the matter to the judge of a Chancery Court (sect. 37).

N.B.—The Acts are printed as amended by later Acts.

THE CHARITABLE TRUSTS ACT, 1853.

16 & 17 VICT. c. 137.

Her Majesty empowered to appoint Charity Commissioners, Secretary, and Inspectors.

1. It shall be lawful for Her Majesty and her successors, by warrant under the Royal Sign Manual, to appoint four commissioners, and also one secretary and two inspectors for the purposes of this Act, and upon any vacancy by the death, resignation, or removal of any commissioner, secretary, or inspector under this Act, from time to time in like manner to appoint another person to succeed to such vacancy, and until a fresh appointment shall be made it shall be lawful for the surviving or continuing commissioners, in case of any vacancy, to act as if

no such vacancy had occurred; and three of the said commissioners shall hold office during good behaviour; and the fourth, and every secretary and inspector to be appointed under this Act, shall hold office during the pleasure of Her Majesty.

Style and seal of commissioners.

6. The said commissioners to be appointed under this Act shall be styled "The Charity Commissioners for England and Wales," and may have and use a seal for authenticating documents, and such commissioners shall sit from time to time as a board for carrying this Act into execution; and any two of such commissioners may form a board, and may exercise all or any of the powers conferred on the commissioners or the board by this Act.

Notice of legal proceedings as to any charity by any person, except the Attorney-General, to be given to the Board.

17. Before any suit, petition, or other proceeding (not being an application in any suit or matter actually pending) for obtaining any relief, order, or direction, concerning or relating to any charity, or the estate, funds, property, or income thereof, shall be commenced, presented, or taken, by any person whomsoever, there shall be transmitted by such person to the said board, notice in writing of such proposed suit, petition, or proceeding, and such statement, information, and particulars as may be requisite or proper, or may be required from time to time, by the said board, for explaining the nature and objects thereof; and the said board, if upon consideration of the circumstances they so think fit, may, by an order or certificate signed by their secretary, authorise or direct any suit, petition, or other proceeding to be commenced, presented, or taken with respect to such charity, either for the objects and in the manner specified or mentioned in such notice, or for such other objects, and in such manner and form, and subject to such stipulations or provisions for securing the charity against liability to any costs or expenses, and to such other stipulations or provisions for the protection or benefit of the charity, as the said board may think proper; and such board, if it seem proper to them, may by such order or certificate as aforesaid require and direct that any proceeding so authorised by them in respect of any charity shall be delayed during such period as shall seem proper to and shall be directed by such board; and every such order or certificate may be in such form and may contain such statements and particulars as such board shall think fit; and (save as herein otherwise provided) no suit, petition, or other proceeding for obtaining any such relief, order, or direction as last aforesaid shall be entertained or proceeded with by the Court of Chancery, or by any court or judge, except upon and in conformity with an order or certificate of the said board: Provided always, that this enactment shall not extend to or affect

Courts not to entertain proceedings as to charities, except upon certificate of the Board.

Section 17.

any such petition or proceeding in which any person shall claim any property or seek any relief adversely to any charity.

NOTE.—The certificate of the board is a condition precedent. This section relates exclusively to administration of trusts; it does not apply to common law rights or to equitable modes of enforcing them (*Rendall* v. *Blair*, (1890) 45 Ch. D. 139; 59 L. J. Ch. 641).

Saving for the Attorney-General acting *ex officio*.

Rule 3.

18. Provided always, that it shall be lawful for Her Majesty's Attorney-General acting *ex officio* to make such application, and take and prosecute such proceedings with respect to any charity, in the Court of Chancery or otherwise, as to him may seem fit, as if this Act had not been passed; and that nothing in this Act contained shall be construed as dispensing with the fiat or allowance of Her Majesty's Attorney-General with respect to any proceeding not being an application under the jurisdiction created by this Act where such fiat or allowance was necessary before the passing of this Act.

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County courts to have jurisdiction in cases of charities, the incomes whereof do not exceed 30*l.* per annum.

See sect. 11, 23 & 24 Vict. c. 136, extending jurisdiction to 50*l.*, *post*.

Rules 3, 4.

32. When any charity of which the gross annual income for the time being does not exceed 50*l.* shall be established or administered, or be applicable wholly or partially to or for objects or purposes within the district, or any two or more of the districts of any county court or courts holden under the Act of the session holden in the ninth and tenth years of the reign of Her Majesty, chapter ninety-five, and the appointment or removal of any trustee, or any other relief, order or direction whatsoever concerning such charity, shall be considered desirable, and such appointment or removal, or other relief, order or direction, might now be made or given by the Court of Chancery in respect either of its ordinary or its special or statutory jurisdiction, or by the Lord Chancellor, intrusted with the care and commitment of the custody of lunatics, it shall be lawful for any person authorised in this behalf by the order or certificate of the said board, or for the Attorney-General, to make application to such county court, or, as the case may be, to any one of such county courts, for such order, direction, or relief, as the nature of the case may require: and such county court shall entertain such application, and shall hear the matter in open court, and shall give such relief, and make such orders and directions in relation to the matter of such application, as might now be made or given by the Court of Chancery or by the Lord Chancellor, intrusted as aforesaid, in a suit regularly instituted, or upon petition, as the case may require; and the clerk of such county court shall transmit a copy of such order or direction to the office in London of the registrar of county courts' judgments,

to be there enrolled: Provided always, that no judge of any county court shall be authorised to vary any decree, order or direction of the Court of Chancery, or of any judge thereof, or to make or give any order or direction inconsistent or conflicting with any such decree, order or direction: Provided also, that where two or more district or county courts shall have concurrent jurisdiction with respect to any charity under this Act, no application in respect of such charity shall be made to or entertained by more than one of such district or county courts at the same time. Section 32.

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34. Where two or more county courts shall concurrently have jurisdiction under this Act with respect to any charity, it shall be lawful for the said board to order to which of such courts any application with respect to such charity shall be made; and every such order shall be conclusive as to the jurisdiction with respect to the application referred to in such order. Where two or more courts have concurrent jurisdiction, board to direct to which court applications shall be made.

35. It shall be lawful for the said board to direct that any application as to any charity within the jurisdiction of any county court shall be made before a judge of the Court of Chancery, or as to any charity within the jurisdiction of the Court of Chancery of the county palatine of Lancaster, either before the chancellor or the vice-chancellor of the same county palatine, or before a judge of the High Court of Chancery, according to the provisions herein contained applicable to a charity the gross annual income whereof exceeds 50*l.*; and in such case such application shall be made and may be heard and determined accordingly, in like manner as if the gross annual income of such charity exceeded 50*l.*; and upon the production of the order or certificate containing such direction, or of a copy thereof, the application with respect to which such order or certificate shall have been made shall not be entertained or proceeded with by such district or county court. Board may direct applications within the jurisdiction of a county court to be made before a judge of the Court of Chancery, &c.

36. Whenever any order or decision is made by any county court for the appointment or removal of any trustee of any charity, or approving of any scheme for regulating or directing the administration of any charity, or the estate, funds, property or income thereof, a copy of every such order or decision shall immediately upon the making thereof be delivered or transmitted by the clerk of the county court, as the case may be, together with all requisite particulars, to the said board, for the purpose of being considered by them; and no such order or decision shall be valid or effectual until the same shall have been approved by the said board, such approval to be testified by a certificate in writing, signed by the Orders of county court for the appointment or removal of trustees or approving of a scheme to be transmitted to the board, and not to be valid until approved by them.

Section 36.

secretary of the said board, and no such approval shall issue from the said board until one calendar month shall have elapsed after the receipt by the board of such copy and particulars.

Board, if dissatisfied with the order of the county court, may remit the same for reconsideration, or may transfer the matter to a judge of the Court of Chancery, &c.

37. In case any such order or decision as last aforesaid of any county court shall not be approved by the said board, it shall be lawful for such board to remit the same for reconsideration and decision by such district or county court, with such remarks and recommendations thereon (if any) as shall seem fit and expedient to such board, or in the discretion of the board, to order and direct that the subject-matter to which such order or decision relates, together with such order or decision, shall be submitted to the consideration and decision of a judge of the Court of Chancery, and in such last-mentioned case no further proceedings shall be had or taken in the district county court with respect to the matter in question; and in case the order or decision of the county court, on the reconsideration of any order or decision so remitted for reconsideration, be disapproved as aforesaid by the said board, such board shall refer such orders and decisions, and the subject-matter thereof, to a judge of the Court of Chancery, or as to any charity within the jurisdiction of the Court of Chancery of the county palatine of Lancaster, either to the chancellor or vice-chancellor of the same county palatine, or to a judge of the High Court of Chancery; and where any order or decision is referred to a judge of the Court of Chancery or of the Court of Chancery of the said county palatine of Lancaster, under this provision, such judge shall have and exercise all such jurisdiction, power and authority in relation thereto as in the case of a charity the gross annual income whereof exceeds 50*l.*, and may make such order in relation to the matter of such order or decision as to him may seem proper.

Proceedings in county courts under this Act.

38. Subject to any orders to be made by the Lord Chancellor as hereinbefore mentioned, and to the other provisions of this Act, all proceedings to be taken in any county court, and all orders and directions to be made or given by any such district court or county court by virtue of the jurisdiction hereby created and conferred on such court, shall respectively be subject to the same rules and regulations, and have the same effect, and be registered, enforced and executed in the same manner as the other proceedings, orders, judgments and directions of the same court under its ordinary jurisdiction, and it shall be lawful for any county court, with the consent of the board, to rescind or vary any order which shall have been previously made by such court, without prejudice to any act or matter in the meantime done under such order; and for executing and putting in force any order to be made by any county

court under this Act, every judge of any such court shall and may have and exercise all such powers as by the Act of the session holden in the ninth and tenth years of her Majesty, chapter ninety-five, are given for enforcing the payment of any debt, damages or costs under the said Act. Section 38.

Appeal from order of county court.

39. Where any person authorised to make any application under this Act (other than Her Majesty's Attorney-General acting *ex officio*), or any other person who may have been made a party to any proceeding upon any application under this Act, is aggrieved by or dissatisfied with any order made by any county court upon any such application or any proceeding thereon, he may, within one calendar month after the making of such order, give notice in writing to the said court, and also to the said board, that he is desirous to appeal against the same; and if the said board think it reasonable and proper that such appeal should be entertained and give a certificate to that effect, such county court shall suspend any proceedings upon the order appealed against during such time as the circumstances may require; and the said board, if they so think fit, may require the person giving any such notice of appeal to become bound with two sufficient sureties, to be approved by the registrar of the county court, to the treasurers of the said courts respectively, or such other person as the said board may see fit, in such sum as to the said board shall seem reasonable, to pay such costs of the proceedings on the appeal as shall be ordered to be paid by such appellant, and also (if the said board so think fit) to indemnify the charity against the costs and expenses of or attending such appeal; and every bond executed under this provision shall be exempt from stamp duty; provided always, that it shall be lawful for Her Majesty's Attorney-General (acting *ex officio*), at any time within three calendar months after the making of any order by a county court under this Act, to lodge and commence and prosecute an appeal against such order, without giving any such notice or becoming bound as aforesaid, and every such last-mentioned appeal shall thereupon be allowed by the order of such county court, and shall have such other effect as any other appeal under this Act.

Proceedings on appeal.

40. Where any order allowing an appeal has been made as aforesaid, the person thereby allowed to appeal shall within three calendar months present a petition to the Court of Chancery, setting forth the order appealed against and the order allowing such appeal, and praying such relief as the case may require; and upon the hearing of such petition the court may confirm, vary or reverse the order appealed against, or may remit such order to the county

Section 40.

court by which the same was made, with or without any declaration or directions of the Court of Chancery in relation thereto, or may proceed in relation to the charity to which such order relates as in the case of an application under this Act to a judge of the Court of Chancery at chambers, and any judge of such court sitting at chambers or in open court may make or give any such orders or directions in relation to the matter of such order as he may see fit, or the court may make such other order in relation to the matter of any such appeal as to the court may seem just, and as might be made in the case of a suit regularly instituted, or a petition, as the case may require; and in case the party allowed to appeal do not within such three calendar months present such petition of appeal, the order against which such appeal was allowed shall be final; and in case any costs adjudged on any such appeal to be paid by the party allowed to appeal be not paid, such bond as aforesaid may be put in suit, and the money to be recovered on every such bond shall be applied to indemnify the charity estate or the person damnified, or otherwise in such manner as the justice of the case may require, and the court or judge by whom such appeal may have been heard shall think fit.

Bond to prosecute appeal may be put in suit.

No Chancery judge, or county court in proceedings under this Act shall try titles to property, &c.

41. Provided always, that no judge of the Court of Chancery, nor any county court, shall upon any proceedings under this Act have jurisdiction to try or determine the title at law or in equity to any real or personal property, or any term or interest therein, as between any charity or the trustee thereof, and any person holding or claiming such real or personal property, term or interest adversely to such charity, or to try and determine any question as to the existence or extent of any charge or trust.

For what are proceedings under the Act see *Bassano* v. *Bradley*, (1896) 2 Q. B. 645; 65 L. J. Q. B. 479.

Notice to be given of application for establishment, &c., of schemes or for appointment or removal of trustees under this Act.

42. Before any application shall be made to any judge of the Court of Chancery, or to any county court, under any of the provisions herein contained for the establishment or alteration of a scheme or the appointment or removal of any trustees or trustee, notice in writing of such intended application shall be given in such form and manner as the said board shall have directed; and if the order be that such notice be affixed to or near the door of any parish or district church, the incumbent and churchwardens of such parish or district are hereby respectively required to allow such notice to be affixed and to remain so affixed during such period, not less than fifteen days, as the said board shall have ordered; and in any case in which the order shall be that such notice shall be affixed to any place, evidence that the same has

been so affixed shall be deemed and taken as *primâ facie* evidence that it has remained affixed during the period prescribed by the board. Section 42.

By whom applications may be made.

43. Every application to any judge or court under the jurisdiction created or conferred by any of the provisions of this Act, may be made by Her Majesty's Attorney-General, or subject to the provisions aforesaid, by all or any one or more of the trustees or persons administering or claiming to administer, or interested in, the charity which shall be the subject of such application, or any two or more inhabitants of any parish or place within which the charity is administered or applicable; and it shall be lawful for Her Majesty's Attorney-General for the time being, acting *ex officio*, to make application by petition to the Court of Chancery with respect to any charity under the provisions of the Act passed in the fifty-second year of King George the Third, chapter one hundred and one, or under the provisions of any Act or Acts passed or to be passed authorising the application to the same court by petition according to the provisions of the said Act.

Board to declare the annual incomes of charities for determining the jurisdiction under this Act.

44. For the purposes of determining the jurisdiction under this Act with respect to any charity, or the right to appeal from the determination of a judge of the Court of Chancery, it shall be lawful for the said board to declare, according to such judgment as they may be able to form upon the returns or statement before them in relation to any charity, whether the gross annual income for the time being of such charity does or does not exceed fifty pounds or one hundred pounds (as the case may require), and a statement in any certificate or order of the said board that according to such judgment as aforesaid the gross yearly income of any charity does or does not exceed fifty pounds or one hundred pounds, shall be sufficient evidence of the amount of the gross annual income of such charity, for the purpose of determining such jurisdiction or right to appeal as aforesaid; and any certificate or order made by the said board under this Act, authorising any proceeding or application concerning any charity to be taken or made to any county court, or to the Court of Chancery or any judge thereof, shall state that the gross annual income for the time being of such charity does not exceed fifty pounds, or does exceed fifty pounds (as the case may be): provided always, that where any charity or the trustees thereof, in addition to the principal endowment for its general objects and purposes, shall be possessed of or entitled to any other endowment for any particular or special object or purpose arising out of or in its nature or application connected with the general objects or purposes of such charity, it

Proviso as to particular endowments.

Section 44.

shall be lawful for the said board, having regard to the circumstances of each such case, and to the object and extent of the proposed application and litigation, to determine whether such endowment for such particular or special object or purpose should, for the purpose of jurisdiction and proceedings under this Act, be considered and treated as forming part of the general endowment of the charity, or as a separate and independent charity, and such board shall frame their certificate or order accordingly.

Lord Chancellor to make orders for regulating proceedings before county courts, &c.

45. The Lord Chancellor shall make such orders for regulating proceedings by and before the judges of county courts under this Act, and for fixing and determining the fees to be taken in respect of such proceedings, as he may see fit; and, subject to such orders, such judges may regulate the proceedings before them respectively so as to render them as summary and inexpensive as conveniently may be.

* * * * *

Secretary, &c., shall be official trustees of charitable funds; and stock, &c., held in trust for a charity may be transferred to them.

51. Where trustees or other persons having in their names, or in the name of any deceased person of whom they are representatives, in the books of the Bank of England, or of the East India or South Sea Company, or of any other public company, any annuities, stock or shares, or holding any Government or Parliamentary or other securities in trust for any charity, shall be desirous to transfer or deposit the same to or with the said official trustees in trust for such charity, or where any persons shall be desirous of transferring or depositing as aforesaid any annuities, stocks, shares, or securities for discharging any legacy or charge given or made to or for the benefit of any charity, or where it shall appear to the Court of Chancery, or to any judge of such court, or of any county court having jurisdiction under this Act, that any annuities, stocks, shares or securities held in trust for any charity ought, for the purpose of security or convenient administration, to be transferred or deposited as aforesaid, it shall be lawful for such court or judge to order the transfer or deposit of such annuities, stocks, shares or securities to or with such official trustees.

Secretary to keep separate accounts of the stock, &c., of each charity.

52. The said official trustees shall pay the dividends or interest or income thereof to the trustees or persons acting in the administration of such charity, or otherwise dispose thereof, and transfer such annuities, stock, shares or securities (when occasion shall require), as the Court of Chancery, or any judge of such court, or of any county court having jurisdiction under this Act or other lawful authority, shall direct.

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Section 59.

Schemes when approved to be certified by the board.

Copy of certificates to be deposited in the parish &c., and notice to be given.

59. Every scheme to be approved by the said board shall be certified by them, and for that purpose shall be embodied in a certificate to be made by the said board, and sealed with their seal; and in every case a copy of such certificate shall be deposited in some convenient place within the parish or one of the parishes or the district in which the charity in question shall wholly or partially be situated or administered, and at the office in London of the registrar of county courts' judgments, and a notice shall also be given in such manner as the board shall direct, which notice shall refer to the certificate so deposited, and shall state the intention of the board to proceed with the scheme thereby certified.

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Exemptions from the operation of Act.

62. This Act shall not extend to the universities of Oxford, Cambridge, London or Durham, or any college or hall in the said universities of Oxford, Cambridge and Durham, or to any cathedral or collegiate church, or to any building registered as a place of meeting for religious worship with the registrar-general of births, deaths or marriages in England and Wales, and *bonâ fide* used as a place of meeting for religious worship; . . . nor shall this Act extend or be applied to the Commissioners of Queen Anne's Bounty, or to the British Museum, or to any friendly or benefit society, or savings bank, or any institution, establishment, or society for religious or other charitable purposes, or to the auxiliary or branch associations connected therewith, wholly maintained by voluntary contributions, or any bookselling or publishing business carried on by or under the direction of any society wholly or partially exempted from this Act, so far as such business is or shall be carried on by means of voluntary contributions only, or the capital or stock of such business; and where any charity is maintained partly by voluntary subscriptions and partly by income arising from any endowment, the powers and provisions of the Act shall, with respect to such charity, extend and apply to the income from endowment only, to the exclusion of voluntary subscriptions, and the application thereof; and no donation or bequest unto or in trust for any such charity as last aforesaid, of which no special application or appropriation shall be directed or declared by the donor or testator, and which may legally be applied by the governing or managing body of such charity as income in aid of the voluntary subscriptions, shall be subject to the jurisdiction or control of the said board, or the powers or provisions of this Act; and no portion of any such donation or bequest as last aforesaid, or of any voluntary subscription, which is now or shall or may from time to time be set apart or

Provisions as to charities supported partly by voluntary subscriptions.

Section 62.

appropriated and invested by the governing or managing body of the charity, for the purpose of being held and applied or expended for or to some defined and specific object or purpose connected with such charity, in pursuance of any rule or resolution made or adopted by the governing or managing body of such charity, or of any donation or bequest in aid of any fund so set apart or appropriated for any such object or purpose as aforesaid, shall be subject to the jurisdiction or control of the said board or the powers or provisions of this Act; and nothing in this Act shall subject the funds or property of any missionary or other similar society, or the missionaries, teachers or officers of such society, or of any branch thereof, which funds or property shall not be within the limits of England or Wales, to the jurisdiction of the said board: provided always, that the said exemption shall not extend to any cathedral, collegiate, chapter or other schools.

As to what is a gift to a college, see *In re Meyrick's Charity*, (1855) 24 L. J. Ch. 669; *In re Dod's Charity*, (1905) 1 Ch. 442; 74 L. J. Ch. 260; exemption in case of land held for general purposes, *In re St. John's Street Chapel, Chester*, (1893) 2 Ch. 618; 62 L. J. Ch. 927; *Attorney-General* v. *Mathieson*, (1907) 2 Ch. 383; 76 L. J. Ch. 682; see also *Corporation of the Sons of Clergy* v. *Skinner*, (1893) 1 Ch. 178; 62 L. J. Ch. 148. As to meaning of the words "wholly maintained by voluntary subscriptions," see *In re Richard Murray Hospital*, (1914) 2 Ch. 713; 84 L. J. Ch. 184.

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Interpretation of terms.

66. In the construction of this Act, except where the context or other provisions of the Act may require a different construction . . . the expression "county court" shall mean and include every county court holden or established or to be holden or established under the Act of the ninth and tenth years of Her Majesty, chapter ninety-five, or any Act or Acts passed or to be passed for the alteration or extension of the same Act, and every judge of any such court; the expression "charity" shall mean every endowed foundation and institution taking or to take effect in England or Wales, and coming within the meaning, purview or interpretation of the statute of the forty-third year of Queen Elizabeth, chapter four, or as to which, or the administration of the revenues or property whereof, the Court of Chancery has or may exercise jurisdiction; the expression "trustee" of any charity shall mean and include every person and corporation seised or possessed of or entitled to any real or personal estate, or any interest therein, in trust for or for the benefit of such charity, or all or any of the objects or purposes thereof, and every member of any such corporation; and the expression "the board" shall mean the said charity commissioners sitting as a board under this Act; and the expression "endowment" shall mean and include all lands and

real estate whatsoever, of any tenure, and any charge thereon, or interest therein, and all stocks, funds, moneys, securities, investments and personal estate whatsoever, which shall for the time being belong to or be held in trust for any charity, or for all or any of the objects or purposes thereof; and the expression "land" shall extend to and include manors, messuages, buildings, tenements, and hereditaments, corporeal and incorporeal, of every tenure and description. Section 86.

Even when revenues are applied abroad (*In re Duncan*, (1867) L. R. 2 Ch. 356; 36 L. J. Ch. 513).

THE CHARITABLE TRUSTS AMENDMENT ACT, 1855.

[18 & 19 Vict. c. 124.]

4. Every act of the board may be sufficiently authenticated by the seal of the commissioners, and the signature of their secretary. The acts of the board, how to be authenticated.

5. All orders, certificates, schemes, and other documents issued under the seal of the board shall be deemed and taken to be the originals, and copies thereof shall be entered in the books of the board, and all such entries may be sufficiently certified by the signature of the secretary: every order, certificate, scheme, and other document purporting to be sealed with the seal of the board shall be received in evidence without further proof; and any writing purporting to be a copy extracted from the said books, and to be certified as aforesaid, shall be received in evidence in like manner. Entries in, and extracts from, the books of the board, how to be authenticated.

12. Any court or judge having jurisdiction to order the transfer of stock in the public funds, or stock or shares of any public company, to the official trustees of charitable funds, shall have power also to authorise such trustees to call for a transfer of and to transfer such stock or shares, and may also order the payment to the same trustees of any principal moneys of any charity, under the same circumstances in which the transfer of stock to them may now be ordered. The official trustees of charitable funds may be empowered to call for transfers to them of stock, &c.

25. No transfer of any stock, shares, or securities shall be made to the official trustees of charitable funds, nor shall any money other than the dividends or interest of any such stock, shares, or securities as aforesaid be paid to their account, except in pursuance of an order of the Court of Chancery, or of some judge thereof, or of a district court of bankruptcy, or county court, or of the board; For the regulation of transfers and payments to or by the official trustees.

Section 25.

and no transfer of any such stock, shares, or securities shall be made by the official trustees, except under the order of such court or judge, or under the order of the board signed by two commissioners, or authenticated in such manner as the Lord Chancellor shall from time to time by any order under his hand direct; and no transfer to or by the official trustee shall be permitted by the governor and company of the Bank of England or any other company contrary to this provision.

THE CHARITABLE TRUSTS ACT, 1860.

[23 & 24 Vict. c. 136.]

Acts to be construed together.

1. The Charitable Trusts Act, 1853, and the Charitable Trusts Amendment Act, 1855, and this Act shall be construed together as one Act, and any provisions of the said former Acts inconsistent with this Act are hereby repealed.

* * * * *

Jurisdiction of county courts enlarged.

11. The jurisdiction vested by the Charitable Trusts Act, 1853, in the county courts over charities not possessing a larger gross yearly income than thirty pounds, shall be exercisable by the said courts respectively, for the like purposes and under the like provisions over charities of which the gross yearly income for the time being, to be calculated in manner aforesaid, shall not exceed fifty pounds, in the same manner as if the last-mentioned limit to the jurisdiction of the said courts had been fixed by the said former Act.

CHARITABLE TRUSTS ACT, 1869.

[32 & 33 Vict. c. 110.]

Legal proceedings by trustees of charities for protection of charity property, etc.

13. The majority of the trustees of any charity, if authorised by the Board, may institute and maintain any action, suit, petition, or other proceeding, in the same manner in all respects as if they were the sole trustees of the charity.

Where the trustees, or the majority of the trustees, of any charity, institute and maintain any action, suit, petition, or other proceeding under the authority of the Board, such action, suit, petition, or other proceeding shall not abate or become discontinued or of no effect by reason of the death or removal from office of any of the trustees, or of the addition of any new trustee, but shall continue and have effect for and against the trustees for the time being of the charity, in the same manner as if they were actually named therein.

THE CHARITABLE TRUSTS (RECOVERY) ACT, 1891.

[54 & 55 Vict. c. 17.]

Short title and construction.

1. This Act, so far as is consistent with the tenor thereof, shall be construed together with the Charitable Trusts Acts, 1853 to 1869, and those Acts and this Act may be cited together as the Charitable Trusts Acts, 1853 to 1891, and this Act may be cited as the Charitable Trusts (Recovery) Act, 1891.

Interpretation.

2. In this Act, unless the context requires otherwise :—

The expression " the board " means the charity commissioners for England and Wales :

The expression " prescribed " means prescribed by rules made under the provisions of this Act.

Power to board to sue for recovery of property belonging to charities.

3. Where it appears to the board that any action, petition, or other proceeding should be instituted for the recovery of any property, the gross annual income of which does not, in the opinion of the board, exceed twenty pounds a year, and which appears to the board to belong to a charity, the board may itself, with the sanction of the Attorney-General, institute such proceeding on behalf of the charity ; and the expenses of the board of and incidental to such action, petition, or proceeding shall be paid in like manner as if they were costs of the Attorney-General in a charity matter.

Mode of procedure by board.

4.—(1) When the board is authorised to make any application to or appear in any court, or to institute any action, petition, or other proceeding, such application or appearance may be made, and such action, petition, or proceeding may be instituted, in the name of the charity commissioners for England and Wales, and not in the names of the persons who are the commissioners.

(2) Any action, petition, application, appearance, or other proceeding instituted or made by the board shall not abate or become defective by reason of any change in the persons who are the commissioners, but the commissioners for the time being shall be deemed to be parties thereto.

(3) For the purposes of any such action, petition, application, appearance, or other proceeding, any document may be served on the board by being addressed to the board and delivered at or sent by post to the office of the board, or by being served on the secretary to the board.

(4) Any application by the board to the court in pursuance of this Act may be made in manner for the time being directed by rules of court.

Section 5.

Special remedies given to board.

5. For the purposes of any action, petition, or proceeding instituted by the board under this Act the following provisions shall have effect:—

Old reports of charity commissioners to be evidence: 58 Geo. III. c. 91.

(1) The printed reports of the charity commissioners appointed under an Act passed in the fifty-eighth year of the reign of His Majesty George the Third, and intituled "An Act for appointing commissioners to inquire concerning charities in England for the education of the poor," and under other Acts for inquiring into charities, shall be admissible as *primâ facie* evidence of the documents and facts therein stated; provided that either party intending to use any such report as evidence shall give notice of such intention in the prescribed manner to the other party:

Payment for twelve years to be presumptive evidence.

(2) Where any yearly or other periodical payment has been made in respect of any land, to or for the benefit of any charity or charitable purpose, for twelve consecutive years, such payment shall be deemed, subject to any evidence which may be given to the contrary, *primâ facie* evidence of the perpetual liability of such land to such yearly or other periodical payment, and no proof of the origin of such payment shall be necessary.

Rules.

6. Rules for practice and procedure under this Act, including fees and costs, whether in the Supreme Court of Judicature or in the county court, may from time to time be made by the authority and in the manner by and in which rules may be made for regulating the practice and procedure in such Supreme Court or county court, as the case may be.

CHARITABLE TRUSTS ACT, 1894.

[57 & 58 Vict. c. 35.]

Construction.

3. This Act, so far as consistent with the tenor thereof, shall be construed as one with the Charitable Trusts Acts, 1853 to 1891, and with the Places of Worship Registration Act, 1855, and this Act and the Charitable Trusts Acts, 1853 to 1891, may be cited as the Charitable Trusts Acts, 1853 to 1894.

Extension of exemption in 16 & 17 Vict. c. 137, s. 62, 18 & 19 Vict. c. 81, s. 9, of places of meeting for

4. The exemption of any building registered as a place of meeting for religious worship with the Registrar-General of Births, Deaths, or Marriages in England and Wales, and *bonâ fide* used as a place of meeting for religious worship, contained in the sixty-second section of the Charitable Trusts Act, 1853, and in the ninth section of the Places of Worship Registration

Act, 1855, shall extend, and shall, without prejudice to any order of the Charity Commissioners made before the passing of this Act, be deemed to have always extended to— Section 4. religious worship.

(*a*) any forecourt, yard, garden, burial ground, vestry, or caretaker's house, in respect of situation connected with, and held upon the same trusts as, any building registered and *bonâ fide* used as aforesaid: and

(*b*) any Sunday-school house or other land, or building which shall be certified by an order of the Charity Commissioners, made upon the application of one or more of the trustees or persons acting in the administration thereof, to be held upon the same trusts as any building registered and used as aforesaid or upon like trusts, and to be in respect of situation so connected with or held or used in connexion with such building that it cannot conveniently be separated therefrom:

Provided always that so much of the Charitable Trusts Acts, 1853 to 1891, as by virtue of the fifteenth section of the Charitable Trusts Act, 1869, extends to buildings registered and used as aforesaid, shall also extend to the properties declared to be exempted by this Act in the same manner and subject to the same restrictions as the buildings registered and used as aforesaid.

THE COUNTY COURTS CHARITABLE TRUSTS, RULES, 1903.

ORDER XLVIII.

Charitable Trusts.

1. The registrar of every court shall keep a book, to be called "The Charitable Trusts Book," in which all proceedings taken in that court in matters of charitable trusts shall be recorded according to the form in the appendix. Record. Form 437.

2. Where any person has obtained the required order or certificate from the charity commissioners, and is desirous of taking proceedings in the court, he shall produce such order or certificate to the registrar, who shall retain and file the same in numerical order in his office, and the party producing such order or certificate shall be deemed to be the plaintiff in such proceedings: and the parties summoned under Rule 4 of this Order shall be deemed to be the defendants. Proceedings by private persons.

Rule 3.

Proceedings by Attorney-General.

3. When the Attorney-General proposes to take proceedings in the court, he shall cause to be delivered or transmitted to the registrar a written statement showing the nature and object of the proposed proceedings, and the registrar shall retain and file such statement in numerical order in his office, and the Attorney-General shall in such proceedings be deemed to be the plaintiff, and the parties summoned under Rule 4 of this Order shall be deemed to be the defendants.

Summons.

Form 434.

4. Upon the production of any order, certificate, or statement in this order before mentioned, the registrar shall at the instance of the plaintiff prepare a summons thereon according to the form in the appendix, in which shall be stated the substance of the order, certificate, or statement, and he shall make as many copies thereof as there are parties required by the plaintiff, in writing, to be summoned, and two additional copies, the one to be filed in his office, and the other to be transmitted to the charity commissioners.

Notice to attend proceedings.

Form 435.

5. The registrar, if required by the plaintiff, shall prepare a notice to attend proceedings, according to the form in the appendix, to be served on any persons indicated by the plaintiff in writing besides those summoned under the last preceding rule; and the registrar shall make as many copies thereof as there are persons to whom such notice is to be given, and two additional copies, one to be filed in his office, and the other to be transmitted to the charity commissioners.

Service of summons and notice to attend.

6. The registrar shall forthwith transmit by post prepaid a copy of the summons to each of the parties required to appear, and a copy of the notice to attend proceedings to each of the persons indicated by the plaintiff, and such transmission shall be sufficient service, unless the judge in any case otherwise directs.

Notice of hearing where no summons or notice to attend issued.

Form 436.

7. Where the plaintiff does not require any summons or notice to attend proceedings to be issued, the registrar shall prepare a notice of hearing, according to the form in the appendix, and two additional copies thereof, one to be filed in his office, and the other to be transmitted to the charity commissioners, and shall either deliver such notice to the plaintiff, or cause it to be served on him by prepaid post letter, unless the judge in any case otherwise directs.

Summons and notices to be issued in certain cases.

8. In all cases it shall be competent for the registrar, if required by the plaintiff, to summon some persons, and to serve others with either or both of the said notices; or to serve a notice of hearing

on the plaintiff, and a notice to attend proceedings on any other person. Rule 8.

9. In all cases it shall be competent for the judge to direct in any case what persons, or additional persons, shall be served with a summons or notice to attend proceedings or notice of hearing. Service by order of judge.

10. Upon the requisition of the charity commissioners, the registrar shall transmit to them at their office by post or otherwise, a copy of the judge's note of the evidence taken at the hearing, or such part thereof as may be required by the commissioners, sealed with the seal of the court. Transmission of judge's note to charity commissioners.

11. Upon the requisition of the Attorney-General in proceedings instituted by him, the registrar shall transmit to him by post or otherwise, a copy of the judge's note of the evidence taken at the hearing, or such part thereof as may be required by the Attorney-General. Transmission of judge's note to Attorney-General.

12. A copy of the summons, notice to attend proceedings, or notice to appear, together with a copy of the order made by the court, shall in all cases be transmitted by the registrar forthwith after the hearing by post or otherwise, as the judge shall direct, to the office of the commissioners. Copy of proceedings to be sent to commissioners.

13. Where the annual income of the charity exceeds ten pounds, the court fees shall be payable as in cases within the ordinary jurisdiction of the court, without prejudice to the privilege of the Attorney-General as to costs, and charitable funds may be made liable to the payment thereof, at the discretion of the judge. Fees where income of charity exceeds 10*l*.

14. Where the annual income of the charity does not exceed ten pounds, no court fees shall be payable out of the funds of the charity; nor shall any court fees be paid by any party to the proceeding unless the judge shall, in his discretion, order any of the parties to the proceeding before him to pay such fees as he shall think fit, without prejudice to the privilege of the Attorney-General as to costs. Fees where income does not exceed 10*l*.

15. Where more charities than one are joined in one application, one set of court fees only shall be payable, such fees to be calculated on the aggregate amount of the incomes of the charities so joining. Fees where several charities join.

16. Where court fees are payable, they shall be calculated according to the scale of fees applicable to proceedings for the recovery of tenements under section one hundred and thirty-eight of the Act, the annual income of the charity, in like manner as Fees, how calculated. 51 & 52 Vict. c. 43, s. 138.

Rule 16. the annual rent of the tenement, being treated as the basis of calculation.

Who may appear at hearing.

17. At the hearing, any person who has been summoned, or has received notice to attend proceedings, or who is authorised to apply under section forty-three of the Charitable Trusts Act, 1853, may appear and be heard in opposition to the application authorised by the order or certificate of the commissioners, or the statement of the Attorney-General, subject to the payment of such costs as the judge shall direct.

Effect of commissioners' order or certificate or Attorney-General's statement.

18. The order or certificate of the commissioners, or statement of the Attorney-General, as to the amount of the annual income, shall be conclusive, and the other statements contained in the certificate or order of the commissioners, or the statement of the Attorney-General shall, unless disputed, be taken as true.

General practice, etc. of the courts to be adopted.

19. The enactments, orders as to fees, practice, and forms in force and used in the county courts, shall, subject to the rules of this order, be adopted with reference to proceedings in matters of charitable trusts, so far as the same are applicable, *mutatis mutandis*.

Registrar's duties as to trustees' accounts.

20. The accounts of trustees of charities, when delivered to the registrar, shall be filed by him in numerical order, and annually indexed alphabetically according to the titles of such charities, or the names or descriptions by which they are known, or may be identified.

THE CHARITABLE TRUSTS (RECOVERY) ACT, 1891.

Parties to proceedings under 54 & 55 Vict. c. 17.

21. It shall not be necessary to make the trustees (if any) or persons acting in the administration of the charity, or the official trustee of charity lands, or the official trustees of charitable funds, parties to any proceeding under the Charitable Trusts (Recovery) Act, 1891, unless the judge before or at the trial otherwise orders; and for the purposes of proceedings under the said Act the board shall be deemed to represent all parties interested in the charity.

Notice under 54 & 55 Vict. c. 17, s. 5.

22. The notice in sect. 5, sub-sect. 1 of the said Act mentioned shall be a two days' notice in writing, and shall be served on the opposite party, but the court may give leave for shorter or substituted or other notice.

Discovery.

23. Any order for production of documents or other discovery against the board shall be made upon their secretary for the time being.

COSTS. Rule 24.

24. Where costs are allowed in any proceeding under the Charitable Trusts Acts, 1853 to 1891, and this order, the judge may order the costs to be taxed under column A, B, or C, and in default of any such order they shall be taxed under column B, without prejudice to the privilege of the Attorney-General as to costs. Costs.

FORMS.

434.

Summons.

The Charitable Trusts Acts, 1853 to 1887.

In the county court of holden at .

In the matter of [*title of charity*].

No. of charity. *Order XLVIII., Rule 4.*

[*Name, description, and address of party to be summoned.*]

You are hereby summoned to appear at a county court to be holden at on the day of 19 at the hour of in the noon, upon the hearing of an application which has been made to the court in the matter of the above charity, by which it is suggested [*here state substance of order, certificate, or statement*].

And you are informed, that if you do not attend pursuant to the requisition of this summons, the court may proceed in the matter in your absence, and make such order as may appear just therein.

And you are further informed, that if you do not obey such order, you will be liable to be imprisoned by order of the court.

Registrar.

Dated this day of 19 .

435.

Notice to attend Proceedings.

The Charitable Trusts Acts, 1853 to 1887.

In the county court of holden at .

In the matter of [*title of charity*].

No. of charity. *Order XLVIII., Rule 5.*

[*Name, description, and address of party to whom notice is to be given.*]

Take notice, that the hearing of an application in the matter of the above charity, by which it is suggested [*here state substance of order, certificate, or statement*], will take place on the day of 19 , at the above county court, to be holden at , at the hour of in the noon.

The object of this notice is that if you are desirous of attending the said hearing you are at liberty to do so, and you may be heard in support of any objection you have to such proceedings in respect of the above charity.

But if you do not attend at the hearing, you will not be subject to any costs or penalty in respect of such non-attendance.

Registrar.

Dated this day of 19 .

436.

Notice of Hearing.

The Charitable Trusts Acts, 1853 to 1887.

16 & 17 Vict. c. 137.

In the county court of holden at

In the matter of [*title of charity*].

No. of charity.

Order XLVIII., Rule 7.

[*Name, description, and address of party to whom notice is to be given.*]

Take notice, that the hearing of the application in the matter of the above charity is appointed to take place at this court on the day of 19 , *at the hour of in the noon.

Registrar.

Dated this day of 19 .

* This should be at the earliest convenient sitting of the court.

437.

Form of Charitable Trusts Book Record.

The Charitable Trusts Acts, 1853 to 1887.

16 & 17 Vict. c. 137.

ASHLEY, Lady, Charity of. In the matter of

No. 1.

Order XLVIII., Rule 1.

On the day of 19 an order [certificate *or* statement, *as the case may be*] was produced by [*state the party producing or transmitting it*] and the same has been numbered 1 [*or, as the case may be according to the priority of production to the clerk*].

On the day of 19 a summons [*or other process, as the case may be*] was issued and directed to be served by post [*or otherwise, as the case may be*] on [*state the parties*], requiring him [*her or them, as the case may be*] to appear at this court on the day of 19 .

At a court holden on the day of 19 appeared [*state parties appearing, or reasons for not appearing, and whether they appeared by counsel or otherwise. If any adjournment takes place, state the cause thereof, and adjournment, and until when adjourned; then on the adjournment day, proceed in a similar manner as on the first day of hearing; and the same on every successive adjournment day. When the matter is finally disposed of, then proceed*]—

The matter having been heard, the court made the following order: [*Here state the order. If any other proceedings, whether before or after the final order, are taken in the matter, they must be recorded in a similar manner in their proper places. It will not be necessary to set forth on the record any of the evidence, as that will appear on the judge's notes; but any document produced, or any copy thereof, which the judge requires to be filed, should be filed along with the other papers relating to the matter.*]

[*When the record of proceedings in any charity occupies more than one page, the record may be continued on the next blank page, and a reference should be made from such previous page to such next page, and from such next page to such previous page. The book in which the record is kept should be paged throughout, and have an alphabetical index at the end. The names of the charities should be arranged in the index alphabetically, and the numbers of the pages in which any proceedings are recorded should be given at the end of the names.*]

438.

Order for the Removal or Appointment of a Trustee, or Removal and Appointment of a Trustee; vesting the Estates of a Charity in a Trustee; and approving a Scheme.

The Charitable Trusts Acts, 1853 to 1887. 16 & 17 Vict. c. 137, &c.

In the county court of holden at .

In the matter of [*title of charity*].

No. of charity.

Upon the application of [*name, description, and address of applicant*] to [*here state the substance of the application authorised by the order or certificate; but in the case of a scheme only refer to it as* "a certain scheme for regulating or directing the administration of the said charity"], and upon hearing the matter of the said application:

It is ordered that [*name, description, and address*] one of the trustees [*or* the trustee] of the above charity be removed [*or* that] [*name, description, and address*] be appointed a trustee of the said charity] *or* that [*name, description, and address*] one of the trustees [*or* the trustee] of the said charity be removed, and that [*name, description, and address*] be appointed a trustee instead of the said [*name of removed trustee*]:

And it is further ordered that [*state property and rights of the charity as described or indicated in the order or certificate*] do vest in the said [*names of trustees in whom the said property and rights are to vest*]:

And it is further ordered that the scheme set forth in the schedule hereunto annexed for the regulating [*or* directing] the administration of the said charity be approved and established.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

Schedule referred to in the foregoing order.

[*Here insert scheme approved of.*]

This is the schedule referred to in the above order.

[*Registrar's signature.*]

*** *Where the application to the court does not embrace all the subjects of the above form, such part may be adopted as is applicable to the exigency of the case.*

439.

Order under Section 48 of the Charitable Trusts Act, 1853. 16 & 17 Vict. c. 137, s. 48.

The Charitable Trusts Acts, 1853 to 1887.

In the county court of holden at .

In the matter of [*title of charity*].

No. of charity.

Upon the application of [*name, description, and address of applicant*] to [*here state the substance of the application authorised by the order or certificate*] and upon hearing the matter of such application:

It is ordered that the [*here describe the estates of the charity as described or indicated in the order or certificate*] holden in trust for the above-

mentioned charity do vest in "the treasurer of public charities," and his successors, in trust for the said charity.

[*Where any periodical or other payment is directed with respect to any copyhold land, add as to a periodical payment the following clause*] : And it is further ordered, with the consent of the [*name, description, and address of the lord of the manor wherein the estates are situated*] that the sum of £ be paid by [*name, description, and address of person ordered to pay*] to the said lord of the manor of on the day of next, and on the same day in each succeeding year [*as the case may be*] in compensation for fines or other profits which would have become due upon the death or admittance of the tenants of such land, being part of the said manor holden upon trust for the said charity.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

440.

16 & 17 Vict. c. 137, s. 51.

Order under Section 51 of the Charitable Trusts Act, 1853.

The Charitable Trusts Acts, 1853 to 1887.

In the county court of holden at :

In the matter of [*title of charity*].

No. of charity.

Upon the application of [*name, description, and address of applicant*] to [*here state the substance of the application authorised by the order or certificate*], and upon hearing the matter of the said application,

It is ordered that [*names, descriptions, and addresses*] [*where they are personal representatives, insert* "the executors [*or* administrators] of [*name, description, and address*] deceased"] do transfer the £ bank £2 15*s.* per cent. annuities, [*or* Bank Stock, promissory note, bill of exchange, bond, debenture, or other security [*as the case may be*], standing in the name *or* names] [*insert the names, descriptions, and addresses of the persons in whose names the stock is standing*], into the names of [*names of official trustees*].

[Where securities are to be deposited, vary the preceding order, commencing with the words "do transfer," and substitute the following : "do deposit the following Exchequer bills, dated, that is to say, No. 1,806 for £500, No. 772 for £50, &c., or any other Exchequer Bills, for which the same may be exchanged [*as the case may be*] with [*names of official trustees*]].

Given under the seal of the court this day of 19 .

By the court,

Registrar.

441.

Order for Payment of Money by any Trustee of any Charity or any Person holding Money belonging to any Charity.

16 & 17 Vict. c. 17.

The Charitable Trusts Acts, 1853 to 1887.

In the county court of holden at .

In the matter of [*title of charity*].

No. of charity.

Upon the application of [*name, description, and address of applicant*] to

[*here state the substance of the application authorised by the order or certificate*], and upon hearing the matter of the said application,

It is ordered that [*name, description, and address*] do on or before the day of 19 , pay the sum of £ [*with interest thereon (if any)*] to [*state party or account*].

Given under the seal of the court this day of 19 .

By the court,

Registrar.

442.

Notice of Sureties.

The Charitable Trusts Acts, 1853 to 1887. 16 & 17 Vict. c. 137.

In the county court of holden at

In the matter of [*title of charity*].

Take notice, that the sureties whom I propose as my sureties on the appeal in the above matter are [*here state the full names and additions of the sureties, whether housekeepers or freeholders and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any*].

BOND.

Know all men by these presents that we [*name, description, and address*], and [*names, descriptions, and addresses*] are jointly and severally bound to [*name, description, and address of obligee*] in £ of good and lawful money of Great Britain, to be paid to the said [*name of obligee*] or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each (and every) of us, in the whole sum and each of our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this day of one thousand nine hundred and .

Whereas an order, dated the day of 19 , was made in the matter of [*name*] charity by the county court of holden at and [*name, description, and address of appellant*] states himself to be aggrieved by [*or* dissatisfied with] the said order, and has given notice of appeal pursuant to the Charitable Trusts Act, 1853, and the practice of the court:

And whereas the Charity Commissioners of England and Wales have required that the said [*appellant*] should, together with two sufficient sureties, become bound to [*person whom the commissioners direct to be obligee*] in the sum of £ to pay such costs of the proceedings on the appeal as shall be ordered to be paid by the said appellant [*if required by the commissioners*, and also to indemnify the charity against the costs and expenses of and attending such appeal].

And whereas the above-named [*names, descriptions, and addresses of sureties*], at the request of the said [*name of appellant*], have agreed to enter into the above written obligation for the purpose aforesaid, and the security intended to be given has been approved of by the registrar of the said court, as appears by his allowance in the margin hereof.

Now the condition of this obligation is such, that if the above bounden [*names*], and any or either of them, shall pay unto the said [*name of the obligee*], his executors, administrators, or assigns, the costs of the said appeal, as the said Court of Appeal shall order [*add, if so ordered*, and indemnify the said charity against the costs or expenses of or attending such appeal], then this obligation shall be void, otherwise the same shall remain in full force and virtue.

I approve of this bond (L. S.) *J. K.*
This requires a stamp.

A. B. (L. S.)
C. D. (L. S.)
E. F. (L. S.)

Signed, sealed, and delivered by the above bounden, in the presence of

CLERGY DISCIPLINE ACT, 1892.

[55 & 56 Vict. c. 32.]

By sect. 9 of the Act a rule committee thereby constituted was given power to make rules for carrying the Act into effect, and particularly for regulating procedure, practice, costs, expenses and fees, and the liability to and recovery of costs and expenses.

The only matter in the Act or Rules which affects county courts is contained in Rules 48 and 49, *infra*.

Up to 20*l*. the jurisdiction of the county court is exclusive, *infra*.

Application for recovery of costs.
Form 52.

48. Where any costs have been ordered by the court to be paid or are payable under these rules and the amount thereof has been taxed, the person to whom the same are payable may within fourteen clear days after the taxation lodge with the registrar of the diocese an application to issue an order for the recovery of the amount.

Mode of enforcing recovery of costs.
Form 53.

49. The registrar on receipt of an application for the recovery of costs shall, if satisfied that the amount to which the application refers ought to be paid, send a precept for the recovery thereof—

(*a*) where the amount of the costs does not exceed twenty pounds, to the registrar of any county court within the jurisdiction of which the person by whom the costs are payable possesses any goods and chattels; and

(*b*) where the amount of the costs exceeds twenty pounds, to the central office of the Supreme Court of Judicature;

and on the receipt of the precept the costs to which it relates, together with costs of the application for recovery as certified in the precept by the registrar, and together with the costs of recovery, may be recovered by the person to whom the same are payable, as if they were costs ordered to be paid by the county court or High Court, as the case may be.

COAL MINES ACT, 1911.

[1 & 2 Geo. V. c. 50.]

COAL MINES ACT, 1914.

[4 & 5 Geo. V. c. 22.]

By sect. 11 of the 1911 Act the county court judge may be appointed by the Secretary of State, either alone or with an assessor or assessors, as the court to hold an inquiry as to the competency of a manager or under-manager of a mine and his fitness to hold a certificate of competency, at such place as the Secretary of State may appoint; extended by the Act of 1914 (4 & 5 Geo. 5, c. 22) to any owner or agent of a mine taking part in the technical management thereof.

The inquiry must be public.

By sect. 77 the mine owner, under certain circumstances, has to provide washing and drying accommodation, one half cost of which is to be borne by the men. If any question arises as to the estimated cost of maintenance, it shall be referred to an arbitrator, who, failing agreement, is to be appointed by the judge of county courts of the district in which the mine is situate.

Inquiry into competency of holders of certificates.

11.—(1) If at any time representation is made to the Secretary of State by an inspector or otherwise that any person holding a certificate of competency under this Act is, by reason of incompetency or gross negligence or misconduct in the capacity of, or while temporarily performing the duties of, manager or undermanager of a mine, unfit to continue to hold a certificate of competency, or has been convicted of an offence against this Act or any enactment repealed by this Act, the Secretary of State may, if he thinks fit, cause inquiry to be made into the conduct of that person, and with respect to every such inquiry the following provisions shall have effect :—

(*a*) The inquiry shall be public, and shall be held, at such place as the Secretary of State may appoint, by such county court judge, metropolitan police magistrate, stipendiary magistrate, or other person or persons (hereinafter in this section referred to as the court) as may be directed by the Secretary of State, and either alone or with the assistance of any assessor or assessors named by the Secretary of State :

(*b*) The Secretary of State shall, before the commencement of the inquiry, furnish to the person into whose conduct inquiry is made a statement of the case on which the inquiry is instituted :

(*c*) The person into whose conduct inquiry is made may attend the inquiry by himself, his counsel, solicitor, or agent, and may, if he thinks fit, be sworn and examined as an ordinary witness in the case :

(*d*) The court shall, on the conclusion of the inquiry, send to the Secretary of State a report containing a full statement of the case, and the opinion of the court thereon, and such report of, or extracts from, the evidence as the court may think fit :

(*e*) The court shall have power to cancel or suspend the certificate of the person into whose conduct inquiry is made, if it finds that he is, by reason of incompetency, or of such gross negligence or misconduct as aforesaid, or of his having been convicted of an offence against this Act or any enactment repealed by this Act, unfit to continue to hold a certificate of competency :

(*f*) The court may require the person into whose conduct

Section 11.

inquiry is made to deliver up his certificate. The court shall hold a certificate so delivered until the conclusion of the investigation, and shall then either restore, cancel, or suspend the certificate according to its judgment on the case:

(*g*) The court shall have, for the purpose of the inquiry, all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against this Act, and all the powers of an inspector under this Act, and in addition the following powers:—

(i.) power, by summons signed by the court, to require the attendance of all such persons as it thinks fit to summon and examine for the purpose of the inquiry, and for that purpose to require answers or returns to such inquiries as the court thinks fit to make;

(ii.) power to require the production of all books, papers, and documents which the court considers important for the purpose of the inquiry:

(*h*) A person attending as a witness before the court shall be allowed such expenses as would be allowed to a witness attending on subpœna before a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a Master of the Supreme Court, who, on request signed by the court, shall ascertain and certify the proper amount of such expenses.

(2) If any person without reasonable excuse (proof whereof shall lie upon him) fails to comply with any summons or requisition of the court or impedes the court in the execution of its duty, he shall be guilty of an offence against this Act, and a person who is guilty of such offence shall, in addition to any other fines to which he is liable under this Act, be liable to a fine not exceeding one pound for every day during which the offence continues.

(3) The court may make such order as it thinks fit respecting the costs and expenses of the inquiry, and such order shall, on the application of any party entitled to the benefit thereof, be enforced by any court of summary jurisdiction as if such costs and expenses were a fine imposed by that court.

(4) The Secretary of State may, if he thinks fit, pay to the person or persons constituting the court, including any assessors, such remuneration as he may, with the consent of the Treasury, determine.

Provision of washing and drying accommodation if

77.—(1) Where a majority, ascertained by ballot of two-thirds of the workmen employed in any mine to whom this section applies, represent to the owner of the mine that they desire that accommo-

dation and facilities for taking baths and drying clothes should be provided at the mine and undertake to pay half the cost of the maintenance of the accommodation and facilities to be provided, the owner shall forthwith provide sufficient and suitable accommodation and facilities for such purposes as aforesaid :

workmen pay half cost.

Provided that the owner shall not be bound to provide any such accommodation and facilities, if the estimated total cost of maintenance exceeds threepence per week for each workman liable to contribute under this section.

(2) General regulations shall be made under this Act for determining what are sufficient and suitable accommodation and facilities for the purposes of this section, and any such regulations may make different requirements as respects different classes or descriptions of mines.

Regulations.

(3) For the purposes of this section, cost of maintenance includes interest on capital expenditure (not exceeding five per cent. per annum), and if any question arises as to the estimated cost of maintenance that question shall, in accordance with regulations as to procedure and costs to be made by the Secretary of State, be referred to an arbitrator to be agreed upon between the parties, or, in default of agreement as to an arbitrator, to a person appointed by the judge of county courts for the district, or in Scotland by the sheriff of the county, in which the mine is situate, and the decision of the arbitrator or of the person so appointed, as the case may be, shall be final.

Cost of maintenance, how calculated.

(4) Where any such accommodation and facilities have been provided, every workman at the mine to whom this section applies (whether he was or was not employed at the mine at the time when the ballot of the workmen for the purposes of this section was taken) shall be liable to contribute a sum equal to one-half of the cost of maintenance (but not exceeding three halfpence per man per week), and the owner shall be entitled to recover such contributions from the workmen liable to contribute by deduction from their wages, notwithstanding the provisions of any acts relating to truck or any contract to the contrary :

Contribution of workmen may be deducted from wages.

Provided that the obligation to contribute shall not apply to any workman who is exempted on the ground of health in accordance with the regulations of the mine.

(5) The management of the accommodation and facilities provided under this section shall be under the control of a committee to be established in accordance with the regulations of the mine, and consisting as to one half of members appointed by the owner of the mine and as to the other half of members appointed by the workmen liable to contribute under this section. The powers and duties of the committee in relation to the management

Committee appointed by owner and workmen to control.

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of the accommodation and facilities shall be such as may be laid down by general regulations, and the owner of the mine shall not be liable to any penalty as for failure to comply with the provisions of this section in respect of any act performed by the committee in pursuance of their powers or of any failure by the committee to perform any of their duties.

Workmen to whom section applies.

(6) The workmen to whom this section applies are all workmen employed underground, and all workmen engaged on the surface in handling tubs, screening, sorting, or washing coal, or loading coal into wagons.

Excepted mines.

(7) This section shall not apply to any mine where the total number of the workmen employed at the mine to whom this section applies is less than one hundred, or to any mine held by the owner under a lease of which the unexpired term is less than ten years or to any mine as respects which the Secretary of State is satisfied that it will be worked out within ten years.

Offence.

(8) If the owner of any mine fails to comply with the provisions of this section, he shall be guilty of an offence against this Act.

Cessation.

(9) Where a majority, ascertained by ballot of two-thirds of the workmen at a mine, represent to the owner of the mine that they desire that this section should cease to have effect as respects the mine, this section shall, unless the owner by notice affixed at the mine within one month after the receipt by him of the representation declares that he does not assent thereto, cease to have effect accordingly as from a date to be agreed upon between the owner and the workmen.

Representations.

(10) A fresh representation shall not be made as respects any mine either under subsection (1) or under subsection (9) of this section before the expiration of five years from the date of any previous representation made with respect to that mine.

4 & 5 GEO. V. c. 22.

Extension of s. 11 of 1 & 2 Geo. V. c. 50 to owners and agents.

1. Section eleven of the Coal Mines Act, 1911, which relates to inquiries into the conduct of holders of certificates of competency, shall apply to any owner or agent of a mine taking part in the technical management thereof who is alleged, by reason of incompetency or gross negligence or misconduct in such management, to be unfit to continue to hold a certificate of competency.

COLLECTING SOCIETIES AND INDUSTRIAL ASSURANCE COMPANIES ACT, 1896.

[59 & 60 Vict. c. 26.]

Jurisdiction is given to the county court in disputes between the societies and companies and their members by sect. 7, and, in dissolution, by sect. 12; but in the case of an industrial assurance company is confined to disputes with regard to policies originally granted for a less sum than 20*l.* It is uncertain whether there is any jurisdiction at all where the company issues policies for 20*l.* and upwards as well as for less than 20*l.* (*Cowling* v. *Topping*, (1906) 1 K. B. 466; 75 L. J. K. B. 176).

The provisions of the Friendly Societies Acts as to dissolution also apply to collecting societies, except that in the case of a society having branches the consent of the central body is not required (sect. 12). As to friendly societies, see p. 2034.

Practice.]—This, by sect. 7, will be the same as under the Friendly Societies Act, 1896 (see p. 2034; see Order XLI. p. 1781).

Application of Act.

1. This Act shall apply to every such—

(*a*) friendly society or branch, whether registered or unregistered (in this Act referred to as a collecting society); and

(*b*) person or body of persons, whether corporate or unincorporate, granting assurances on any one life for a less sum than twenty pounds (in this Act referred to as an industrial assurance company),

as receives contributions or premiums by means of collectors at a greater distance than ten miles from the registered office or principal place of business of the society or company, and, in the case of an industrial assurance company, at less periodical intervals than two months:

Provided that nothing in this Act shall, except as expressly provided thereby, apply to any assurance with an industrial assurance company the premiums in respect of which are receivable at greater periodical intervals than two months.

Copies of rules and policies.

2.—(1) A collecting society shall deliver to every person, on his becoming a member of or insuring with the society, a copy of the rules of the society, together with a printed policy signed by two of the committee, and by the secretary, at a price not exceeding one penny for the rules and one penny for the policy.

(2) In the case of a family enrolled in one book or card, one copy of rules and one family policy shall be sufficient.

Notice before forfeiture.

3. A forfeiture shall not be incurred by any member or person insured in a collecting society or industrial assurance company by reason of any default in paying any contribution until after:

(*a*) notice stating the amount due by him, and informing him that in case of default of payment by him within a reason-

Section 3.

able time, not being less than fourteen days, and at a place to be specified in the notice, his interest or benefit will be forfeited, has been served upon him by or on behalf of the society or company; and

(*b*) default has been made by him in paying his contribution in accordance with that notice.

Transfers without written consent.

59 & 60 Vict. c. 25.

33 & 34 Vict. c. 61.
34 & 35 Vict. c. 58.
35 & 36 Vict. c. 42.

4.—(1) A member of or person insured with a collecting society or industrial assurance company shall not, except in the case of—

(*a*) as respects a collecting society, an amalgamation transfer of engagements or conversion into a company under the Friendly Societies Act, 1896; or

(*b*) as respects an industrial assurance company, an amalgamation or transfer of business under the Life Assurance Companies Acts, 1870 to 1872,

become or be made a member of or be insured with any other such society or company without his written consent, or in the case of an infant, without the consent of his father or other guardian.

(2) The society or company to which the member or person is sought to be transferred shall, within seven days from his application for admission to that society or company, give notice thereof in writing to the society or company from which he is sought to be transferred.

[Sects. 5 and 6 relate to general meetings and balance sheets.]

Disputes.

7. In all disputes between a collecting society or industrial assurance company and any member or person insured, or any person claiming through a member or person insured, or under the rules, that member or person may notwithstanding any provisions of the rules of the society or company to the contrary, apply to the county court, or to the court of summary jurisdiction for the place where that member or other person resides, and the court may settle that dispute according to the provisions of the Friendly Societies Act, 1896.

[Sects. 8 to 11 relate to disabilities of collector, name of collecting society, and provisions as to the same appearing in rules.]

Inspectors, special meetings, and dissolution of collecting societies.

12. The provisions of section seventy-six and sections seventy-eight to eighty-three of the Friendly Societies Act, 1896, relating to the appointment of inspectors, the calling of special meetings, and the dissolution of registered societies, shall apply to every collecting society, and in the case of a society having branches shall so apply without the consent of the central body of the society.

Section 13.

Assurances on children's lives by industrial assurance companies.

13.—(1) The provisions of sections sixty-two to sixty-seven and section eighty-four of the Friendly Societies Act, 1896, relating to payments on the death of children, shall extend to industrial assurance companies, as if the word society where used in those sections included all industrial companies assuring the payment of money on the death of children under the age of ten years.

(2) An insurance made, or to be made by an industrial assurance company, of a sum of money payable on the death of a child under the age of ten years, which would be valid if effected with a registered society, shall not be invalidated by reason of any provision contained in the Life Assurance Act, 1774.

(3) The provisions of this section shall extend to industrial assurance companies which do not receive premiums by means of collectors at a greater distance than ten miles from their principal place of business, and to assurances with any such company the premiums in respect of which are receivable at greater periodical intervals than two months.

14 Geo. III. c. 48.

[Sects. 14 and 15 deal only with offences.]

Notices.

16. Where any notice is required by this Act to be served upon any member or other person, the notice shall be in writing, and either delivered or sent by post to him, or, in the case of a notice of default, left at his last known place of abode.

Interpretation.

17.—(1) In this Act, unless the context otherwise requires,—

The expression "collector" shall include every paid officer, agent, or person, howsoever remunerated, who, by himself or by any deputy or substitute, collects contributions for a collecting society or industrial assurance company, or holds any interest in a collecting book thereof, but shall not include—

(*a*) the secretary or other officer of a branch of a society who receives contributions on behalf of the society or of any other branch thereof; or

(*b*) any officer appointed to superintend and receive moneys from collectors within a specified area, not being himself a collector; or

(*c*) any agent appointed and remunerated by members, and not under the control of the society or company, or of any officer thereof.

Other expressions have the same meaning as in the Friendly Societies Act, 1896.

(2) The power of the Treasury to make regulations for carrying the Friendly Societies Act, 1896, into effect shall extend to the making of regulations for carrying this Act into effect.

Section 18. Repeals.

18. The Acts mentioned in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Commencement and extent of Act.

19. This Act shall come into operation on the first day of January next after the passing thereof, and shall extend to the whole of the British Islands.

Short title and construction.

20. This Act may be cited as the Collecting Societies and Industrial Assurance Companies Act, 1896.

[By this Act and the Friendly Societies Act, 1896, the Friendly Societies Acts, 1875, 1887, 1889, 1893, and 1895 are repealed.]

COMMON LAW PROCEDURE ACT, 1860.

[23 & 24 Vict. c. 126.]

Court or judge may direct sale of goods seized in execution.

13. When goods or chattels have been seized in execution by a sheriff or other officer under process of the above mentioned courts, and some third person claims to be entitled under a bill of sale or otherwise to such goods or chattels by way of security for a debt, the court or a judge may order a sale of the whole or part thereof, upon such terms as to payment of the whole or part of the secured debt, or otherwise, as they or he shall think fit, and may direct the application of the proceeds of such sale, in such manner and upon such terms as to such court or judge may seem just.

(Applied to county courts by Order in Council dated August 4th, 1879.)

[The above section, though repealed by the Statute Law Revision Act, 1883, was preserved as to county courts by sect. 7 of that Act.]
See now Order XXVII., r. 13.

COMMONS ACT, 1876.

[39 & 40 Vict. c. 56.]

By sect. 37 "a common" means any land subject to be inclosed under the Inclosure Acts, 1845 to 1868.

Jurisdiction, by sect. 30, in addition to any then existing remedy, was given to the county court within whose jurisdiction any common or part of a common is situate to grant an injunction against any illegal inclosure,

encroachment or nuisance, or to make an order for the removal or abatement thereof.

Practice is provided for by Order L. r. 9, *infra*.

An appeal to the High Court of Justice is given to any person aggrieved by the making or the refusal of an injunction or order. No rules of court have been made as to an appeal, which may be had in the same manner as in a case within the court's ordinary jurisdiction (see sect. 120 of the County Courts Act, p. 123).

Jurisdiction of county court in respect of illegal inclosures.

30. A county court within whose jurisdiction any common or part of a common is situate shall have jurisdiction to hear any case relating to any illegal inclosure or encroachment of or upon such common or part of a common respectively made after the passing of this Act, or to any nuisance impeding the exercise of any right of common arising after the passing of this Act, and to grant an injunction against such inclosure, encroachment, or nuisance, or to make an order for the removal or abatement of such inclosure, encroachment, or nuisance.

Any person aggrieved by any injunction granted or order made or refusal to grant an injunction or make an order by a county court in pursuance of this section may, on giving security for costs to the satisfaction of the county court, appeal to the High Court of Justice in a summary manner, or by special case or otherwise, as may be prescribed by rules of court to be made by the Supreme Court of Judicature in manner provided by the seventeenth section of the Supreme Court of Judicature Act, 1875.

The appellate court may on hearing the appeal reverse, modify, or confirm the injunction or order complained of, or remit the case to the county court from which the appeal lay, with instructions to deal with the case according to the directions given by the appellate court.

Where an appeal is lodged against the order of a county court directing the removal or abatement of any inclosure, encroachment, or nuisance, such order shall be suspended during such time as such appeal is pending.

Nothing in this Act contained shall abridge or interfere with any existing right of abating or otherwise preventing any illegal inclosure of or encroachment on any common, or any nuisance interfering with any right of common.

Until rules of court are made for the purposes of this section, an appeal may be had from the decision of any county court under this section in the same manner in which an appeal from the decision of a county court may be had in a case within its ordinary jurisdiction.

COUNTY COURT RULES. ORDER L. RULE 9.

Proceedings under 39 & 40 Vict. c. 56.

Proceedings under section 30 of the Commons Act, 1876, shall be by action commenced by plaint and summons in the ordinary

way. Particulars of demand must be filed in every such action stating concisely the relief or order which the plaintiff claims.

COMPANIES CLAUSES ACT, 1863.

[26 & 27 Vict. c. 118.]

Sect. **27.** If the interest on debenture stock is in arrear for thirty days the holder for the time being may (without prejudice to his power to apply for the appointment of a receiver or judicial factor) recover the arrears with costs by action or suit against the company in any court of competent jurisdiction.

As to court of competent jurisdiction, see 34 & 35 Vict. c. 41, s. 4.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

[8 Edw. VII. c. 69.]

Jurisdiction.]—Where the share capital of a company paid up, or credited as paid up, does not exceed 10,000*l.*, and the registered office of the company is situated within the jurisdiction of a county court having jurisdiction under this Act, *i.e.*, a county court having bankruptcy jurisdiction, a petition to wind up the company shall be presented to that county court (sect. 131, sub-sect. 3).

"The Court."]—By sect. 131, sub-sect. 5, the Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and has in fact by order dated May 19th, 1899 (see p. 1996), excluded any county court not, for the time being, having bankruptcy jurisdiction from having jurisdiction under this Act, the district of such court so excluded from jurisdiction being attached to a county court having bankruptcy jurisdiction, hence "the court" (sect. 285) is the county court having bankruptcy jurisdiction within the district within which the registered office of the company is situated. The list of the county courts having bankruptcy jurisdiction with their respective districts are at p. 1996.

Stannaries Court.]—The county courts in Cornwall to which the jurisdiction of the Stannaries court has been transferred, are not, in the case of mining companies *carrying on business solely in Cornwall*, confined to companies whose capital does not exceed 10,000*l.*, but have exclusive jurisdiction whatever the amount of the capital (*Dunbar* v. *Harvey*, (1913) (C. A.) 2 Ch. 530; 82 L. J. Ch. 452; or wherever the registered office of the company is situate (sect. 131, sub-sect. 4), even when the company's powers were not confined to working mines in Cornwall (*Radium Ore Mines, Ltd.*, 109 L. T. 707; affirmed (C. A.) 110 L. T. 57).

Powers of the Court.]—The court has all the powers of the High Court and is not subject to prohibition when exercising such powers (sect. 131, sub-sect. 6; *In re The New Par Consols, Ltd.* (*No.* 2), (1898) 1 Q. B. 669 (C. A.); 67 L. J. Q. B. 598); but has no jurisdiction to decide in the winding-up questions of title to property between a company and a stranger (*Re Ilkeley Hotel Co.*, (1893) 1 Q. B. 248; 62 L. J. Q. B. 333); the court must enforce its judgment by means of its own officers (*Re Bassett's Plaster Co.*, (1894) 2 Q. B. 96; 63 L. J. Q. B. 518).

Practice.]—The Companies (Winding-up) Rules, 1909, govern the procedure in a winding-up by the court (see *post*, p. 1895); for the title of the proceedings and issue of summonses see Rules 11 *et seq.*; for service and execution of process see Rules 22 *et seq.*; for the form of a petition, the advertisement, service, and verification thereof see Rules 25 *et seq.*; for appointment of official receiver as provisional liquidator see Rule 31; for notice by persons who intend to appear, affidavits in opposition and reply, and for hearing of the petition see Rules 32—35; for the notice of the making of an order to the official receiver, for the drawing up and settling of the order, and for the transmission and advertisement of the order see Rules 37 *et seq.* In matters other than winding-up the practice is governed by Ord. XLIA., p. 1893.

Transfer.]—The powers of transfer are very large, from the county court to the High Court, and from one county court to another county court having jurisdiction in the winding-up of a company (see Rules 42—47).

Appeal to High Court.]—It is provided by sect. 181 of the Act that subject to rules of court, an appeal lies upon a question of law from any order or decision in the winding-up of a company in the same manner and under the same conditions as in ordinary cases. If any question arises in any winding-up proceeding, which all the parties to the proceeding, or one of them and the judge, wish to have determined in the first instance in the High Court, the judge must state the facts in the form of a special case for the opinion of the High Court. The case and such proceedings as may be required, must then be transmitted to the High Court (sect. 133, sub-sect. 3).

The registrar's taxation of costs may, at the instance of the Board of Trade, be reviewed by a taxing-officer of the High Court (Rule 185).

Appeal to County Court from Official Receiver.]—In various cases mentioned in the Act and rules, an appeal is allowed to the court against the act or decision of the official receiver. Where the official receiver is acting otherwise than as liquidator the appeal must be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced or made (Rule 206).

No costs should be given against an official receiver personally, unless he has been guilty of misconduct; such an order is subject to an appeal to the divisional court (see *In re Raynes Park Golf Club, Ex parte Official Receiver*, (1899) 1 Q. B. 961; 68 L. J. Q. B. 529).

Matters to be heard in Court and Chambers.]—Rule 6 (1) provides what matters are to be heard in county courts in court, and Rule 6 (2) provides that any other matter or application may be heard and determined in chambers.

Public Examinations.]—An order for a public examination may be made *ex parte* (*Re Trust, etc., Corporation of South Africa* (C. A.), (1892) 3 Ch. 332; 62 L. J. Ch. 22); but not until the official receiver has made a report stating that in his opinion a fraud has been committed by some person in the promotion or formation of the company, or by some director or officer of the company in relation to the company since its formation, and the judge has, after consideration of the report, directed the attendance of such person (sect. 175).

The rules (see r. 62 and Form 31) provide that the examination shall be taken before the judge.

On any proceedings subsequently instituted under sect. 215, the verified notes of the examination are subject to all just exceptions admissible against those against whom the application is made, who, under sect. 175 and the judge's order, could take part in the examination if fifteen days' notice at least of the intention to use the notes be given before day of hearing. Every person against whom the application is made, shall be at liberty to cross-examine or re-examine the person whose examination is read (see Rule 70).

County Court Judges as Commissioners.]—County court judges who sit at places more than twenty miles from the General Post Office are commissioners for taking evidence in any winding-up (sect. 226).

Unregistered Companies.]—Part VIII., beginning at sect. 267, deals with the winding-up of unregistered companies.

Limited Partnerships established under the 7 Edw. VII. c. 24, are now treated as ordinary partnerships and fall under the Bankruptcy Act. The Limited Partnership (Winding-up) Rules, made under sect. 268 (1) (VII.) of the Companies (Consolidation) Act, 1908, are now obsolete. See *post*, p. 1996.

Costs.]—In a winding-up by the county court, costs are allowed on the lower scale in Appendix N (see Annual Practice Supreme Court, Appendix N); taxation must be by the registrar in person (Rule 184).

PART I.

Constitution and Incorporation.

Alteration of objects of company.

9.—(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

(*a*) to carry on its business more economically or more efficiently; or

(*b*) to attain its main purpose by new or improved means; or

(*c*) to enlarge or change the local area of its operations; or

(*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company (*a*); or

Note (*a*).—See *John Brown & Co., Ltd.* v. *Tredegar Iron and Coal Co., Ltd.*, (1915) 84 L. J. Ch. 245.

(*e*) to restrict or abandon any of the objects specified in the memorandum (*b*).

Note (*b*).—As to true test of contract *ultra vires*, see *Dundee Harbour Trustees* v. *Nicol*, (1915) A. C. 550; 84 L. J. P. C. 74.

(2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied—

(*a*) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and

(*b*) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or

claim has been discharged or has determined, or has been secured to the satisfaction of the court : Section 9.

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members ; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement : Provided that no part of the capital of the company may be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.

(7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default.

* * * * *

PART II.

DISTRIBUTION AND REDUCTION OF SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

30.—(1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered Inspection of register of members.

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office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding two pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director and manager of the company who knowingly authorises or permits the refusal shall be liable to the like penalty; and, as respects companies registered in England or Ireland, any judge of the High Court, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the register.

* * * * *

Power of court to rectify register.

32.—(1) If—

(*a*) the name of any person is, without sufficient cause, entered in or omitted (*a*) from the register of members of a company; or

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) The application may be made, as respects companies registered in England or Ireland, by motion in the High Court, or by application to a judge of the High Court sitting in chambers, or by application to the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, and, as respects companies registered in Scotland, by summary petition to the Court of Session, or in such other manner as the said courts may respectively direct; and the court may either refuse the application, or may order rectification of the

(*a*) See *Bede Steam Shipping Co., In re*, (1916) 85 L. J. Ch. 612. Affirmed on appeal, (1917) 86 L. J. Ch. 65.

register, and payment by the company of any damages sustained by any party aggrieved. Section 32.

(3) On any application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

* * * * *

45.—(1) A company limited by shares may, by special resolution confirmed by an order of the court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes : Reorganisation of share capital.

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section an office copy thereof shall be filed with the registrar of companies within seven days after the making of the order, or within such further time as the court may allow, and the resolution shall not take effect until such a copy has been so filed.

See *Nordberg, Ltd., In re,* (1915) 84 L. J. Ch. 830.

Reduction of Share Capital.

46.—(1) Subject to confirmation by the court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may— Special resolution for reduction of share capital.

(*a*) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(*b*) Either with or without extinguishing or reducing liability

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on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act called a resolution for reducing share capital.

Application to court for confirming order.

47. Where a company has passed and confirmed a resolution for reducing share capital it may apply by petition to the court for an order confirming the reduction.

Addition to name of company of "and reduced."

48. On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company:

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

Objections by creditors and settlement of list of objecting creditors.

49.—(1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

(3) Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction,

the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount; (that is to say,)—

(i.) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(ii.) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

Order confirming reduction.

50. The court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

As to what is sufficient evidence of consent by debenture holders, see *Hydraulic Power and Smelting Co. Ltd., In re,* (1914) 2 Ch. 187; 83 L. J. Ch. 753.

Registration of order and minute of reduction.

51.—(1) The registrar of companies on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court), showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

Minute to form part of memorandum.

52.—(1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein; and must be embodied in every copy of the memorandum issued after its registration.

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(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Liability of members in respect of reduced shares.

53. A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute:

Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

(i.) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and

(ii.) if the company is wound up, the court, on the application of any such creditor, and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor.

54. If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour.

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55. In any case of reduction of share capital, the court may require the company to publish as the court directs the reasons for reduction, or such other information in regard thereto as the court may think expedient with a view to give proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

Publication of reasons for reduction.

56. A company limited by guarantee and registered on or after the first day of January nineteen hundred and one, may, if it has a share capital, and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

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PART III.

Management and Administration.

Definitions of extraordinary and special resolution.

69.—(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given (*a*).

Note (*a*).—See *MacConnell* v. *E. Prill & Co.*, (1916) 2 Ch. 57; 85 L. J. Ch. 674.

(2) A resolution shall be a special resolution when it has been—

(*a*) passed in manner required for the passing of an extraordinary resolution; and

(*b*) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles

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to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company.

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

Registration and copies of special resolutions.

70.—(1) A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the registrar of companies, who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one shilling or such less sum as the company may direct.

(4) If the company makes default in printing or forwarding a copy of a special or extraordinary resolution to the registrar it shall be liable to a fine not exceeding two pounds for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(6) Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

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Right to inspect copies of instruments creating mortgages

101.—(1) The copies of instruments creating any mortgage or charge requiring registration under this Act with the registrar of companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee,

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and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

and charges and company's register of mortgages

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues; and, in addition to the above penalty as respects companies registered in England or Ireland, any judge of the High Court sitting in chambers, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the copies or register.

Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed.

102.—(1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.

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Service and Authentication of Documents.

Service of documents on company.

116. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

See Rule 23 (*post*).

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Authentication of documents.

117. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

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Power to Compromise.

Power to compromise with creditors and members.

120.—(1) Where a compromise or arrangement (*a*) is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company of or any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) In this section the expression "company" means any company liable to be wound up under this Act.

(*a*) As to what may be done under the words "Compromise or arrangement," see *In re Guardian Assurance Co.*, (1917) 86 L. J. Ch. 214.

If proper provision is made for dissentient members, a reconstruction of an existing company by winding up and sale of the entire assets for shares in new company may be effected under this section (*In re Sandwell Park Colliery Co., Ltd.*, (1914) 1 Ch. 589).

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PART IV.

WINDING UP.

Preliminary.

Modes of winding up.

122.—(1) The winding up of a company (*a*) may be either—

(i.) by the court; or

(ii.) voluntary; or

(iii.) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears to the winding up of a company in any of these modes.

(*a*) As to winding up an assurance company, see Assurance Companies Act, 1909, sect. 15.

Contributories. Section 123.

123.—(1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say) :— Liability as contributories of present and past members.

(i.) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up :

(ii.) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member :

(iii.) A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act :

NOTE.—This applies to past members of a company limited by guarantee (*In re Premier Underwriting Association, Ltd.* (*No.* 1), (1913) 2 Ch. 29 ; 82 L. J. Ch. 383).

(iv.) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member :

(v.) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up :

(vi.) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract :

(vii.) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company ; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director, or manager, whether past or present, whose liability is, in pursuance

Section 123.

of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company: Provided that—

(i.) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up:

(ii.) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office:

(iii.) Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of contributory.

124. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

125. The liability of a contributory shall create a debt (in England and Ireland of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of member.

126.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but, except in the case of heirs or devisees of any such real estate in England, they may be added as and when the court thinks fit.

(3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for

administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment thereout of the money due. Section 126.

127. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then— Contributories in case of bankruptcy of member.

(1) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

128.—(1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly. Provision as to married women. 45 & 46 Vict. c. 15. 44 & 45 Vict. c. 21.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

Winding up by Court.

129. A company may be wound up by the court— Circumstances in which company may be wound up by court.

(i.) if the company has by special resolution resolved that the company be wound up by the court:

(ii.) if default is made in filing the statutory report or in holding the statutory meeting:

(iii.) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

(iv.) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven:

(v.) if the company is unable to pay its debts:

(vi.) if the court is of opinion that it is just and equitable that the company should be wound up. (*a*)

(*a*) It may be "just and equitable" though opposed by a majority both in number and value of the creditors (*Clandown Colliery Co., In re*, (1915) 1 Ch. 369; 84 L. J. Ch. 420). See also *Yenidje Tobacco Co., Ltd., In re*, (1917) 86 L J. Ch. 1. The Courts Emergency Act, 1914, did not

Section 129. apply to the winding up of a company (*Globe Trust, Ltd.*, (1915) 84 L. J. Ch. 903). See now Courts Emergency Act, 1916, 6 & 7 Geo. V., c. 18, s. (1) (2).

Company when deemed unable to pay its debts.

130. A company shall be deemed to be unable to pay its debts—

(i.) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(ii.) if, in England or Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(iii.) if, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; or

(iv.) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Jurisdiction to wind up companies in England.

131.—(1) The courts having jurisdiction to wind up companies registered in England shall be the High Court, the chancery courts of the counties palatine of Lancaster and Durham, and the county courts.

(2) Where the amount of the share capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company shall be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situated within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company shall be presented to that county court.

(4) Where a company is formed for working mines within the stannaries and is not shown to be actually working mines beyond the limits of the stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for

such working or undertaking, a petition to wind up the company shall be presented to the court exercising the stannaries jurisdiction whatever may be the amount of the capital of the company and wherever the registered office of the company is situate. Section 131.

See Stannaries Acts, p. 2262.

(5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to the High Court or any other county court, and may revoke or vary any such order or any like order made under the Companies (Winding Up) Act, 1890. 53 & 54 Vict. c. 63.

In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896. 59 & 60 Vict. c. 45.

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

* * * * *

133.—(1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced. Transfer of proceedings.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

Section 133.

(3) If any question arises in any winding-up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

* * * * *

Provisions as to applications for winding up.

137.—(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately: Provided that

(*a*) A contributory shall not be entitled to present a petition for winding up a company unless—

(i.) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii.) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(*b*) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(*c*) The court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *primâ facie* case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the court, as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up

or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories. Section 137.

(3) Where under the provisions of this part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

138. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory. Effect of winding-up order.

139. A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up. Commencement of winding up by court.

See *Havana Exploration Co., In re*, (1916) 85 L. J. Ch. 174.

140. At any time after the presentation of a petition for a winding up, and before a winding-up order has been made, the company, or any creditor or contributory, may— Power to stay or restrain proceedings against company.

(*a*) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and

(*b*) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

141.—(1) On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets. Powers of court on hearing petition.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the court may order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

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Actions stayed on winding-up order.

142. When a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

Copy of order to be forwarded to registrar.

143. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the registrar of companies, who shall make a minute thereof in his books relating to the company.

Power of court to stay winding up.

144. The court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

Court may have regard to wishes of creditors or contributories.

145. The court may, as to all matters relating to a winding up have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Official Receiver.

Definition of official receiver.

146.—(1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term "official receiver" shall mean the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade.

(2) Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

Statement of company's affairs to be submitted to official receiver.

147.—(1) Where the court in England has made a winding-up order, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having

taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the court, may require to submit and verify the same.

(3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

Report by official receiver.

148.—(1) Where the court in England has made a winding-up order, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court—

(*a*) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and

(*b*) if the company has failed, as to the causes of the failure; and

(*c*) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

Liquidators.

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Appointment, remuneration and title of liquidators.

149.—(1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

(2) The court may make such an appointment provisionally at any time after the presentation of a petition and before (where the proceedings are in England) the making of an order for winding up, or (where the proceedings are in Scotland or Ireland) the first appointment of liquidators.

(3) Where the proceedings are in England—

(*a*) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed:

(*b*) On a winding-up order being made the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such:

(*c*) When a person other than the official receiver is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) In a winding up in Scotland or Ireland the court may determine whether any and what security is to be given by a liquidator on his appointment.

(6) A liquidator appointed by the court may resign or, on cause shown, be removed by the court. (*a*)

(*a*) As to what is sufficient cause see *Rubber and Produce Investment Trust, In re*, (1915) 1 Ch. 382; 84 L. J. Ch. 534.

(7) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

In a winding up in England the official receiver shall by virtue of his office be the liquidator during the vacancy.

(8) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(9) A liquidator shall be described as follows (that is to say) :—

(*a*) in a winding up in England, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, and

(*b*) in a winding up in Scotland or Ireland, by the style of the official liquidator,

of the particular company in respect of which he is appointed, and not by his individual name.

(10) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of company's property.

150.—(1) In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland or Ireland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

Powers of liquidator.

151.—(1) The liquidator in a winding up by the court shall have power, in the case of a winding up in England with the sanction either of the court or of the committee of inspection, and in the case of a winding up in Scotland or Ireland with the sanction of the court—

(*a*) to bring or defend any action or other legal proceeding in the name and on behalf of the company :

(*b*) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof :

(*c*) in the case of a winding up in England, to employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself ; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction : (*a*)

(*a*) See *Consolidated Diesel Engine Co., In re*, (1915) 1 Ch. 192 ; 84 L. J. Ch. 325.

(*d*) in the case of a winding up in Scotland or Ireland, to appoint a solicitor or law agent to assist him in the performance of his duties.

(2) The liquidator in a winding up by the court shall have power, but (subject to the provisions of this section) in the case of a winding up in Scotland or Ireland only with the sanction of the court,—

(*a*) To sell the real and personal property, and things in action

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of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels :

(*b*) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal :

(*c*) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors :

(*d*) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business :

(*e*) To raise on the security of the assets of the company any money requisite :

(*f*) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company ; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself :

(*g*) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court in England of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4) In the case of a winding up in Scotland or Ireland the court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent, without the sanction or intervention of the court.

(5) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

(6) In a winding up by the court in Scotland the liquidator

shall, subject to rules made under this Act, have the same powers as a trustee on a bankrupt estate. Section 151.

152.—(1) When a winding-up order has been made by the court in England, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of— Meetings of creditors and contributories in English winding up.

(*a*) determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver; and

(*b*) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the court shall decide the difference and make such order thereon as the court may think fit.

(3) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company.

153. Where in the winding up of a company by the court in England a person other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act. Liquidator to give information to official receiver.

154.—(1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid: Payments of liquidator in English winding up into bank.

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten

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days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts in English winding up.

155.—(1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Books to be kept by liquidator in English winding up.

156. Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Release of liquidators in England.

157.—(1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised

without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Exercise and control of liquidator's powers in England.

158.—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

NOTE.—See as to employment of solicitor when the committee of inspection objects, *Consolidated Diesel Engine Co.*, (1915) 1 Ch. 192; 84 L. J. Ch. 325.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.

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(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of Board of Trade over liquidators in England.

159.—(1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

Committee of Inspection, Special Manager, Receiver.

Committee of inspection in English winding up.

160.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

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(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories) of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

(9) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

Power in England to appoint special manager.

161.—(1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power in England to appoint official receiver as receiver for debenture holders or creditors.

162. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

Ordinary Powers of Court.

Settlement of list of

163.—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the

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register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

Power to require delivery of property.

164. The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is *primâ facie* entitled.

Power to order payment of debts by contributory.

165.—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of court to make calls.

166.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Power to order payment into bank.

167.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on contributory conclusive evidence.

168.—(1) An order made by the court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order shall be only *primâ facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Power to exclude creditors not proving in time.

169. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories.

170. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Power to order costs.

171. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

Dissolution of company.

172.—(1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

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(3) If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

Delegation to liquidator of certain powers of court in England.

173. General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court; that is to say, the powers and duties of the court in respect of—

(*a*) holding and conducting meetings to ascertain the wishes of creditors and contributories;

(*b*) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;

(*c*) requiring delivery of property or documents to the liquidator;

(*d*) making calls;

(*e*) fixing a time within which debts and claims must be proved:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Extraordinary Powers of Court.

Power to summon person suspected of having property of company.

174.—(1) The court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, affairs, or property of the company (*a*).

(*a*) This power should only be exercised in very exceptional circumstances (*In re Property Insurance Co.*, (1914) 1 Ch. 775; 83 L. J. Ch. 525).

(2) The court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

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(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended, and brought before the court for examination.

Power in England to order public examination of promoters, directors, etc.

175.—(1) When an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributor, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

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(8) The court may, if it thinks fit adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a palatine court, before a registrar of that court, and the powers of the court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

Power to arrest absconding contributory.

176. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him, and them, to be safely kept until such time as the court may order.

Powers of court cumulative.

177. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Enforcement of and Appeal from Orders.

Power to enforce orders.

178.—(1) Orders made by the High Court in England or Ireland under this Act may be enforced in the same manner as orders made in any action pending therein.

(2) For the purposes of this part of this Act the court exercising the stannaries jurisdiction shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the High Court in England has in relation to matters within its jurisdiction; and, for the last-mentioned purposes, the jurisdiction of the judge of the court exercising the stannaries jurisdiction shall be deemed to be co-extensive in local limits with the jurisdiction of the High Court in England.

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Enforcement of order

180.—(1) Any order made by the Court in England for or in the course of winding up a company shall be enforced in Scotland and

Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Ireland, and in the same manner in all respects as if the order had been made by those courts. Section 180. throughout United Kingdom.

(2) In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland, by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

181.—(1) Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction. Appeals from order.

(2) Provided, in regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the bills in vacation, that—

(i.) No order or judgment under the provisions of this Act specified in the first part of the fourth schedule to this Act shall be subject to review, reduction, suspension, or stay of execution; and

(ii.) Every other order or judgment (except as herein-after mentioned) shall be subject to review only by reclaiming note, in common form, presented within fourteen days from the date of the order or judgment:

Provided that orders or judgments under the provisions of this Act specified in the second part of the fourth schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the court.

(3) Provided also, in regard to orders or judgments pronounced

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in Scotland by a permanent Lord Ordinary to whom a winding up has been remitted, that any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but, should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation shall apply to the order or judgment.

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

Voluntary Winding Up.

Circumstances in which company may be wound up voluntarily.

182. A company may be wound up voluntarily—

(1) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily.

(2) If the company resolves by special resolution that the company be wound up voluntarily :

(3) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

Commencement of voluntary winding up.

183. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

See *Havana Exploration Co., In re,* (1916) 85 L. J. Ch. 174.

Effect of voluntary winding up on status of company.

184. When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof :

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Notice of resolution to wind up voluntarily.

185. When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the *Gazette.*

186. The following consequences shall ensue on the voluntary winding up of a company :— **Section 186.**

Consequences of voluntary winding up.

(i.) The property of the company shall be applied in satisfaction of its liabilities (*a*) *pari passu* and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company :

NOTE.—(*a*) *I.e.*, liabilities existing at the time of the passing of the resolution (*General Rolling Stock Co., In re Joint Stock Discount Co.'s Claim*, (1872) L. R. 7 Ch. 646; 41 L. J. Ch. 732). As to debts already barred by the Statutes of Limitation, see *Fleetwood Electric Syndicate Co., In re*, (1915) 1 Ch. 486; 84 L. J. Ch. 374.

(ii.) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them :

(iii.) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof :

(iv.) The liquidator may, without the sanction of the court, exercise all powers by this Act given to the liquidator in a winding up by the court :

(v.) The liquidator may exercise the powers of the court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves :

(vi.) The list of contributories shall be *primâ facie* evidence of the liability of the persons named therein to be contributories :

(vii.) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two :

(viii.) If from any cause whatever there is no liquidator acting, the court may, on the application of a contributory, appoint a liquidator :

(ix.) The court may, on cause shown, remove a liquidator, and appoint another liquidator.

187.—(1) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the registrar of companies a notice of his appointment in the form prescribed by the Board of Trade. Notice by liquidator of his appointment.

(2) If the liquidator fails to comply with the requirements of

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this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Rights of creditors in a voluntary winding up.

188.—(1) Every liquidator appointed by a company in a voluntary winding up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company (*a*), or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

Note (*a*).—See *In re Karamelli & Barnett Ltd.* (1917), 86 L. J. Ch. 207.

(3) On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.

(4) No appeal shall lie from any order of the court upon an application under this section.

(5) The court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

Power to fill vacancy in office of liquidator.

189.—(1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Delegation of authority to appoint liquidators.

190.—(1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

Arrangement when binding on creditors.

191.—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Power of liquidator to accept shares, etc., as consideration for sale of property of company.

192.—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company), the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the tranferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

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(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

NOTE.—The notice must express dissent and also expressly give the liquidator the option mentioned (*In re Demarara Rubber Co.*, (1913) 1 Ch. 331; 82 L. J. Ch. 220). "Member" includes executors of a deceased member (*Llewellyn* v. *Kasintoe Rubber Estates, Ld.*, (1915) 2 Ch. 670; 84 L. J. Ch. 70).

(4) If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

8 & 9 Vict. c. 16. 8 & 9 Vict. c. 17.

(6) For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of those provisions this Act shall be deemed to be the special Act, and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator then of any two or more of the liquidators.

Power to apply to court.

193.—(1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks just.

NOTE.—The costs of unsuccessful litigation are payable to the party entitled out of the assets of company in priority to the costs of the liquidation (*In re Pacific Coast Syndicate, Ld.*, (1913) 2 Ch. 26; 82 L. J. 404).

Power of liquidator to call general meeting.

194.—(1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

Final meeting and dissolution.

195.—(1) In the case of every voluntary winding up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the *Gazette* specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall make a return to the registrar of companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(4) The registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an

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order of the court under this section is made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Costs of voluntary liquidation.

196. All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Saving for rights of creditors and contributories.

197. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, if the court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

Power of court to adopt proceedings of voluntary winding up.

198. Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding up subject to Supervision of Court.

Power to order winding up subject to supervision.

199. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just.

Effect of petition for winding up subject to supervision.

200. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

Court may have regard to wishes of creditors and contributories.

201. The court may, in deciding between a winding up by the court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Power for court to appoint or remove liquidators.

202.—(1) Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company. Section 202.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

203.—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily. Effect of supervision order.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, except sub-section (10), one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, one hundred and sixty-two, one hundred and seventy-three, and one hundred and seventy-five, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, the power in Scotland to remit the winding up to a permanent Lord Ordinary, and the exercise of all other powers, be deemed to be an order for winding-up by the court.

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Supplemental Provisions.

205.—(1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up, shall be void. Avoidance of transfers, etc. after commencement of winding up.

(2) In the case of a winding up by or subject to the supervision of the court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Section 206.

Debts of all descriptions to be proved.

206. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent English and Irish companies.

207. In the winding-up of an insolvent company registered in England or Ireland the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England or Ireland, as the case may be, with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

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Preferential payments.

209.—(1) In a winding up there shall be paid in priority to all other debts—

(*a*) All parochial or other local rates (*a*) due from the company at the date hereinafter mentioned, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;

NOTE (*a*).—See *Westminster Corporation and United Travellers' Club* v. *Chapman*, (1916) 85 L. J. Ch. 334.

See *National Provincial Bank of England* v. *United Electric Theatres, Ld.*, (1916) 1 Ch. 132.

(*b*) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; and

See *In re Havana Exploration Co., Ld., Nathan's claim*, (1916) 1 Ch. 8.

(*c*) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date: Provided that where any labourer in husbandry has entered into a con-

tract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the said date; and

(*d*) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before the said date, subject nevertheless to the provisions of section five of that Act. 6 Edw. VII. c. 58.

(2) The foregoing debts shall—

(*a*) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(*b*) In the case of a company registered in England or Ireland, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

See *Westminster Corporation and United Travellers' Club Co., Ld.* v. *Chapman*, (1916) 1 Ch. 161; 85 L. J. Ch. 334.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date herein-before in this section referred to is—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and

(*b*) in any other case, the date of the commencement of the winding up.

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Fraudulent preference.

210.—(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Avoidance of certain attachments, executions, etc. in case of company registered in England or Ireland.

211. Where any company (being a company registered in England or Ireland) is being wound up by or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Effect of on floating charge.

212. Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time (*a*) of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

See *Gregory, Love & Co., In re. Francis* v. *The Company,* (1916) 1 Ch. 203; 85 L. J. Ch. 281.

(*a*) Past advances are not "Cash paid to the company at the time." See *Hayman, Christy and Lilley, Ld., In re; Christy* v. *The Company,* (1917) 86 L. J. Ch. 255; 33 T. L. R. 167.

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General scheme of liquidation may be sanctioned.

214.—(1) The liquidator may, with the sanction following (that is to say)—

(*a*) in the case of a winding up by the court in England with the sanction either of the court or of the committee of inspection;

(*b*) in the case of a winding up by the court in Scotland or Ireland, and in the case of any winding up subject to supervision, with the sanction of the court; and

(*c*) in the case of a voluntary winding up, with the sanction of an extraordinary resolution of the company,

do the following things or any of them:—

(i.) Pay any classes of creditors in full;

(ii.) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable; Section 214.

(iii.) Compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) In the case of a winding up by the court in England the exercise by the liquidator of the powers of this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

215.—(1) Where in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just. Power of court to assess damages against delinquent directors, etc.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

(3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (*g*) of sub-section (1) of section four of the Bankruptcy Act, 1883. 46 & 47 Vict. c. 52.

(4) So much of this section as refers to promoters, and to pro-

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perty of a company other than money, shall not apply to a winding up in Scotland or Ireland.

Penalty for falsification of books.

216. If any director, officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanor, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Prosecution of delinquent directors, etc.

217.—(1) If it appears to the court in the course of a winding up by or subject to the supervision of the court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may on the application of any person interested in the winding up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Penalty on perjury.

218. If any person, on examination on oath authorised under this Act, or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.

Meetings to ascertain wishes of creditors or contributories.

219.—(1) Where by this Act the court is authorised, in relation to winding up, to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

220. Where any company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded. Books of company to be evidence.

221. After an order for a winding up by or subject to the supervision of the court, the court may make such order for inspection by creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise. Inspection of books.

222.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows (that is to say) :— Disposal of books and papers of company.

(*a*) In the case of a winding up by or subject to the supervision of the court in such way as the court directs ;

(*b*) In the case of a voluntary winding up in such way as the company by extraordinary resolution directs.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

223.—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved. Power of court to declare dissolution of company void.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the registrar of companies an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

224.—(1) Where a company is being wound up in England, if the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Information as to pending liquidations in England.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his

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agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3) If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

(4) If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(5) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exerciseable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

46 & 47 Vict. c. 52.

(6) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(7) Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

Judicial notice of signature of officers.

225. In all proceedings under this part of this Act, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court in England or Ireland, or of the Court of Session in Scotland, or of the registrar of the court exercising the stannaries jurisdiction, and also of the official seal or stamp of the several offices of the High Court in England or Ireland, Court of Session, or court exercising the stannaries jurisdiction, appended to or impressed on any document made, issued, or signed under the provisions of this part of this Act, or any official copy thereof.

Special commission for receiving evidence.

226.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and

the judge exercising the bankruptcy jurisdiction of the High Court in Ireland and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in any part of the United Kingdom, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court that made the winding-up order. Section 226.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of a county court, judge of the High Court, assistant barrister or recorder, or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

Court may order examination of persons in Scotland.

227.—(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs, or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory; and the order or commission to take the examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(2) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court; and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(3) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence

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or make production may be proceeded against by the law of Scotland.

(4) The sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(5) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

Affidavits, etc. in United Kingdom and colonies.

228.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this part of this Act may be sworn in Great Britain or Ireland, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this part of this Act.

Companies Liquidation Account defined.

229.—(1) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connection with the winding up of companies in England shall be paid to that account.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

Investment of surplus funds on general account.

230.—(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies in England.

Separate accounts of particular estates.

231.—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum.

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Returns by officers in English winding up.

235.—The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns o the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

Proceedings of Board of Trade.

236.—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act

Section 236. and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

Rules and Fees.

237.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England.

(2) All general rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and, if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the chancery court of the county palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge," and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

(5) The authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules made and directions given by the like authority under the Companies (Winding Up) Act, 1890, which are in force at the commencement of this Act.

53 & 54 Vict. c. 63.

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Powers to make rules of procedure.

238.—(1) Subject to the provisions of this Act with respect to rules and fees in relation to the winding up of companies in England, rules of procedure for the purposes of this Act, including rules as to costs and fees, may be made—

(*a*) As regards the High Court in England, by the authority having power to make rules for the Supreme Court in England:

(*b*) As regards the Court of Session, by act of sederunt:

(*c*) As regards the High Court in Ireland, by the authority having power to make rules for the Supreme Court in Ireland:

(*d*) As regards the court exercising the stannaries jurisdiction, by the authority having power to make rules for county courts in England.

(2) The authority having power to make rules under this section may by any such rules repeal, alter, or amend any rules made by the like authority under the Companies Act, 1862, or any Act amending the same, which are in force at the commencement of this Act.

25 & 26 Vict. c. 89.

Special Provisions as to Stannaries.

Attachment of debt due to contributory on winding up in stannaries court.

239. When several companies are in course of liquidation by or under the superintendence of the court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applied to such payment in due course:

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

Preferential payments stannaries cases.

240. In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments the following modifications shall be made:—

(1) In the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this

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Act shall be given to the extent of three months only, instead of four months, and shall not extend to the principal agent, manager, purser, or secretary:

(2) All wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months' wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts:

(3) Wages of any miner, artizan, or labourer unpaid at the commencement of the winding up, and, subject to the provisions of section five of the Workmen's Compensation Act, 1906, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under that Act payable to a miner or the dependants of a miner the liability wherefor accrued before the commencement of the winding up, shall, to the extent aforesaid, be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding up by the court) such costs of and incidental to the making of the winding-up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary, and, subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the said wages and amounts due in respect of compensation, with interest at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof; and as soon as the said sum has been so advanced, the said wages and amounts due in respect of compensation shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

6 Edw. VII. c. 58.

Provisions as to mine club funds.

241.—(1) On the winding up of a company within the stannaries, contributions of the miners, artizans, or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as, part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the pursuer or any other person

in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club. Section 241.

(2) Where the company is being wound up voluntarily, the liquidator or any person claiming to be entitled to any such contributions or fund may apply to the court for directions, or to determine any question arising in the matter in the same manner as if the company were being wound up by the court.

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Registrar may strike defunct company off register.

242.—(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on the application of the company or member or creditor may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

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PART VI.

Application of Act to Companies Formed and Registered under former Companies Acts.

Application of Act to companies formed under former Companies Acts.

245. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and in the case of a company

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other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, as the case may be.

Application of Act to companies registered under former Companies Acts.

246. This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, or the Companies Act, 1862, in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or the Companies Act, 1862, as the case may be.

Application of Act to companies re-registered under Companies Act, 1879.

247. This Act shall apply to every unlimited company registered in pursuance of the Companies Act, 1879, as a limited company, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the Companies Act, 1879.

42 & 43 Vict. c. 76.

Mode of transferring shares.

248. A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

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PART VII.

Companies Authorised to Register under this Act.

Definition of joint stock company.

250. For the purposes of this part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

* * * * *

260. All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein. Section 260. Vesting of property on registration.

261. Registration of a company in pursuance of this part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration. Saving for existing liabilities.

262. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company. Continuation of existing actions.

263. When a company is registered in pursuance of this part of this Act— Effect of registration under Act.

(i.) All provisions contained in any Act of Parliament, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles:

(ii.) All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—

(*a*) The regulations in Table A in the first schedule to this Act shall not apply unless adopted by special resolution;

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(*b*) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered ;

(*c*) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company ;

(*d*) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company ;

(*e*) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company ;

(*f*) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability ; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid ; and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply :

(iii.) The provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited ;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

(*c*) the power of a limited company to determine

that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company:

(iv.) Nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act:

(v.) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company, be vested in the company.

Power to substitute memorandum and articles for deed of settlement.

264.—(1) Subject to the provisions of this section, a company registered in pursuance of this part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:—

(*a*) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles; and

(*b*) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement"

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includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

Power of court to stay or restrain proceedings.

265. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Action stayed on winding-up order.

266. Where an order has been made for winding up a company registered in pursuance of this part of this Act no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

PART VIII.

Winding Up of Unregistered Companies.

Meaning of unregistered company.

13 & 14 Vict. c. 83.
32 & 33 Vict. c. 114.

267. For the purposes of this part of this Act the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament (except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them), nor a company registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, or under this Act, but, save as aforesaid, shall include any partnership, association, or company consisting of more than seven members, and any trustee savings bank certified under the Trustees Savings Banks Act, 1863, and any limited partnership.

26 & 27 Vict. c. 87.

Court has jurisdiction to wind up a friendly society which has not been registered under the Friendly Societies Acts or at all (*In re Victoria Society, Knottingley*, (1913) 1 Ch. 167; 82 L. J. Ch. 176).

Winding up of unregistered companies.

268.—(1) Subject to the provisions of this part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

(i.) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of

business is situate; or if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; and the principal place of business situate in that part of the United Kingdom in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company:

(ii.) No unregistered company shall be wound up under this Act voluntarily or subject to supervision:

(iii.) The circumstances in which an unregistered company may be wound up are as follows (that is to say):—

(*a*) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(*b*) If the company is unable to pay its debts;

(*c*) If the court is of opinion that it is just and equitable that the company should be wound up:

(iv.) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts:—

(*a*) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(*b*) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid,

Section 268.

secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;

(*c*) If in England or Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(*d*) If in Scotland the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(*e*) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts:

(v.) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court in England or Ireland, or the Court of Session in Scotland, according as the railway was authorised to be made in England, Ireland, or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867:

Provided that, subject to general rules and to orders of transfer made, as respects England, under the authority of the Supreme Court of Judicature Act, 1873, and, as respects Ireland, under the authority of the Supreme Court of Judicature (Ireland) Act, 1877, the jurisdiction of the High Court in England or Ireland under this provision shall be exercised by the Chancery Division of that court:

36 & 37 Vict. c. 66.

40 & 41 Vict. c. 57.

(vi.) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company:

50 & 51 Vict. c. 47.

(vii.) [*Repealed as to England, 3 & 4 Geo. V., c. 34, s. 24 (2).*]

(2) Nothing in this part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act. Section 268.

See note to sect. 267.

269.—(1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid : Contributories in winding up of unregistered company.

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

(2) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

270. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company. Power of court to stay or restrain proceedings.

271. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose. Actions stayed on winding-up order.

272. If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the winding-up order, or by any subsequent Directions as to property in certain cases.

Section 272.

order, direct that all or any part of the property, real and personal (including things in action), belonging to the company, or to trustees on its behalf, is to vest in the liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Provisions of part of act cumulative.

273. The provisions of this part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions herein-before in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this part of this Act.

* * * * *

PART X.

SUPPLEMENTAL.

Legal Proceedings, Offences, etc.

Prosecution of offences.

276.—(1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts.

Applications of fines.

277. The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

Costs in actions by certain limited companies.

278. Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there

is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given. Section 278.

This power may be exercised by a county court judge in the case of a remitted action (*Plasycoed Collieries Co.* v. *Partridge*, (1911) 104 L. T. 807).

Power of court to grant relief in certain cases.

279. If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think proper.

Jurisdiction of stannaries court.

59 & 60 Vict. c. 45.

280.—(1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the court of the vice-warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act.

(2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands, on such terms and conditions as the court may think fit:

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.

(3) All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the court of the vice-warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

* * * * *

Section 285.

Interpretation, etc.

Interpretation.

285. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say) :—

"Existing company" means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862;

"Company" means a company formed and registered under this Act or an existing company;

"Articles" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the schedule annexed to the Joint Stock Companies Act, 1856, or in Table A in the first schedule annexed to the Companies Act, 1862, or in that table as altered in pursuance of section seventy-one of that Act, or in Table A in the first schedule to this Act;

19 & 20 Vict. c. 47.

"Memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of the provisions of this Act;

"Document" includes summons, notice, order, and other legal process, and registers;

"Share" means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied;

"Debenture" includes debenture stock;

"Books and papers" and "books or papers" include accounts, deeds, writings, and documents;

"The registrar of companies," or, when used in relation to registration of companies, "the registrar," means the registrar or other officer performing under this Act the duty of registration of companies in England, Scotland, or Ireland, or in the stannaries, as the case requires;

"The court" used in relation to a company means the court having jurisdiction to wind up the company;

"Joint Stock Companies Acts" means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intituled An

Act for the Registration, Incorporation, and Regulation of Joint Stock Companies; Section 285.

"The *Gazette*" means, as respects companies registered in England, the *London Gazette*; as respects companies registered in Scotland, the *Edinburgh Gazette*; and, as respects companies registered in Ireland, the *Dublin Gazette*;

"Real and personal," as respects Scotland, means heritable and moveable;

"General rules" means general rules made under this Act, and includes forms;

"Prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by the Board of Trade;

"Company within the stannaries" means a company engaged in or formed for working mines within the stannaries:

"The court exercising the stannaries jurisdiction" used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested;

"Director" includes any person occupying the position of director by whatever name called;

"Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

Repeal of Acts and Transitional Provisions.

286.—(1) The Acts mentioned in the first part of the sixth schedule to this Act are hereby repealed to the extent specified in the third column of that part: Repeal of Acts and savings.

Provided that the repeal shall not affect—

(*a*) The incorporation of any company registered under any enactment hereby repealed; nor

(*b*) Table B in the schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor

(*c*) Table A in the first schedule annexed to the Companies Act, 1862, or any part thereof (either as originally contained in that schedule or as altered in pursuance of section seventy-one of that Act) so far as the same applies to any company existing at the commencement of this Act; nor

Section 286.

(*d*) The continuance in force of the enactments set out in the second part of the sixth schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862.

(2) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals.

52 & 53 Vict. c. 63.

Saving of pending proceedings for winding up.

287. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding up, the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

Saving of deeds.

288. Every conveyance, mortgage, or other deed, made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force.

Former registration offices, registers, official receivers, etc. continued.

289.—(1) The offices existing at the commencement of this Act in England, Scotland, and Ireland for registration of joint stock companies shall be continued as if they had been established under this Act.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(3) The existing registrars, assistant registrars, officers, clerks, and servants in those offices shall during the pleasure of the Board of Trade hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Board of Trade with regard to the execution of their duties.

(4) The existing official receivers and officers of the Board of Trade appointed for the execution of the Companies (Winding Up) Act, 1890, shall during the pleasure of the Board of Trade hold the offices and receive the salaries or remuneration hitherto held and received by them.

(5) Persons, other than officers of the Board of Trade, performing any duties under the Companies (Winding Up) Act, 1890, and receiving therefor any salary or remuneration by the direction of the Lord Chancellor, shall during his pleasure receive the salaries or remuneration hitherto received by them.

(6) The Companies Liquidation Account under this Act shall be deemed to be in continuation of the Companies Liquidation Account under the Companies (Winding Up) Act, 1890. Section 289.

290. Until revoked and except as varied under the powers of this Act, the general rules and orders, and scale of fees, under the Companies (Winding Up) Act, 1890, in force at the commencement of this Act, and the rules of court in force at the commencement of this Act in England, Scotland, and Ireland respectively with respect to the procedure for reduction of capital, and to winding up companies, and the practice and procedure for winding up companies in England, Scotland, and Ireland respectively in force at the commencement of this Act, shall, so far as they are not inconsistent with this Act, continue in force. Saving for existing rules of procedure, etc.

291. Where any enactment repealed by this Act is mentioned or referred to in any document, that document shall be read as if the corresponding provision (if any) of this Act were therein mentioned or referred to and substituted for the repealed enactment. Substitution of provisions of this act for provisions of repealed acts.

292. Nothing in this Act shall affect the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865. Saving for 28 & 29 Vict. c. 78, s. 3.

293. Nothing in this Act shall affect the provisions of the Life Assurance Companies Acts, 1870 to 1872, except that references in those Acts to any provision of the Companies Act, 1862, shall be read as references to the corresponding provision of this Act. Saving for Life Assurance Companies Acts. 33 & 34 Vict. c. 61. 34 & 35 Vict. c. 58. 35 & 36 Vict. c. 41.

294. Nothing in this Act shall affect the provisions of section five of the Trade Union Act, 1871, except that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to this Act. Saving for 34 & 35 Vict. c. 31, s. 5.

295. This Act may be cited as the Companies (Consolidation) Act, 1908. Short title.

296. This Act shall come into operation on the first day of April nineteen hundred and nine. Commencement of act.

SIXTH SCHEDULE.

PART I.

Section 286.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title of Act.	Extent of Repeal.
25 & 26 Vict. c. 89 .	The Companies Act, 1862	The whole act.
27 Vict. c. 19 .	The Companies Seals Act, 1864.	The whole act.
30 & 31 Vict. c. 131	The Companies Act, 1867	The whole act.
32 & 33 Vict. c. 19 .	The Stannaries Act, 1869	Sections twenty-five, twenty-six, and thirty-four.
33 & 34 Vict. c. 104	The Joint Stock Companies Arrangement Act, 1870.	The whole act.
37 & 38 Vict. c. 94 .	Conveyancing (Scotland) Act, 1874.	Section fifty-six.
38 & 39 Vict. c. 77 .	The Supreme Court of Judicature Act, 1875.	Section ten, so far as relates to the winding up of companies.
40 & 41 Vict. c. 26 .	The Companies Act, 1877	The whole act.
40 & 41 Vict. c. 57 .	The Supreme Court of Judicature (Ireland) Act, 1877.	Sub-section (1) of section twenty-eight, so far as relates to the winding up of companies.
42 & 43 Vict. c. 76 .	The Companies Act, 1879	The whole act.
43 Vict. c. 19 .	The Companies Act, 1880	The whole act.
46 & 47 Vict. c. 30 .	The Companies (Colonial Registers) Act, 1883.	The whole act.
49 Vict. c. 23 .	The Companies Act, 1886	The whole act.
50 & 51 Vict. c. 43 .	The Stannaries Act, 1887	Sections nine and ten; section thirteen from "Upon the winding up" to the end of the section (being paragraph (2)); and section thirty-one.
50 & 51 Vict. c. 47 .	The Trustee Savings Banks Act, 1887.	Section three.
51 & 52 Vict. c. 62 .	The Preferential Payments in Bankruptcy Act, 1888.	Sections one, two, and three, so far as they relate to companies.

SCHEDULE—*continued.*

Session and Chapter.	Short Title of Act.	Extent of Repeal.
52 & 53 Vict. c. 42 .	The Revenue Act, 1889	Section eighteen.
52 & 53 Vict. c. 60 .	The Preferential Payments in Bankruptcy (Ireland) Act, 1889.	Section four, so far as relates to companies.
53 & 54 Vict. c. 62 .	The Companies (Memorandum of Association) Act, 1890.	The whole act.
53 & 54 Vict. c. 63 .	The Companies (Winding up) Act, 1890.	The whole act.
53 & 54 Vict. c. 64 .	The Directors' Liability Act, 1890.	The whole act.
56 & 57 Vict. c. 58 .	The Companies (Winding up) Act, 1893.	The whole act.
60 & 61 Vict. c. 19 .	The Preferential Payments in Bankruptcy Amendment Act, 1897.	The whole act.
61 & 62 Vict. c. 26 .	The Companies Act, 1898	The whole act.
63 & 64 Vict. c. 48 .	The Companies Act, 1900	The whole act.
7 Edw. 7, c. 24 .	The Limited Partnerships Act, 1907.	Sub-section (4) of section six.
7 Edw. 7, c. 50 .	The Companies Act, 1907	The whole act.
8 Edw. 7, c. 12 .	The Companies Act, 1908	The whole act.

COUNTY COURT RULES, ORDER XLIA.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

1.—(1) The practice and rules of procedure for the time being in force in the High Court of Justice in relation to proceedings in the High Court under the Companies (Consolidation) Act, 1908, other than proceedings relating to the winding up of companies by the court shall, with the necessary modifications, apply to similar proceedings in the county courts having jurisdiction under the said Act; and the judges and registrars of such courts respectively shall in relation to any such proceedings have and exercise all the powers of a judge of the High Court having jurisdiction in such

Proceedings under the Companies (Consolidation) Act, 1908, 8 Edw. VII. c. 69 (other than winding up proceedings).

proceedings, and of a registrar, master, or other officer of the High Court exercising the powers of any such judge.

(2) Except and so far as by this rule provided, the County Court Rules for the time being in force, and the general practice of the county court in actions and matters under the equitable jurisdiction of the court, shall apply, as far as may be practicable, as regards all such proceedings as in this rule mentioned.

Costs. (3) The costs of any such proceedings as in this rule mentioned may be taxed and allowed according to the scale of costs applicable to similar proceedings in the High Court.

Fees. (4) The court fees payable in respect of any such proceedings as in this rule mentioned shall, subject to the approval of the Treasury, be the same as those payable in respect of similar proceedings in actions or matters under the equitable jurisdiction of the county court.

Application of rule to court exercising stannaries jurisdiction. (5) This rule, and Rule 7 of Order LI., shall apply to such proceedings as in this rule mentioned in the court exercising the stannaries jurisdiction.

COMPANIES (WINDING-UP) ACT, 1890.

ORDER OF THE LORD CHANCELLOR UNDER SECTION ONE, SUB-SECTION (5) OF THE COMPANIES (WINDING-UP) ACT, 1890.

I, the Right Honourable Hardinge Stanley, Baron Halsbury Lord High Chancellor of Great Britain, do hereby, by virtue of th power vested in me by section one of the Companies (Winding-up Act, 1890, and all other powers enabling me in that behalf, orde that a county court which at the time of the coming into operatio of the Companies (Winding-up) Act, 1890, is excluded from havin jurisdiction in bankruptcy shall be excluded from having juris diction under the Companies (Winding-up) Act, 1890, until furthe order, and the district of any such county court shall for the pur poses of jurisdiction under the Companies (Winding-up) Act, 189 be attached until further order to the court to which that distric is attached at the time of the coming into operation of this Act fo the purposes of jurisdiction in bankruptcy.

The 29th day of November, 1890.

(Signed) HALSBURY, C.

COMPANIES (WINDING-UP) RULES.

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THE COMPANIES (WINDING-UP) RULES, 1909, DATED MARCH 29, 1909, MADE PURSUANT TO THE COMPANIES (CONSOLIDATION) ACT, 1908 (8 EDW. VII. C. 69), AND THE JUDICATURE ACT, 1881 (44 & 45 VICT. C. 68).

PRELIMINARY.

Rule 1.

Application of Rules.

1. Subject to the limitation hereinafter mentioned these rules shall apply to the proceedings in every winding-up under the Act of a company, which shall commence on and after the date on which these rules come into operation, and they shall also, so far as practicable, and subject to any general or special order of the court, apply to all proceedings which shall be taken or instituted after the said date, in the winding-up of a company which commenced on or after the first day of January, 1891. Rules which from their nature and subject-matter are, or which by the head lines above the group in which they are contained or by their terms are made applicable only to the proceedings in a winding-up by the court, shall not apply to the proceedings in a voluntary winding-up, or winding-up under the supervision of the court.

Interpretation of terms.

2. In these rules, unless the context or subject-matter otherwise requires :—

"The Act" means the Companies (Consolidation) Act, 1908.

"The Company" means a company which is being wound up, or against which proceedings to have it wound up have been commenced.

"Court" means the court which has jurisdiction to wind up the company.

"Creditor" includes a corporation, and a firm of creditors in partnership.

"Gazetted" means published in the *London Gazette*.

"Judge" means in the High Court the judge who for the time being exercises the jurisdiction of the High Court to wind up companies, and in any other court the judge thereof, or officer who exercises the powers of the judge thereof.

"Liquidator" includes an official receiver when acting as liquidator.

"Official Receiver" includes any officer appointed by the Board of Trade to discharge the duties of official receiver under the Act.

"Palatine Court" means one of the Chancery Courts of the counties Palatine of Lancaster and Durham.

"Proceedings" means the proceedings in the winding-up of a company under the Act.

Rule 2.

"Registrar" . . . . in a county court, where there are joint registrars, means either of such registrars, or a deputy registrar, and in any court other than the High Court, means the officer of the court whose duty it is to exercise in relation to a winding-up the functions which in the High Court are exercised by a registrar or master.

"The Rules" means these rules, and includes the prescribed forms.

"Sealed" means sealed with the seal of the court.

"Taxing Officer" means the officer of the court whose duty it is to tax costs in the proceedings of the court under its ordinary jurisdiction.

Words importing the masculine gender shall include females.

Words in the singular shall include the plural and words in the plural shall include the singular.

The expression "person" shall include any body of persons corporate or unincorporate.

Expressions referring to writing shall include printing, lithography, photography, and other methods of representing or reproducing words in a visible form.

Use of forms in Appendix.

3.—(1) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the court shall otherwise direct.

(2) Provided that the Board of Trade may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof. Where the Board of Trade alters any form, or substitutes any new form in lieu of a form prescribed by these rules, such altered or substituted form shall be published in the *London Gazette*.

Court and Chambers.

[Rules 4 and 5 apply solely to the High Court.]

Proceedings in courts other than High Court.

6.—(1) In courts other than the High Court the following matters and applications to the court shall be heard in open court:—

(*a*) Petitions.

(*b*) Public Examinations.

(*c*) Applications under sub-section (1) of section 217 of the Act.

(*d*) Applications to rectify the register.

(*e*) Appeals from the official receiver and Board of Trade.

(*f*) Appeals from any decision or act of the liquidator.

(*g*) Applications relating to the admission or rejection of proofs.
(*h*) Proceedings under section 215 of the Act.
(*i*) Applications under section 223 of the Act.
(*j*) Applications for the committal of any person to prison for contempt.
(*k*) Such matters and applications as the judge may from time to time by any general or special orders direct to be heard before him in open court.
(2) Any other matter or application may be heard and determined in chambers.

Applications in chambers.

7. Subject to the provisions of the Acts and rules in every court :—
(1) The registrar may under the general or special directions of the judge hear and determine any application or matter which under the Acts and rules may be heard and determined in chambers.
(2) Any matter or application before the registrar may at any time be adjourned by him to be heard before the judge either in chambers or in court.
(3) Any matter or application may, if the judge or as the case may be, the registrar, thinks fit be adjourned from chambers to court, or from court to chambers.

Motions and summonses. Form 3.

8.—(1) Every application in court other than a petition, shall be made by motion, notice of which shall be served on every person against whom an order is sought, not less than two clear days before the day named in the notice for hearing the motion, which day must be one of the days appointed for the sittings of the court.
(2) Every application in chambers shall be made by summons, which, unless otherwise ordered shall be served on every person against whom an order is sought, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons.

Place of sitting of county court.

9. Subject to the orders of the Lord Chancellor the place of sitting of each county court having jurisdiction under the Act shall for the purposes of such jurisdiction, be the town and place in which the court holds its sittings for the general business of the court, under the County Courts Acts.

Times for holding courts other than the High Court.

10. Subject to the provisions of the Act, the times of the sitting of each court, other than the High Court in matters of the winding-up of companies, shall be those which are appointed for the transaction of the general business of the court, unless the judge of any such court shall otherwise order.

PROCEEDINGS.

Rule 11.

Title of proceedings.

11.—(1) Every proceeding in a winding-up matter shall be dated, and shall with any necessary additions, be intituled as follows :—

Forms 1 and 2.

IN THE COURT

COMPANIES (WINDING-UP)

In the Matter of the Companies (Consolidation) Act, 1908.

with the name of the matter to which it relates. Numbers and dates may be denoted by figures.

(2) The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the office of the registrar, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

Written or printed proceedings.

12. All proceedings shall be written or printed, or partly written or partly printed on paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts, and must have a stitching margin ; but no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size.

Process to be sealed.

13. All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the court) and office copies in any winding-up matter shall be sealed.

Issue of summonses.

14. Every summons in a winding-up matter in the High Court shall be prepared by the applicant or his solicitor, and issued from the office of the registrar. A summons, when sealed, shall be deemed to be issued. The person obtaining the summons shall leave in the registrar's office a duplicate which shall be stamped with the prescribed stamp and filed.

Orders.

15. Every order, whether made in court or in chambers in the winding-up of a company shall be drawn up by the registrar, unless in any proceeding, or classes of proceedings, the judge or registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the judge or the registrar making the order, shall be sufficient evidence of the order having been made.

See *In re Saul Moss & Son, Ltd.*, (1906) W. N. 142.

[Rule 16 applies solely to High Court.]

File of proceedings in

17. In courts other than the High Court a file of proceedings in

every winding-up matter shall be kept on which, subject to the directions of the court, all petitions, affidavits, summonses, orders, proofs, notices, depositions, and other proceedings in the matter shall be placed and remain of record as far as possible in continuous order. Rule 17. courts other than High Court.

18. In every court all office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the official receiver or any liquidator, contributory, creditor, officer of a company, or other person entitled thereto, shall be provided by the registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay, and in the order in which they shall have been bespoken. Office copies.

19. Every person who has been a director or officer of a company which is being wound up, and every duly authorised officer of the Board of Trade, shall be entitled, free of charge, and every contributory and every creditor whose claim or proof has been admitted, shall be entitled on payment of a fee of one shilling for each hour or part of an hour occupied, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any document therein, or to be furnished with such copies or extracts at a rate not exceeding fourpence per folio of seventy-two words. Inspection of file.

20. Where, in the exercise of their functions under the Act or rules, the Board of Trade or the official receiver requires to inspect or use the file of proceedings the registrar shall (unless the file is at the time required for use in court or by him) on request, transmit the file of proceedings to the Board of Trade or official receiver, as the case may be. Use of file by Board of Trade and official receiver.

21. Every officer of a court who shall receive any document to which an adhesive stamp shall be affixed, shall immediately upon receipt of the document deface the stamp thereon, in the High Court in such manner as the Commissioners of Inland Revenue may from time to time direct, and in any other court by writing partly on the stamp and partly on the document the name of the matter, or in such other manner as the Commissioners of Inland Revenue may from time to time direct, and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid ; and it shall be the duty of the party presenting or receiving such document to see that the defacement hereby prescribed has been duly made. Defacement of stamps.

Service and Execution of Process and Enforcement of Orders.

Rule 22.

Duties of bailiff in county court.

22.—(1) It shall be the duty of the high bailiff of a county court to serve such orders, summonses, petitions and notices as the court may require him to serve; to execute warrants and other process; to attend any sittings of the court (but not sittings in chambers); and to do and perform all such things as may be required of him by the court.

(2) But this rule shall not be construed to require any order, summons, petition, or notice to be served by a bailiff or officer of the court which is not specially by the Act or rules required to be so served, unless the court in any particular proceeding by order specially so directs.

Service.

23.—(1) All notices, summonses, and other documents other than those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith; and the notice, summons, or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post office, and notwithstanding the same may be returned by the post office.

(2) No service shall be deemed invalid by reason that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the person's name, provided that the court is satisfied that in other respects the service of the document has been sufficient.

Enforcement of orders.

24.—(1) Every order of a court having jurisdiction to wind up a company, made in the exercise of the powers conferred by the Acts and rules, may be enforced by such court as if it were a judgment or order of the court made in the exercise of its ordinary jurisdiction.

(2) Every such order of a county court, and every process issued therein may be enforced, executed and dealt with not only by such court, but by any county court, whether such county court has or has not jurisdiction to wind up a company, as if such order or process were made or issued for the enforcement of a judgment or order made by such last mentioned court in the exercise of its ordinary jurisdiction.

Petition.

Form of petition.

Forms 4 and 5.

25. Every petition for the winding-up of a company by the court, or subject to the supervision of the court, shall be in the Forms Nos. 4 and 5 in the Appendix with such variations as circumstances may require.

Rule 26.

26. A petition shall be presented at the office or chambers of the registrar, who shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof, and the registrar may at any time before the petition has been advertised, alter the time appointed, and fix another time. Presentation of petition.

27. Every petition shall be advertised seven clear days before the hearing as follows:— Advertisement of petition. Form 6.

(1) In the case of a company whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles of the principal entrance of the Royal Courts of Justice once in the *London Gazette*, and once at least in one London daily morning newspaper, or in such other newspaper as the court directs.

(2) In the case of any other company, once in the *London Gazette*, and once at least in one local newspaper circulating in the district where the registered office, or principal or last known place of business, as the case may be, of such company is or was situate, or in such other newspaper as shall be directed by the court.

(3) The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any), and shall contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his solicitors or London agent, within the time and manner prescribed by Rule 33, and an advertisement of a petition for the winding-up of a company by the court which does not contain such a note shall be deemed irregular.

And if the petitioner or his solicitor does not within the time hereby prescribed or within such extended time as the registrar may allow duly advertise the petition in the manner prescribed by the said rule the appointment of the time and place at which the petition is to be heard shall be cancelled by the registrar and the petition shall be removed from the file in the Companies (Winding-up) Office unless the judge or registrar shall otherwise direct.

28. Every petition shall, unless presented by the company, be served upon the company at the registered office, if any, of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any Service of petition. Forms 7 and 8.

Rule 28.

such can be found, by leaving a copy with any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member or members of the company as the court may direct; and where the company is being wound up voluntarily, the petition shall also be served upon the liquidator (if any), appointed for the purpose of winding-up the affairs of the company.

Verification of petition. Form 9.

29. Every petition for the winding-up of a company by the court, or subject to the supervision of the court, shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a corporation, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *primâ facie* evidence of the statements in the petition.

Copy of petition to be furnished to creditor or contributory.

30. Every contributory or creditor of the company shall be entitled to be furnished, by the solicitor of the petitioner, with a copy of the petition, within 24 hours after requiring same, on paying the rate of 4*d.* per folio of 72 words for such copy.

Official Receiver as Provisional Liquidator.

Appointment of provisional liquidator.

31.—(1) After the presentation of a petition, upon the application of a creditor, or of a contributory, or of the company, and upon proof by affidavit of sufficient grounds for the appointment of the official receiver as provisional liquidator, the court, if it thinks fit, and upon such terms as in the opinion of the court shall be just and necessary may make the appointment.

Form 10.

(2) The order appointing the official receiver to be provisional liquidator, shall bear the number of the petition, and shall state the nature and a short description of the property of which the official receiver is ordered to take possession, and the duties to be performed by the official receiver.

(3) Subject to any order of the court, if no order for the winding-up of the company is made upon the petition, or if an order for the winding-up of the company on the petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made continuing the voluntary winding-up of the company subject to the supervision of the court, the official receiver as provisional liquidator shall be entitled to be paid, out of the property of the company, all the costs, charges, and expenses properly incurred by him as provisional liquidator, including the fees payable to the

Board of Trade under the scale of fees in force for the time being, and may retain out of such property the amount of such costs, charges, expenses, and fees. Rule 31.

HEARING OF PETITIONS AND ORDERS MADE THEREON.

32. After a petition has been presented, the petitioner, or his solicitor, shall, on a day to be appointed by the registrar, attend before the registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein, and the affidavit of service (if any) have been duly filed, and that the provisions of the rules as to petitions for winding-up companies have been duly complied with by the petitioner. No order for the winding-up of a company shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the registrar at the time appointed, and satisfied him in manner required by this rule. Attendance before hearing to show compliance with rules.

33. Every person who intends to appear on the hearing of a petition shall serve on, or send by post to, the petitioner, or his solicitor or London agent at the address stated in the advertisement of the petition, notice of his intention. The notice shall contain the address of such person, and shall be signed by him or by his solicitor or London agent, and shall be served, or if sent by post shall be posted in such time as in ordinary course of post to reach the address not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. The notice may be in Form 11 with such variations as circumstances may require. A person who has failed to comply with this rule shall not, without the special leave of the court, be allowed to appear on the hearing of the petition. Notice by persons who intend to appear. Form 11.

34. The petitioner, or his solicitor or London agent, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in Form 12. On the day appointed for hearing the petition a fair copy of the list (or if no notice of intention to appear has been given a statement in writing to that effect) shall be handed by the petitioner, or his solicitor or London agent, to the court prior to the hearing of the petition. List of names and addresses of persons who appear on the petition. Form 12.

35.—(1) Affidavits in opposition to a petition that a company may be wound up under the order or subject to the supervision of the court shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of Affidavits in opposition and reply.

Rule 35.

every affidavit in opposition to such a petition shall be given to the petitioner or the solicitor or London agent of the petitioner, on the day on which the affidavit is filed.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within three days of the date on which notice of such affidavit is received by the petitioner or the solicitor or London agent of the petitioner.

Substitution of creditor or contributory for withdrawing petitioner.

36. When a petitioner consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, or fails to appear in support of his petition when it is called on in court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned, or, if appearing, does not apply for an order in the terms of the prayer of his petition, the court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who, in the opinion of the court would have a right to present a petition, and who is desirous of prosecuting the petition.

Order to Wind up a Company.

Notice that winding-up order has been pronounced to be given to official receiver.

37. When an order for the winding-up of a company, or for the appointment of the official receiver as provisional liquidator prior to the making of an order for the winding-up of the company, has been pronounced in court, the registrar shall, on the same day, send to the official receiver a notice informing him that the order has been pronounced.

Forms 13 and 14.

The notice may be in Forms 13 and 14 respectively, with such variations as circumstances may require.

Documents for drawing up order to be left with registrar.

38. It shall be the duty of the petitioner, or his solicitor or London agent, and of all other persons who have appeared on the hearing of the petition, at latest on the day following the day on which an order for the winding-up of a company is pronounced in court, to leave at the registrar's office all the documents required for the purpose of enabling the registrar to complete the order forthwith.

No appointment for settling order.

39. It shall not be necessary for the registrar to make an appointment to settle the order, unless in any particular case the special circumstances make an appointment necessary.

Contents of winding-up order.

Form 15.

40. An order to wind up a company shall contain at the foot thereof a notice stating that it will be the duty of the person who is at the time secretary or chief officer of the company, and of such of the persons who are liable to make out or concur in making out

the company's statement of affairs as the official receiver may require, to attend on the official receiver forthwith on the service of the order at the place mentioned therein. Rule 40.

41.—(1) When an order that a company be wound up, or for the appointment of the official receiver as provisional liquidator has been made: Transmission and advertisement of winding-up order.

(*a*) Three copies of the order sealed with the seal of the court shall forthwith be sent by post or otherwise by the registrar to the official receiver.

(*b*) The official receiver shall cause a sealed copy of the order to be served upon the secretary or other chief officer of the company at the registered office of the company (if any), or upon such other person or persons, or in such other manner as the court may direct, and if the order is that the company be wound up by the court, shall forward to the registrar of companies the copy of the order which by section 143 of the Act is directed to be so forwarded by the company.

(*c*) The official receiver shall forthwith give notice of the order to the Board of Trade, who shall forthwith cause the notice to be gazetted. Form 17.

(*d*) The official receiver shall forthwith send notice of the order to such local paper as the Board of Trade may from time to time direct, or, in default of such direction, as he may select. Form 16.

(2) An order for the winding-up of a company, subject to the supervision of the court, shall before the expiration of twelve days from the date thereof be advertised by the petitioner, once in the *London Gazette*, and shall be served on such persons (if any) and in such manner as the court shall direct.

Transfers of Actions and Proceedings.

42.—(1) Where an order has been made in the High Court for the winding-up of a company the judge shall have power, without further consent, to order the transfer to him of any action, cause or matter pending in any other court or division brought or continued by or against the company, and any action or proceeding by a mortgagee or debenture holder of the company against the company, for the purpose of realising his security, or by any other person for the purpose of enforcing a claim against the company's assets or property, which is pending in the High Court or before any judge thereof shall without further order be transferred to the judge of the High Court. In the case of applications in chambers in actions so transferred where the practice in winding-up is Transfer of actions.

Rule 42.

different from the practice in the Chancery Division the practice in winding-up shall prevail.

(2) Where any action brought by or against a company against which a winding-up order has been made is transferred to the judge of the High Court, the registrar may, under the general or special directions of the judge, hear, determine and deal with any application, matter, or proceeding which, if the action had not been transferred, would have been determined in chambers. These provisions shall apply to the proceedings in any action in which by the rules of the Supreme Court or otherwise the chamber proceedings are directed to be dealt with by the registrar.

Transfer of proceedings by judge of High Court.

Form 18.

43. The judge of the High Court may at any time, for good cause shown, order the proceedings in any court other than the High Court to be transferred to the High Court, or any proceedings in the High Court to be transferred from the High Court to any other court.

Transfer of proceedings by judge of court other than High Court or Palatine Court.

Form 18.

44. The judge of any court, other than the High Court or a Palatine Court, may at any time, for good cause shown, order any proceedings which have been commenced or are pending in his court to be transferred to any court which has jurisdiction to order the winding up of a company, not being the High Court or a Palatine Court.

Notice of application to official receiver.

45. In a winding-up by the court, notice of an application for a transfer of proceedings shall before the hearing thereof, be served by the applicant on the official receiver of the court in which the proceedings are pending and on the official receiver of the court to which the proceedings are sought to be transferred.

Procedure where proceedings transferred.

Form 19.

46. When an order for the transfer of proceedings has been made :—

(1) The person on whose application the transfer has been made shall lodge with the registrar of the court to which the proceedings are transferred a sealed copy of the order of transfer.

(2) In a winding-up by the court the official receiver of the court to which the proceedings are transferred shall become the official receiver in the proceedings.

(3) The records of the proceedings shall be transmitted to the registrar of the court to which the proceedings are transferred, and in a winding-up by the court such registrar, as soon as he has received the records, shall give notice of the transfer to the official receiver of his court, who shall give notice of the transfer to the Board of Trade.

(4) The proceedings shall receive a new distinctive number.

47. Whenever the Lord Chancellor, by order under his hand, shall exclude any county court from having jurisdiction under the Act, or shall attach the district or any part of the district of a county court to the High Court, or any other county court, or shall detach the district or any part of the district of any county court from the district and jurisdiction of the High Court, any winding-up matters pending in the court or district to which the order relates shall become transferred to such court as shall be mentioned for the purpose in the order; and, thereupon, the rules as to transfer of proceedings shall apply to the transfer of such pending proceedings in all respects as if the proceedings had been transferred by order of a court having power to transfer proceedings.

Transfer of jurisdiction of county court.

Special Manager.

48.—(1) An application by the official receiver for the appointment of a special manager shall be supported by a report of the official receiver, which shall be placed on the file of proceedings, and in which shall be stated the amount of remuneration which, in the opinion of the official receiver, ought to be allowed to the special manager. No affidavit by the official receiver in support of the application shall be required.

Appointment of special manager.

(2) The remuneration of the special manager shall, unless the court otherwise in any special case directs, be stated in the order appointing him, but the court may at any subsequent time for good cause shown make an order for payment to the special manager of further remuneration.

(3) A copy of the order appointing a special manager shall be transmitted to the Board of Trade by the official receiver.

49. Every special manager shall account to the official receiver, and the special manager's accounts shall be verified by affidavit, and, when approved by the official receiver, the totals of the receipts and payments shall be added by the official receiver to his accounts.

Accounting by special manager. Form 20.

Statement of Affairs.

50.—(1) Every person who under section 147 of the Act, has been required by the official receiver to submit and verify a statement as to the affairs of the company, shall be furnished by the official receiver with forms and instructions for the preparation of the statement. The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The official receiver shall cause to be filed with the registrar the verified statement of affairs.

Preparation of statement of affairs. Form 26.

Rule 50.

(2) The official receiver may from time to time hold personal interviews with every such person for the purpose of investigating the company's affairs, and it shall be the duty of every such person to attend on the official receiver at such time and place as the official receiver may appoint and give the official receiver all information that he may require.

Extension of time for submitting statement of affairs.

51. When any person requires any extension of time for submitting the statement of affairs, he shall apply to the official receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings in the winding-up and shall render an application to the court unnecessary.

Information subsequent to statement of affairs.

52. After the statement of affairs of a company has been submitted to the official receiver it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the official receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the official receiver in relation to the statement of affairs.

Default.

53. Any default in complying with the requirements of section 147 of the Act, may be reported by the official receiver to the court.

Expenses of statement of affairs.

54. A person who is required to make or concur in making any statement of affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the official receiver for his sanction, and submit a statement of the estimated costs and expenses which it is intended to incur ; and, except by order of the court, no person shall be allowed out of the assets of the company any costs or expenses which have not before being incurred been sanctioned by the official receiver.

APPOINTMENT OF LIQUIDATOR IN A WINDING-UP BY THE COURT.

Appointment of liquidator on report of meetings of creditors and contributories.

Form 27.

55.—(1) As soon as possible after the first meetings of creditors and contributories have been held the official receiver or the chairman of the meeting, as the case may be, shall report the result of each meeting to the court.

(2) Upon the result of the meetings of creditors and contributories being reported to the court, the court may, if the meeting of creditors and the meeting of contributories have each passed the same resolutions, or if the resolutions passed at the two meetings are identical in effect, upon the application of the official receiver,

forthwith make the appointments necessary for giving effect to such resolutions. In any other case the court shall, on the application of the official receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences (if any), and making such order as shall be necessary. Rule 55.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the official receiver in such manner as the court shall direct, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.

(4) Upon the consideration of the resolutions and determinations of the meetings the court shall hear the official receiver and any creditor or contributory.

(5) If a liquidator is appointed a copy of the order appointing him shall be transmitted to the Board of Trade by the official receiver, and the Board of Trade shall, as soon as the liquidator has given security, cause notice of the appointment to be gazetted. The expense of gazetting the notice of the appointment shall be paid by the liquidator, but may be charged by him on the assets of the company. Forms 28 and 103 (7).

(6) Every appointment of a liquidator or committee of inspection shall be advertised by the liquidator in such manner as the court directs immediately after the appointment has been made, and the liquidator has given the required security. Form 30.

(7) If a liquidator in a winding-up by the court shall die, or resign, or be removed, another liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the official receiver shall, on the request of not less than one tenth in value of the creditors or contributories summon meetings for the purpose of determining whether or not the vacancy shall be filled ; but none of the provisions of this rule shall apply where the liquidator is released under section 157 of the Act, in which case the official receiver shall remain liquidator.

56. When the official receiver is liquidator of a company he shall be styled " official receiver and liquidator." Style of official receiver when he is liquidator.

SECURITY BY LIQUIDATOR OR SPECIAL MANAGER IN A WINDING-UP BY THE COURT.

57. In the case of a special manager or a liquidator other than the official receiver, the following provisions as to security shall have effect, namely :— Standing security to Board of Trade.

(1) The security shall be given to such officers or persons, and

Rule 57.

in such manner as the Board of Trade may from time to time direct.

(2) It shall not be necessary that security shall be given in each separate winding-up; but security may be given either specially in a particular winding-up, or generally, to be available for any winding-up in which the person giving security may be appointed, either as liquidator or special manager.

(3) The Board of Trade shall fix the amount and nature of such security, and may from time to time, as they think fit, either increase or diminish the amount of special or general security which any person has given.

Form 29.

(4) The certificate of the Board of Trade that a liquidator or special manager has given security to their satisfaction shall be filed with the registrar.

(5) The cost of furnishing the required security by a liquidator or special manager, including any premiums which he may pay to a guarantee society, shall be borne by him personally, and shall not be charged against the assets of the company as an expense incurred in the winding-up.

Failure to give or keep up security.

58.—(1) If a liquidator or special manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the official receiver shall report such failure to the court, who may thereupon rescind the order appointing the liquidator or special manager.

(2) If a liquidator or special manager fails to keep up his security, the official receiver shall report such failure to the court, who may thereupon remove the liquidator or special manager, and make such order as to costs as the court shall think fit.

(3) Where an order is made under this rule rescinding an order for the appointment of or removing a liquidator, the court may direct that another liquidator is to be appointed and thereupon the same meetings shall be summoned and the same proceedings may be taken as in the case of a first appointment of a liquidator.

Public Examination.

Report of official receiver to be filed.

59. A report made by the official receiver pursuant to section 148 of the Act shall state, in a narrative form, the facts and matters which the official receiver desires to bring to the notice of the court, and his opinion as required by the said section.

Appointment of time for consideration of report.

60. The official receiver may apply to the court to fix a day for the consideration of the report, and on such application the court shall appoint a day on which the report shall be considered.

Rule 61.

Consideration of report.

61. The consideration of the report shall be before the judge of the court personally in chambers, and the official receiver shall personally, or by counsel or solicitor, attend the consideration of the report, and give the court any further information or explanation with reference to the matters stated in the report which the court may require.

Procedure consequent on order for public examination. Form 31.

62. Where the judge makes an order under section 175 of the Act, directing any person or persons to attend for public examination :—

(*a*) The examination shall be held before the judge (*a*).

(*b*) The judge may, if he thinks fit, either in the order for examination or by any subsequent order, give directions as to the special matters on which any such person is to be examined.

(*c*) Where on an examination held before the registrar, or one of the persons mentioned in sub-section 9 of the said section, he is of opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person, or any part of the examination, to be held before the judge.

NOTE.—(*a*) Residue of sub-rule applies to High Court.

Application for day for holding examination.

63. Upon an order directing a person to attend for public examination being made, the official receiver shall apply for the appointment of a day on which the public examination is to be held.

Appointment of time and place for public examination.

64. A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the official receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

Forms 32 and 33.

Notice of public examination to creditors and contributories.

65.—(1) The official receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such newspapers as the Board of Trade from time to time direct, or in default of any such direction as the official receiver thinks fit, and shall also forward notice of the appointment to the Board of Trade to be gazetted.

(2) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the court, be advertised in any newspaper, but it shall be sufficient to publish in the *Gazette* a notice of the time and place fixed for the adjourned examination.

Rule 66.

Default in attending.

Form 40.

66.—(1) If any person who has been directed by the court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the official receiver satisfies the court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the court, upon its being proved to the satisfaction of the court that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the court shall think just.

Warrants of arrest.

(2) A warrant of arrest issued by the High Court under this rule shall be issued in the central office of the Supreme Court pursuant to an order of the court directing such issue.

Notes of examination to be filed.

Forms 36 and 37.

67. The notes of every public examination shall, after being signed as required by section 175 (7) of the Act, be filed with the registrar.

PROCEEDINGS AGAINST DELINQUENT DIRECTORS, PROMOTERS, AND OFFICERS.

Application against delinquent directors, officers, and promoters.

68.—(1) An application under section 215 of the Act shall in any court other than the High Court be made by motion to the court (*a*). . . . Where the application is made by the official receiver or liquidator he may make a report to the court stating any facts and information on which he proceeds which are verified by affidavit, or derived from sworn evidence in the proceedings. Where the application is made by any other person it shall be supported by affidavit to be filed by him (*a*).

NOTE.—(*a*) Provisions applicable to High Court omitted.

Notice of application.

69. Where the application is made by motion, notice of the intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given not less than four days before the hearing of the motion.

Use of depositions taken at public examinations.

70. Where in the course of the proceedings in a winding-up by the court an order has been made for the public examination of persons named in the order pursuant to section 175 of the Act, and it appears from the examination that the persons examined,

Rule 70.

some of them, have misapplied, or retained, or become liable, accountable for moneys or property of the company, or been lty of misfeasance or breach of trust in relation to the company, n in any proceedings subsequently instituted under section 215 the Act, for the purpose of examining into the conduct of the d persons, or any of them, and compelling repayment or toration to the company of any moneys or property, or con- bution by way of compensation to the assets of the company by h persons or any of them, the verified notes of the examination each person who was examined under the order shall, subject hereinafter mentioned, and to any order or directions of the rt as to the manner and extent in and to which the notes shall used, and subject to all just exceptions to the admissibility in dence against any particular person or persons of any of the tements contained in the notes of the examinations, be admis- le in evidence against any of the persons against whom the plication is made who, under section 175 of the Act, and the der for the public examination, was or had the opportunity of ng present at and taking part in the examination. Provided ut before any such notes of a public examination shall be d on any such application, the person intending to use the me shall, not less than fifteen days before the day appointed hearing the application, give notice of such intention to each rson against whom it is intended to use such notes, or any of m, specifying the notes or parts of the notes which it is in- ded to read against him, and furnish him with copies of such es, or parts of notes (except notes of the person's own deposi- ns), and provided also that every person against whom the plication is made shall be at liberty to cross-examine or re- mine (as the case may be) any person the notes of whose mination are read, in all respects as if such person had made affidavit on the application.

Witnesses and Depositions.

Shorthand notes. Forms 34 and 35.

71. If the court or the officer of the court before whom any mination under the Acts and rules is directed to be held shall any case, and at any stage of the proceedings, be of opinion t it would be desirable that a person (other than the person ore whom an examination is taken) should be appointed to e down the evidence of any person examined in shorthand or erwise, it shall be competent for the court or officer aforesaid make such appointment. The person at whose instance the mination is taken shall nominate a person for the purpose, l the person so nominated shall be appointed, unless the court

Rule 71.

or officer holding the examination shall otherwise order. Every person so appointed shall be paid a sum not exceeding one guinea a day, and a sum not exceeding 8*d.* per folio of ninety words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the assets of the company as may be directed by the court.

Committal of contumacious witness.

Form 38.

72.—(1) If a person examined before a registrar or other officer of the court who has no power to commit for contempt of court refuses to answer to the satisfaction of the registrar or officer any question which he may allow to be put, the registrar or officer shall report such refusal to the judge, and upon such report being made the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the judge.

(2) The report shall be in writing, but without affidavit, and shall set forth the question put, and the answer (if any) given by the person examined.

(3) The registrar or other officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the judge, and upon receiving the report the judge may take such action thereon as he shall think fit. If the judge is sitting at the time when the default in answering is made, such default may be reported immediately.

Depositions at private examinations.

73.—(1) The official receiver may attend in person, or by an assistant official receiver, any examination of a witness under section 174 of the Act, on whosesoever application the same has been ordered, and may take notes of the examination for his own use, and put such questions to the persons examined as the court may allow.

(2) The notes of the depositions of a person examined under section 174 of the Act, or under any order of the court before the court, or before any officer of the court, or person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 175 of the Act) shall not be filed, or be open to the inspection of any creditor, contributory, or other person, except the official receiver or liquidator, unless and until the court shall so direct, and the court may from time to time give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom.

ARRANGEMENTS WITH CREDITORS AND CONTRIBUTORIES IN A WINDING-UP BY THE COURT.

74. In a winding-up by the court if application is made to the court to sanction any compromise or arrangement the court may, before giving its sanction thereto, hear a report by the official receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the company, and as to any other matters which, in the opinion of the official receiver or the Board of Trade, ought to be brought to the attention of the court. The report shall not be placed upon the file, unless and until the court shall direct it to be filed. Rule 74. Report by official receiver on arrangements and compromises.

COLLECTION AND DISTRIBUTION OF ASSETS IN A WINDING-UP BY THE COURT.

75.—(1) The duties imposed on the court by section 163 (1) of the Act, in a winding-up by the court with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities shall be discharged by the liquidator as an officer of the court subject to the control of the court. Collection and distribution of company's assets by liquidator.

(2) For the purpose of the discharge by the liquidator of the duties imposed by section 163 (1) of the Act, and sub-rule (1) of this rule, the liquidator in a winding-up by the court shall for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the High Court, and the court may, on his application, enforce such acquisition or retention accordingly.

76. The powers conferred on the court by section 164 of the Act, shall be exercised by the liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker, or agent, or officer of a company which is being wound up under order of the court shall, on notice from the liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any sum of money or balance, books, papers, estate or effects which happen to be in his hands for the time being and to which the company is *primâ facie* entitled. Power of liquidator to require delivery of property. Form 41.

LIST OF CONTRIBUTORIES IN A WINDING-UP BY THE COURT.

77. The liquidator shall with all convenient speed after his appointment settle a list of contributories of the company, and shall appoint a time and place for that purpose. The list of Liquidator to settle list of contributories.

Rule 77.

Form 42.

contributories shall contain a statement of the address of, and th number of shares or extent of interest to be attributed to eacl contributory, and shall distinguish the several classes of contribu tories. As regards representative contributories the liquidato shall, so far as practicable, observe the requirements of sec tion 163 (2) of the Act.

Appointment of time and place for settlement of list.

Forms 43 and 44.

78. The liquidator shall give notice in writing of the time an place appointed for the settlement of the list of contributories t every person whom he proposes to include in the list, and shal state in the notice to each person in what character and for wha number of shares or interest he proposes to include such perso in the list.

Settlement of list of contributories.

Form 45.

79. On the day appointed for settlement of the list of contributories the liquidator shall hear any person who objects t being settled as a contributory, and after such hearing shall finally settle the list, which when so settled shall be the list of contributories of the company.

Notice to contributories.

Form 46.

80. The liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list, and in the notice inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the court by summons within twenty-one days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.

Application to the court to vary the list.

Form 49.

81.—(1) Subject to the power of the court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the court by any person who objects to the list of contributories as finally settled by the liquidator shall be entertained after the expiration of twenty-one days from the date of the service on such person of notice of the settlement of the list.

(2) The official receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.

Variation of or addition to list of contributories.

Form 47.

82. The liquidator may from time to time vary or add to the list of contributories, but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

Calls.

83. The powers and duties of the court in relation to making calls upon contributories conferred by section 166 of the Act, shall and may be exercised, in a winding-up by the court, by the liquidator as an officer of the court subject to the proviso to section 173 of the Act, and to the following regulations :— Rule 83. Calls by liquidator.

(1) Where the liquidator desires to make any call on the contributories, or any of them for any purpose authorised by the Act, if there is a committee of inspection he may summon a meeting of such committee for the purpose of obtaining their sanction to the intended call. Form 50.

(2) The notice of the meeting shall be sent to each member of the committee of inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notice of the intended call and the intended meeting of the committee of inspection shall also be advertised once at least in a London newspaper, or, where the winding-up is not in the High Court, in a newspaper circulating in the district of the court in which the proceedings are pending. The advertisement shall state the time and place of the intended meeting of the committee of inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the liquidator or members of the committee of inspection to be laid before the meeting, in reference to the said intended call.

(3) At the meeting of the committee of inspection any statements or representations made either to the meeting personally or addressed in writing to the liquidator or members of the committee by any contributory shall be considered before the intended call is sanctioned.

(4) The sanction of the committee shall be given by resolution, which shall be passed by a majority of the members present. Form 52.

(5) Where there is no committee of inspection, the liquidator shall not make a call without obtaining the leave of the court.

84. In a winding-up by the court an application to the court for leave to make any call on the contributories of a company, or any of them, for any purpose authorised by the Acts, shall be made by summons stating the proposed amount of such call, which Application to the court for leave to make a call.

Rule 84. summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the court so directs, notice of such intended call may be given by advertisement, without a separate notice to each contributory.

Forms 54 to 57.

Document making the call.

Form 58.

85. When the liquidator is authorised by resolution or order to make a call on the contributories he shall file with the registrar a document in the Form 58 with such variations as circumstances may require making the call.

Service of notice of a call.

Forms 52, 53 and 59.

86. When a call has been made by the liquidator in a winding-up by the court, a copy of the resolution of the committee of inspection or order of the court (if any), as the case may be, shall forthwith after the call has been made be served upon each of the contributories included in such call, together with a notice from the liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the court so directs.

Enforcement of call.

Forms 60, 61 and 62.

87. The payment of the amount due from each contributory on a call may be enforced by order of the court, to be made in chambers on summons by the liquidator.

PROOFS.

Proof of debt.

88. In a winding-up by the court every creditor shall prove his debt, unless the judge in any particular winding-up shall give directions that any creditors or class of creditors shall be admitted without proof.

Mode of proof.

89. A debt may be proved in any winding-up by delivering or sending through the post an affidavit verifying the debt. In a winding-up by the court the affidavit shall be so sent to the official receiver or, if a liquidator has been appointed, to the liquidator; and in any other winding-up the affidavit may be so sent to the liquidator.

Verification of proof.

90. An affidavit proving a debt may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

Contents of proof.

Form 63.

91. An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or liquidator to whom the proof is sent may at any time call for the production of the vouchers.

Rule 92.

Statement of security.

92. An affidavit proving a debt shall state whether the creditor is or is not a secured creditor.

Proof before whom sworn.

93. An affidavit proving a debt may in a winding-up by the court be sworn before an official receiver, or assistant official receiver, or any officer of the Board of Trade or any clerk of an official receiver duly authorised in writing by the court or the Board of Trade in that behalf.

Costs of proof.

94. A creditor shall bear the cost of proving his debt unless the court otherwise orders.

Discount.

95. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Periodical payments.

96. When any rent or other payment falls due at stated periods, and the order or resolution to wind-up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day. Provided that where the liquidator remains in occupation of premises demised to a company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the company, or the liquidator, of rent during the period of the company's or the liquidator's occupation.

Interest.

97. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order or resolution, the creditor may prove for interest at a rate not exceeding four per centum per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

Proof for debt payable at a future time.

98. A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Rule 99.

Workmen's wages.

Form 64.

99. In any case in which it appears that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

Production of bills of exchange and promissory notes.

100. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the court made to the contrary, be produced to the official receiver, chairman of a meeting or liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

Transmission of proofs to liquidator.

101. Where a liquidator is appointed in a winding-up by the court, all proofs of debts that have been received by the official receiver shall be handed over to the liquidator, but the official receiver shall first make a list of such proofs, and take a receipt thereon from the liquidator for such proofs.

Admission and Rejection of Proofs, and Appeal to the Court.

Notice to creditors to prove.

102. Subject to the provisions of the Act, and unless otherwise ordered by the court, the liquidator in any winding-up may from time to time fix a certain day, which shall be not less than fourteen days from the date of the notice, on or before which the creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved, and the liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding-up by the court to every person mentioned in the statement of affairs as a creditor, and who has not proved his debt, and in any other winding-up to the last known address or place of abode of each person who, to the knowledge of the liquidator, claims to be a creditor of the company and whose claim has not been admitted.

Examination of proof.

Form 65.

103. The liquidator shall examine every proof of debt lodged with him, and the grounds of the debt, and in writing admit or

reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection. Rule 103.

104. If a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the court to extend the time, no application to reverse or vary the decision of the liquidator in a winding-up by the court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained, unless notice of the application is given before the expiration of twenty-one days from the date of the service of the notice of rejection. Appeal by creditor.

105. If the liquidator thinks that a proof has been improperly admitted, the court may, on the application of the liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount. Expunging at instance of liquidator.

106. The court may also expunge or reduce a proof upon the application of a creditor or contributory if the liquidator declines to interfere in the matter. Expunging at instance of creditor.

107. For the purpose of any of his duties in relation to proofs, the liquidator, in a winding-up by the court, may administer oaths and take affidavits. Oaths.

108. In a winding-up by the court the official receiver, before the appointment of a liquidator, shall have all the powers of a liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal. Official receiver's powers.

109. In a winding-up by the court the official receiver, where no other liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding-up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected. Filing proofs by official receiver.

110. Every liquidator in a winding-up by the court other than the official receiver shall on the first day of every month, file with the registrar a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the registrar. Proofs to be filed. Form 66.

Rule 111.

Procedure where creditor appeals.

111. The liquidator in a winding-up by the court, including the official receiver when he is liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the registrar, with a memorandum thereon of his disallowance thereof.

Time for dealing with proofs by official receiver.

112. Subject to the power of the court to extend the time in a winding-up by the court, the official receiver as liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it.

Time for dealing with proofs by liquidator.

113. Subject to the power of the court to extend the time, the liquidator in a winding-up by the court, other than the official receiver, within twenty-eight days after receiving a proof, which has not previously been dealt with, shall in writing either admit or reject it wholly or in part, or require further evidence in support of it. Provided that where the liquidator has given notice of his intention to declare a dividend, he shall within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject, or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby. Where a creditor's proof has been admitted the notice of dividend shall be a sufficient notification of the admission.

Costs of appeals from decisions as to proofs.

114. The official receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

General Meetings of Creditors and Contributories in Relation to a Winding-up by the Court.

First meetings of creditors and contributories.

115. The meetings of creditors and contributories under section 152 of the Act (hereinafter referred to as the first meetings of creditors and contributories) shall be held within twenty-one days, or if a special manager has been appointed then within one month after the date of the winding-up order or within such further time as the court may approve. The dates of such meetings shall be fixed and they shall be summoned by the official receiver.

116. The official receiver shall forthwith give notice of the days fixed by him for the first meetings of creditors and contributories to the Board of Trade, who shall gazette the same.

Notice of first meetings to Board of Trade.

117. The first meetings of creditors and contributories shall be summoned as hereinafter provided.

Summoning of first meetings.

118. The notices of first meetings of creditors and contributories may be in Forms 21 and 22 appended hereto, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.

Form of notices of first meetings.

Forms 21 and 22.

119. The official receiver shall also give to each of the directors and other officers of the company who in his opinion ought to attend the first meetings of creditors and contributories seven days' notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent by prepaid post letter, as may be convenient. It shall be the duty of every director or officer who receives notice of such meeting to attend if so required by the official receiver.

Notice of first meetings to officers of company.

Form 23.

Summary of statement of affairs.

120. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books or otherwise to be a contributory of the company a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make. The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

Liquidator's meetings of creditors and contributories.

121. In addition to the first meeting of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the court under section 219 of the Act (hereinafter referred to as court meetings of creditors and contributories), the liquidator may himself from time to time subject to the provisions of the Act and the control of the court summon, hold and conduct meetings of the creditors or contributories (hereinafter referred to as liquidator's meetings of creditors and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding-up.

Application of rules as to meetings.

122. Except where and so far as the nature of the subject-matter or the context may otherwise require the succeeding rules as to meetings hereinafter set out are intended to apply to first meetings, court meetings and liquidator's meetings of creditors and contributories, but so nevertheless that the said rules shall

Rule 122.

take effect as to first meetings subject and without prejudice to any express provisions of the Act and as to court meetings subject and without prejudice to any express directions of the court.

Summoning of meetings.

123. The official receiver or liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the *London Gazette* and in a local paper; and shall not less than seven days before the day appointed for the meeting send by post to every person appearing by the company's books to be a creditor of the company notice of the meeting of creditors, and to every person appearing by the company's books or otherwise to be a contributory of the company notice of the meeting of contributories.

The notice to each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the statement of affairs of the company, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

Proof of notice. Forms 76 and 77.

124. A certificate by the official receiver or other officer of the court, or by the clerk of any such person, or an affidavit by the liquidator, or his solicitor, or the clerk of either of such persons, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Place of meetings.

125. The meetings shall be held at such place as is in the opinion of the official receiver or liquidator most convenient for the majority of the creditors or contributories or both. Different times or places or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

Costs of calling meetings.

126. The costs of summoning a meeting of creditors or contributories at the instance of any person other than the official receiver or liquidator shall be paid by the person at whose instance it is summoned who shall before the meeting is summoned deposit with the official receiver or liquidator (as the case may be) such sum as may be required by the official receiver or liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, two

shillings per creditor or contributory for the first 20 creditors or contributories, one shilling per creditor or contributory for the next 30 creditors or contributories, sixpence per creditor or contributory for any number of creditors or contributories after the first 50. The said costs shall be repaid out of the assets of the company if the court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct. Rule 126.

127. Where a meeting is summoned by the official receiver or the liquidator, he or someone nominated by him shall be chairman of the meeting. At every other meeting of creditors and contributories the chairman shall be such person as the meeting by resolution shall appoint. Chairman of meeting. Form 79.

128. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company. Ordinary resolution of creditors and contributories.

129. The official receiver, or, as the case may be, the liquidator, shall file with the registrar a copy, certified by him, of every resolution of a meeting of creditors or contributories. Copy of resolution to be filed.

130. Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the court otherwise orders, be valid, notwithstanding that some creditors or contributories may not have received the notice sent to them. Non-reception of notice by a creditor.

131. The chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original place of meeting unless in the resolution for adjournment another place is specified or unless the court otherwise orders. Adjournment. Form 78.

132.—(1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat at least three creditors entitled to vote or three contributories or all Quorum.

Rule 132.

the creditors entitled to vote or all the contributories if the number of the creditors entitled to vote or the contributories as the case may be shall not exceed three.

(2) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day as the chairman may appoint not being less than seven or more than twenty-one days.

Creditors entitled to vote.

133. In the case of a first meeting of creditors or of an adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting a proof of the debt which he claims to be due to him from the company. In the case of a court meeting or liquidator's meeting of creditors a person shall not be entitled to vote as a creditor unless he has lodged with the official receiver or liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held. Provided that this and the next four following rules shall not apply to a court meeting of creditors held prior to the first meeting of creditors.

Cases in which creditors may not vote.

134. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

Votes of secured creditors.

135. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

Rule 136.

136. The official receiver or liquidator may within twenty-eight days after a proof estimating the value of a security as aforesaid has been used in voting at a meeting require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per cent. Provided that where a creditor has valued his security he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of twenty per cent. shall not be made if the security is required to be given up.

Creditor required to give up security.

137. The chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether a proof should be admitted or rejected he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

Admission and rejection of proofs for purpose of voting.

138. The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

Minutes of meeting.

PROXIES IN RELATION TO A WINDING-UP BY THE COURT.

139. A creditor or a contributory may vote either in person or by proxy. The succeeding rules as to proxies shall not (unless otherwise directed by the court) apply to a court meeting of creditors or contributories prior to the first meeting.

Proxies.

140. Every instrument of proxy shall be in accordance with the form in the Appendix and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager or clerk or other person in his regular employment or of a commissioner to administer oaths in the Supreme Court.

Form of proxies.

Forms 80 and 81.

141. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official receiver or liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

Forms of proxy to be sent with notices.

142. A creditor or a contributory may give a general proxy to his manager or clerk or any other person in his regular employment. In any such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

General proxies to managers or clerks.

Rule 143.

Special proxies.

143. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof :—

(*a*) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and

(*b*) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

Solicitation by liquidator to obtain proxies.

144. Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring his appointment as liquidator except by the direction of a meeting of creditors or contributories, the court if it thinks fit may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

Proxies to official receiver or liquidator.

145. A creditor or a contributory may appoint the official receiver or liquidator to act as his general or special proxy.

Holder of proxy not to vote on matter in which he is financially interested.

146. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the company otherwise than as creditor rateably with the other creditors of the company. Provided that where any person holds special proxies to vote for an application to the court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

Proxies.

Forms 80 and 81.

147.—(1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the court otherwise directs.

(2) In every other case a proxy shall be lodged with the official receiver or liquidator not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

(4) Where a limited company is a creditor, any person who is duly authorised under the seal of the creditor company to act generally on behalf of the creditor company at meetings of creditors and contributories and to appoint himself or any other person to be the creditor company's proxy, may fill in and sign the form of proxy on the creditor company's behalf and appoint himself to be the creditor company's proxy, and a proxy so filled in and signed by such a person shall be received and dealt with as the proxy of the creditor company. Rule 147.

148. Where an official receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf, and in such manner as he may direct. Use of proxies by deputy.

149. The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark. Filling in where creditor blind or incapable.

Dividends in a Winding-up by the Court.

150.—(1) Not more than two months before declaring a dividend the liquidator in a winding-up by the court shall give notice of his intention to do so to the Board of Trade in order that the same may be gazetted, and at the same time to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than fourteen days from the date of such notice. Dividends to creditors. Form 67.

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the liquidator rejecting a proof, notice of appeal shall, subject to the power of the court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which the appeal is made, and the liquidator may in such case make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this rule, the liquidator shall exclude all proofs which have been rejected from participation in the dividend.

Rule 150.

Form 71.

(3) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the liquidator he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted.

(4) If it becomes necessary, in the opinion of the liquidator and the committee of inspection, to postpone the declaration of the dividend beyond the limit of two months, the liquidator shall give a fresh notice of his intention to declare a dividend to the Board of Trade in order that the same may be gazetted ; but it shall not be necessary for the liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

Forms 68 and 69.

(5) Upon the declaration of a dividend the liquidator shall forthwith transmit to the Board of Trade a list of the proofs filed with the registrar under Rule 110, which list shall be in the Form 68 or 69 in the Appendix as the case may be. If the winding-up is in a court other than the High Court the list shall, on payment of the prescribed fee, be examined by the registrar, with the proofs tendered for filing, and if found correct shall be certified by the registrar. . . .

Residue of sub-rule applies to High Court.

(6) Dividends may at the request and risk of the person to whom they are payable be transmitted to him by post.

Form 72.

(7) If a person to whom dividends are payable desires that they shall be paid to some other person he may lodge with the liquidator a document in the Form 72 which shall be a sufficient authority for payment of the dividend to the person therein named.

Return of capital to contributories.

Forms 73 and 74.

151. Every order by which the liquidator in a winding-up by the court is authorised to make a return to contributories of the company, shall, unless the court shall otherwise direct, contain or have appended thereto a schedule or list (which the liquidator shall prepare) setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories. The schedule or list shall be in the Form 74 with such variations as circumstances shall require.

Attendance and Appearance of Parties.

152.—(1) Every person for the time being on the list of contributories of the company, and every person whose proof has been admitted shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the court shall be of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same. Rule 152. Attendance at proceedings.

(2) The court may from time to time appoint any one or more of the creditors or contributories to represent before the court, at the expense of the company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the court, and may remove the person so appointed. If more than one person is appointed under this rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

(3) No creditor or contributory shall be entitled to attend any proceedings in chambers unless and until he has entered in a book, to be kept by the registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor.

153. Where the attendance of the liquidator's solicitor is required on any proceeding in court or chambers, the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the court directs him to attend. Attendance of liquidator's solicitor.

Liquidator and Committee of Inspection in a Winding-up by the Court.

154.—(1) The remuneration of a liquidator, unless the court shall otherwise order, shall be fixed by the committee of inspection, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors (other than debenture holders) out of the proceeds of their securities, and the other part on the amount distributed in dividend. Remuneration of liquidator.

Rule 154.

(2) If the Board of Trade is of opinion that the remuneration of a liquidator as fixed by the committee of inspection is unnecessarily large, the Board of Trade may apply to the court, and thereupon the court shall fix the amount of the remuneration of the liquidator.

(3) If there is no committee of inspection the remuneration of the liquidator shall, unless the court shall otherwise order, be fixed by the scale of fees and percentages for the time being payable on realisations and distributions by the official receiver as liquidator.

Limit of remuneration.

155. Except as provided by the Act or the rules, a liquidator shall not under any circumstances whatever, make any arrangement for, or accept from any solicitor, auctioneer, or any other person connected with the company of which he is liquidator, or who is employed in or in connection with the winding-up of the company, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Act and the rules he is entitled as liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to any such solicitor, auctioneer, or other person.

Dealings with assets.

156. Neither the liquidator nor any member of the committee of inspection of a company shall, while acting as liquidator or member of such committee, except by leave of the court, either directly or indirectly, by himself or any partner, clerk, agent, or servant, become purchaser of any part of the company's assets. Any such purchase made contrary to the provisions of this rule may be set aside by the court on the application of the Board of Trade or any creditor or contributory, and the court may make such order as to costs as the court shall think fit.

Restriction on purchase of goods by liquidator.

157. Where the liquidator carries on the business of the company, he shall not, without the express sanction of the court, purchase goods for the carrying on of such business from any person whose connection with the liquidator is of such a nature as would result in the liquidator obtaining any portion of the profit (if any) arising out of the transaction.

Committee of inspection not to make profit.

158. No member of a committee of inspection shall, except under and with the sanction of the court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding-up, or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator

for or on account of the company. If it appears to the Board of Trade that any profit or payment has been made contrary to the provisions of this rule, they may disallow such payment or recover such profit, as the case may be, on the audit of the liquidator's accounts. Rule 158.

159. In any case in which the sanction of the court is obtained under the last two preceding rules, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the company's assets. Costs of obtaining sanction of court.

160. Where the sanction of the court to a payment to a member of a committee of inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the court shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature. Except by the express sanction of the court no remuneration shall, under any circumstances, be paid to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee. Sanction of payments to committee.

161.—(1) Where a liquidator is appointed by the court, and has notified his appointment to the registrar of joint stock companies, and given security to the Board of Trade, the official receiver shall forthwith put the liquidator into possession of all property of the company of which the official receiver may have custody; provided that such liquidator shall have, before the assets are handed over to him by the official receiver, discharged any balance due to the official receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the company together with interest on such advances at the rate of four pounds per centum per annum; and the liquidator shall pay all fees, costs, and charges of the official receiver, which may not have been discharged by the liquidator before being put into possession of the property of the company, and whether incurred before or after he has been put into such possession. Discharge of costs before assets handed to liquidator.

(2) The official receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3) It shall be the duty of the official receiver, if so requested by the liquidator, to communicate to the liquidator all such information respecting the estate and affairs of the company as

Rule 161.

may be necessary or conducive to the due discharge of the duties of the liquidator.

Resignation of liquidator.

162. A liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted. If the creditors and contributories by ordinary resolutions both agree to accept the resignation of the liquidator, he shall file with the registrar a memorandum of his resignation, and shall send notice thereof to the official receiver, and the resignation shall thereupon take effect. In any other case the liquidator shall report to the court the result of the meetings and shall send a report to the official receiver and thereupon the court may, upon the application of the liquidator or the official receiver, determine whether or not the resignation of the liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the court shall be necessary.

Office of liquidator vacated by his insolvency.

163. If a receiving order in bankruptcy is made against the liquidator, he shall thereby vacate his office, and for the purposes of the application of the Act and rules shall be deemed to have been removed.

Payments Into and Out of a Bank.

Payments out of Bank of England.

164. All payments out of the companies liquidation account shall be made in such manner as the Board of Trade may from time to time direct.

Special bank account. Forms 82 and 83.

165.—(1) Where the liquidator in a winding-up by the court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the liquidator of the company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the company, and shall be signed by the liquidator, and shall be countersigned by at least one member of the committee of inspection, and by such other person, if any, as the committee of inspection may appoint.

(2) Where application is made to the Board of Trade to authorise the liquidator in a winding-up by the court to make his payments into and out of a special bank account, the Board of Trade may grant such authorisation for such time and on such terms as they may think fit, and may at any time order the account to be closed if they are of opinion that the account is no longer required for the purposes mentioned in the application.

Books.

166. The official receiver, until a liquidator is appointed by the court, and thereafter the liquidator, shall keep a book to be called the " Record Book " in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs, but he shall not be bound to insert in the " Record Book " any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the committee of inspection, or the official receiver, or the Board of Trade. **Rule 166.** Record book.

167.—(1) The official receiver, until a liquidator is appointed by the court, and thereafter the liquidator, shall keep a book to be called the " Cash Book " (which shall be in such form as the Board of Trade may from time to time direct) in which he shall (subject to the provisions of the rules as to trading accounts) enter from day to day the receipts and payments made by him. Cash book.

(2) The liquidator shall submit the record book and cash book, together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every three months.

Investment of Funds.

168.—(1) Where the committee of inspection are of opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request, and the liquidator shall transmit such certificate and request to the Board of Trade. Investment of assets in securities, and realisation of securities.

(2) Where the committee of inspection are of opinion that it is advisable to sell any of the securities in which the moneys of the company's assets are invested they shall sign a certificate and request to that effect, and the liquidator shall transmit such certificate and request to the Board of Trade. Forms 84 and 85.

(3) Where in a winding-up by the court in which there is no committee of inspection, or in a voluntary winding-up, or winding-up under the supervision of the court, a case has in the opinion of the liquidator arisen under section 231 of the Act for an investment of funds of the company or a sale of securities in which the company's funds have been invested, the liquidator shall sign and transmit to the Board of Trade a certificate of the facts on

Rule 168.

which his opinion is founded, and a request to the Board of Trade to make the investment mentioned in the certificate, and the Board of Trade may thereupon, if it thinks fit, invest or sell the whole or any part of the said funds or securities, as provided in the said section, and the said certificate and request shall be a sufficient authority to the Board of Trade for the said investment or sale.

ACCOUNTS AND AUDIT IN A WINDING-UP BY THE COURT.

Audit of cash book. Form 86.

169. The committee of inspection shall not less than once every three months audit the liquidator's cash book and certify therein under their hands the day on which the said book was audited.

Board of Trade audit of liquidator's accounts.

170.—(1) The liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the cash book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the committee of inspection. He shall also forward with the first accounts a summary of the company's statement of affairs, showing thereon in red ink the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised. The liquidator shall also at the end of every six months forward to the Board of Trade, with his accounts, a report upon the position of the liquidation of the company in such form as the Board of Trade may direct.

(2) When the assets of the company have been fully realised and distributed, the liquidator shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

Form 87.

(3) The accounts sent in by the liquidator shall be verified by him by affidavit.

Liquidator carrying on business.

171.—(1) Where the liquidator carries on the business of the company, he shall keep a distinct account of the trading, and shall incorporate in the cash book the total weekly amount of the receipts and payments on such trading account.

Forms 88 and 88A.

(2) The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the liquidator shall thereupon submit such account to the committee of inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same.

Copy of accounts to be filed.

172. When the liquidator's account has been audited, the Board of Trade shall certify the fact upon the account, and

thereupon the duplicate copy, bearing a like certificate, shall be filed with the registrar. Rule 172.

173.—(1) The liquidator shall transmit to the Board of Trade with his accounts a summary of such accounts in such form as the Board of Trade may from time to time direct, and, on the approval of such summary by the Board of Trade, shall forthwith obtain, prepare, and transmit to the Board of Trade so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to each creditor and contributory. Summary of accounts.

(2) The cost of printing and posting such copies shall be a charge upon the assets of the company.

174. Where a liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the Board of Trade, forward to the Board of Trade an affidavit of no receipts or payments. Affidavit of no receipts.

175.—(1) Upon a liquidator resigning, or being released or removed from his office, he shall deliver over to the official receiver, or, as the case may be, to the new liquidator, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of liquidator. The release of a liquidator shall not take effect unless and until he has delivered over to the official receiver, or, as the case may be, to the new liquidator, all the books, papers, documents, and accounts which he is by this rule required to deliver on his release. Proceedings on resignation, etc. of liquidator.

(2) The Board of Trade may, at any time during the progress of the liquidation, on the application of the liquidator or the official receiver, direct that such of the books, papers, and documents of the company or of the liquidator as are no longer required for the purpose of the liquidation, may be sold, destroyed, or otherwise disposed of. Disposal of books.

176. Where property forming part of a company's assets is sold by the liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every liquidator by whom such auctioneer or agent is employed, shall, Expenses of sales.

Rule 176. unless the court otherwise orders, be accountable for the proceeds of every such sale.

Taxation of Costs.

Taxation of costs payable by or to official receiver or liquidator or by company.

177. Every solicitor, manager, accountant, auctioneer, broker, or other person employed by an official receiver or liquidator in a winding-up by the court shall on request by the official receiver or liquidator (to be made a sufficient time before the declaration of a dividend) deliver his bill of costs or charges to the official receiver or liquidator for the purpose of taxation; and if he fails to do so within the time stated in the request, or such extended time as the court may allow, the liquidator shall declare and distribute the dividend without regard to such person's claim, and subject to any order of the court the claim shall be forfeited. The request by the official receiver or liquidator shall be in the Form No. 89.

Form 89.

Notice of appointment.

178. Where a bill of costs or charges in any winding-up has been lodged with the taxing officer, he shall give notice of an appointment to tax the same, in a winding-up by the court to the official receiver, and in every winding-up to the liquidator, and to the person to or by whom the bill or charges is or are to be paid (as the case may be).

Lodgment of bill.

179. The bill of charges, if incurred in a winding-up by the court prior to the appointment of a liquidator, shall be lodged with the official receiver, and if incurred after the appointment of a liquidator, shall be lodged with the liquidator. The official receiver or the liquidator, as the case may be, shall lodge the bill or charges with the proper taxing officer.

Copy of the bill to be furnished.

180. Every person whose bill or charges in a winding-up by the court is or are to be taxed shall, on application either of the official receiver or the liquidator, furnish a copy of his bill or charges so to be taxed, on payment at the rate of 4*d.* per folio, which payment shall be charged on the assets of the company. The official receiver shall call the attention of the liquidator to any items which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the taxation.

Application for costs.

181. Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding:—

(1) Such party or person shall serve notice of his intended application on the official receiver in a winding-up by the court and in every winding-up on the liquidator.

(2) The official receiver (if any) and liquidator may appear on such application and object thereto. Rule 181.

(3) No costs of or incident to such application shall be allowed to the applicant, unless the court is satisfied that the application could not have been made at the time of the proceeding.

182. Upon the taxation of any bill of costs, charges, or expenses being completed, the taxing officer shall issue to the person presenting such bill for taxation his allowance or certificate of taxation. The bill of costs, charges, and expenses, together with the allowance or certificate, shall be filed with the registrar. Certificate of taxation. Form 90.

183. Where the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an official receiver or liquidator, is or are payable out of the assets of the company, a certificate in writing, signed by the official receiver or liquidator, as the case may be, shall on the taxation be produced to the taxing officer setting forth whether any, and if so, what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the employment. Certificate of employment.

184. In a county court all costs properly incurred in a winding up by the court shall be allowed on the lower scale in Appendix N to the Rules of the Supreme Court, and costs shall be taxed by the registrar in person. Scale of costs in a county court, and taxation.

185.—(1) Where any bill of costs, charges, fees or disbursements which are payable out of the assets of the company to any solicitor, manager, accountant, auctioneer, broker or other person has been taxed by a registrar of a court other than the High Court, the Board of Trade may require the taxation to be reviewed by the taxing officer of the High Court. Review of taxation at instance of Board of Trade.

(2) In any case in which the Board of Trade require such a review of taxation as is above mentioned, they shall give notice to the person whose bill has been taxed, and shall apply to the taxing officer of the High Court to appoint a time for the review of such taxation, and thereupon such taxing officer shall appoint a time for the review of, and shall review, such taxation, and certify the result thereof. The Board of Trade shall give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

(3) Where any such review of taxation as is above mentioned is required to be made by the taxing officer of the High Court, the

Rule 185.

registrar whose taxation is to be reviewed shall forward to the said taxing officer the bill which is required to be reviewed.

(4) The Board of Trade may appear upon the review of the taxation; and if, upon the review of the taxation, the bill is allowed at a lower sum than the sum allowed on the original taxation, the amount disallowed shall (if the bill has been paid) be repaid to the official receiver or the liquidator, or other person entitled thereto. The certificate of the taxing officer shall in every case of a review by him under this rule be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

(5) The costs of and incidental to the review shall be paid out of the assets of the company or otherwise as the taxing officer or the court may direct; provided that the cost of the attendance of a principal shall not be allowed if in the opinion of the taxing officer he could have been sufficiently represented by his London agent.

Costs and Expenses Payable out of the Assets of the Company.

Liquidator's charges.

186.—(1) Where a liquidator or special manager in a winding-up by the court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

(2) Where a liquidator is a solicitor he may contract that the remuneration for his services as liquidator shall include all professional services.

Costs payable out of the assets.

187.—(1) The assets of a company in a winding-up by the court, remaining after payment of the fees and actual expenses incurred in realising or getting in the assets, shall, subject to any order of the court, and, as regards a winding-up to which the provisions of the Stannaries Act, 1887, apply, subject to that Act, as modified by the Act, be liable to the following payments, which shall be made in the following order of priority, namely:—

50 & 51 Vict. c. 43.

First. The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the court.

Next. The remuneration of the special manager (if any).

Next. The costs and expenses of any person who makes or concurs in making, the company's statement of affairs.

Next. The taxed charges of any shorthand writer appointed to take an examination. Provided that where the shorthand writer is appointed at the instance of the official receiver the costs of the shorthand notes shall be deemed to be an expense incurred by the official receiver in getting in and realising the assets of the company. Rule 187.

Next. The liquidator's necessary disbursements, other than actual expenses of realisation heretofore provided for.

Next. The costs of any person properly employed by the liquidator.

Next. The remuneration of the liquidator.

Next. The actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Board of Trade.

(2) No payments in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers, or other persons, other than payments for costs and expenses incurred and sanctioned under Rule 54, and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the registrar. The taxing officer shall satisfy himself before passing such bills or charges that the employment of the solicitor or other person in respect of the matters mentioned in the bills or charges has been duly sanctioned. Provided that the official receiver when acting as liquidator may without taxation pay and allow the costs and charges of any person other than a solicitor employed by him where such costs and charges are within the scale usually allowed by the court, and do not exceed the sum of £2 ; provided always that the Board of Trade may require such costs or charges to be taxed by the taxing officer. Costs.

(3) Nothing contained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against a company which is being wound up by the court, are ordered by the court in which such proceedings are pending or a judge thereof to be paid by the company or the liquidator, or the rights of the person to whom such costs are payable.

Statements by Liquidator to the Registrar of Joint Stock Companies.

188. The winding-up of a company shall, for the purposes of section 224 of the Act, be deemed to be concluded :— Conclusion of winding-up.

(*a*) In the case of a company wound up by order of the court,

Rule 188.

at the date on which the order dissolving the company has been reported by the liquidator to the registrar of companies, or at the date of the order of the Board of Trade releasing the liquidator pursuant to section 157 of the Act.

(*b*) In the case of a company wound up voluntarily, or under the supervision of the court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator, or any person who has acted as liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the companies liquidation account at the Bank of England.

Times for sending liquidator's statements, and regulations applicable thereto.

189. The statements with respect to the proceedings in and position of a liquidation of a company, the winding-up of which is not concluded within a year after its commencement, shall be sent to the registrar of companies twice in every year as follows :—

(1) The first statement, commencing at the date when a liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding-up, shall be sent within 30 days from the expiration of such twelve months, or within such extended period as the Board of Trade may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is sent.

Form 92.

(2) Subject to the next succeeding rule, Form No. 92, with such variations as circumstances may require, shall be used, and the directions specified in the form shall (unless the Board of Trade otherwise direct) be observed in reference to every statement.

Form 93.

(3) Every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 93, with such variations as circumstances may require.

Affidavit of no receipts or payments.

190. Where a liquidator has not during any period for which a statement has to be sent received or paid any money on account of the company, he shall at the period when he is required to transmit his statement, send to the registrar of companies the prescribed statement in the Form No. 92, in duplicate, containing the particulars therein required with respect to the proceedings

Forms 92 and 93.

in and position of the liquidation, and with such statement shall also send an affidavit of no receipts or payments in the Form No. 93. Rule 190.

Unclaimed Funds and Undistributed Assets in the Hands of a Liquidator.

191.—(1) All money in the hands or under the control of a liquidator of a company representing unclaimed dividends, which for six months from the date when the dividend became payable have remained in the hands or under the control of the liquidator, shall forthwith, on the expiration of the six months, be paid into the companies liquidation account. Payment of undistributed and unclaimed money into companies liquidation account.

(2) All other money in the hands or under the control of a liquidator of a company, representing unclaimed or undistributed assets, which under sub-section 4 of section 224 of the Act, the liquidator is to pay into the companies liquidation account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the registrar of companies is brought down, and the amount to be paid to the companies liquidation account shall be the minimum balance of such money which the liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Board of Trade may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the companies liquidation account within fourteen days from the date to which the statement of account is brought down.

(3) Notwithstanding anything in this rule, any moneys representing unclaimed or undistributed assets or dividends in the hands of the liquidator at the date of the dissolution of the company shall forthwith be paid by him into the companies liquidation account.

(4) A liquidator whose duty it is to pay into the companies liquidation account at the Bank of England, money representing unclaimed or undistributed assets of the company shall apply in such manner as the Board of Trade shall direct to the Board of Trade for a paying-in order, which paying-in order shall be an authority to the Bank of England to receive the payment.

(5) Money at the credit of the account of the official liquidator of a company with the Bank of England shall be deemed to be money under the control of such official liquidator, and when such money has remained unclaimed or undistributed for six months after the date of receipt it shall be transferred to the companies liquidation account, and the official liquidator and

Rule 191.

master of the Chancery Division of the High Court attached to the judge in whose chambers the winding-up is proceeding shall draw and sign such cheques or orders as may be necessary for the transfer of the money. An application to the Board of Trade for payment out of moneys so transferred shall be signed by the official liquidator and counter-signed by the said master.

(6) Money invested or deposited at interest by a liquidator shall be deemed to be money under his control, and when such money forms part of the minimum balance payable into the companies liquidation account pursuant to clause (2) of this rule, the liquidator shall realise the investment or withdraw the deposit, and shall pay the proceeds into the companies liquidation account, provided that where the money is invested in Government securities, such securities may, with the permission of the Board of Trade, be transferred to the control of the Board of Trade instead of being forthwith realised and the proceeds thereof paid into the companies liquidation account. In the latter case, if and when the money represented by the securities is required wholly or in part for the purposes of the liquidation, the Board of Trade may realise the securities wholly or in part and pay the proceeds of realisation into the companies liquidation account and deal with the same in the same way as other moneys paid into the said account may be dealt with.

Liquidator to furnish information to Board of Trade.

Form 97.

192. Every person who has acted as liquidator of any company, whether the liquidation has been concluded or not, shall furnish to the Board of Trade particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company and such other particulars as the Board of Trade may require for the purpose of ascertaining or getting in any money payable into the company's liquidation account at the Bank of England. The Board of Trade may require such particulars to be verified by affidavit.

Board of Trade may call for verified accounts.

Forms 92 and 93.

46 & 47 Vict. c. 52.

193.—(1) The Board of Trade may at any time order any such person to submit to them an account verified by affidavit of the sums received and paid by him as liquidator of the company and may direct and enforce an audit of the account.

(2) For the purposes of section 224 of the Act, and the rules, the court shall have, and, at the instance of the Board of Trade, may exercise all the powers conferred by the Bankruptcy Act, 1883, with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of that Act with respect thereto shall, with any necessary modification, apply to proceedings under section 224 of the Act.

194. An application by the Board of Trade for the purpose of ascertaining and getting in money payable into the Bank of England pursuant to section 224 of the Act, shall be made by motion, and where the winding-up is by or under the supervision of the court shall be made to and dealt with by the judge, and in a voluntary winding-up shall be made to and dealt with by the judge of the High Court. Rule 194. Application to the court for enforcing an account, and getting in money.

195. An application by a person claiming to be entitled to any money paid into the Bank of England in pursuance of section 224 of the Act, shall be made in such form and manner as the Board of Trade may from time to time direct, and shall, unless the Board of Trade otherwise directs, be accompanied by the certificate of the liquidator that the person claiming is entitled and such further evidence as the Board of Trade may direct. Application for payment out by person entitled.

196. A liquidator who requires to make payments out of money paid into the Bank of England in pursuance of section 224 of the Act, either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Board of Trade may direct, and the Board of Trade may thereupon either make an order for payment to the liquidator of the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the liquidator for transmission to the persons to whom the payments are to be made. Application by liquidator for payment out.

Release of Liquidator in a Winding-up by the Court.

197.—(1) A liquidator in a winding-up by the court before making application to the Board of Trade for his release, shall give notice of his intention so to do to all the creditors who have proved their debts, and to all the contributories, and shall send with the notice a summary of his receipts and payments as liquidator. Proceedings for release of liquidator. Forms 98, 99 and 100.

(2) When the Board of Trade have granted to a liquidator his release, a notice of the order granting the release shall be gazetted. The liquidator shall provide the requisite stamp fee for the *Gazette*, which he may charge against the company's assets.

Official Receivers and Board of Trade.

198.—(1) Judicial notice shall be taken of the appointment of the official receivers appointed by the Board of Trade. Appointment.

(2) When the Board of Trade appoints any officer to act as deputy for or in the place of an official receiver, notice thereof shall be given by letter to the court to which such official receiver

Rule 198.

is or was attached. The letter shall specify the duration of such acting appointment.

(3) Any person so appointed shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of an official receiver.

Removal.

199. Where an official receiver is removed from his office by the Board of Trade, notice of the order removing him shall be communicated by letter to the court to which the official receiver was attached.

Personal performance of duties.

200. The Board of Trade may, by general or special directions determine what acts or duties of the official receiver in relation to the winding-up of companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control.

Assistant official receivers.

201. An assistant official receiver, appointed by the Board of Trade, shall be an officer of the court, like the official receiver to whom he is assistant, and subject to the directions of the Board of Trade, he may represent the official receiver in all proceedings in court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of an assistant official receiver, and he may be removed in the same manner as is provided in the case of an official receiver.

Power of officers of Board of Trade and official receivers' clerks in certain cases to act for official receiver.

202. In the absence of the official receiver any officer of the Board of Trade duly authorised for the purpose by the Board of Trade, and any clerk of the official receiver duly authorised by him in writing, may by leave of the court act on behalf of the official receiver, and take part for him in any public or other examination and in any unopposed application to the court.

Duties where no assets.

203. Where a company against which a winding-up order has been made has no available assets, the official receiver shall not be required to incur any expense in relation to the winding-up without the express directions of the Board of Trade.

Accounting by official receiver.

204.—(1) Where a liquidator is appointed by the court in a winding-up by the court, the official receiver shall account to the liquidator.

(2) If the liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who shall take such action (if any) thereon as it may deem expedient.

(3) The provisions of these rules as to liquidators and their accounts shall not apply to the official receiver when he is liqui-

dator, but he shall account in such manner as the Board of Trade may from time to time direct. Rule 204.

205. Where there is no committee of inspection any functions of the committee of inspection which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the official receiver. Official receiver to act for Board of Trade where no committee of inspection.

206. An appeal in the High Court against a decision of the Board of Trade, or an appeal to the court from an act or decision of the official receiver acting otherwise than as liquidator of a company, shall be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced, or made. Appeals from Board of Trade and official receiver.

207.—(1) An application by the Board of Trade to the court to examine on oath the liquidator or any other person pursuant to section 159 of the Act, shall be made *ex parte*, and shall be supported by a report to the court filed with the registrar, stating the circumstances in which the application is made. Applications under s. 159 (2) of the Act.

(2) The report may be signed by any person duly authorised to sign documents on behalf of the Board of Trade; and shall for the purposes of such application be *primâ facie* evidence of the statements therein contained.

BOOKS TO BE KEPT, AND RETURNS MADE, BY OFFICERS OF COURTS.

208.—(1) (*a*) In a court other than the High Court, the registrar shall keep books according to the Forms in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded. Books to be kept by officers of courts.

NOTE.—(*a*) Provisions applicable to High Court omitted.

(2) The officers of the courts whose duty it is to keep the books prescribed by these rules shall make and transmit to the Board of Trade such extracts from their books, and shall furnish the Board of Trade with such information and returns as the Board of Trade may from time to time require. Forms 101 and 102.

GAZETTING IN A WINDING-UP BY THE COURT.

209.—(1) All notices subsequent to the making by the court of a winding-up order in pursuance of the Act or the rules requiring publication in the *London Gazette* shall be gazetted by the Board of Trade. Gazetting notices. Form 103.

(2) Where any winding-up order is amended, and also in any

Rule 209.

case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade shall re-gazette such order or matter with the necessary amendments and alterations in the prescribed form, at the expense of the company's assets, or otherwise as the Board of Trade may direct.

Filing memorandum of *Gazette* notices.

Form 104.

210.—(1) Whenever the *London Gazette* contains any advertisement relating to any winding-up proceedings the official receiver or liquidator as the case may be shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

(2) In the case of an advertisement in a local paper, the official receiver or liquidator as the case may be shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3) For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the court is inserted, shall be left with the official receiver or liquidator as the case may be by the person who inserts the advertisement.

(4) A memorandum under this rule shall be *primâ facie* evidence that the advertisement to which it refers was duly inserted in the issue of the *Gazette* or newspaper mentioned in it.

Arrests and Commitments.

To whom warrants may be addressed.

211. A warrant of arrest, or any other warrant issued under the provisions of the Act and rules, may be addressed to such officer of the court, or to such high bailiff or officer of any county court, whether such county court has jurisdiction to wind up a company or not, as the court may in each case direct.

Prison to which person arrested on warrant is to be taken.

212. Where the court issues a warrant for the arrest of a person under any of the provisions of the Act or rules, the prison (to be named in the warrant of arrest) to which the person shall be committed shall, unless the court shall otherwise order, be the prison used by the court in cases of orders of commitment made in the exercise by the court of its ordinary jurisdiction.

Execution of warrants of arrest outside ordinary jurisdiction of court.

Forms 105 and 106.

213. Where a warrant for the arrest of a person has been issued by a court other than the High Court under any of the provisions of the Act and rules, the High Bailiff of the court, or other officer of the court to whom the warrant is addressed, may send the warrant of arrest to the registrar of any other court (other than the High Court) within the ordinary jurisdiction or district of

Rule 213.

which such person shall then be or be believed to be, with a warrant annexed thereto under the hand of the high bailiff or officer and seal of the court from which the warrant originally issued, requiring execution of the warrant by the court to which it is so sent; and the registrar of the last-mentioned court shall seal or stamp the warrant with the seal of his court, and issue the same to the high bailiff or other proper officer of his court, with an endorsement thereon in the Form 106; and thereupon such last-mentioned high bailiff or officer may, and shall in all respects execute the said warrant according to the requirements thereof, and all constables and peace officers shall aid and assist within their respective districts in the execution of such warrant.

Prison to which a person arrested is to be conveyed, and production and custody of persons arrested.

214.—(1) Where a person is arrested under a warrant of commitment issued under any of the provisions of the Acts and rules, other than sections 174 and 176 of the Act, and Rule 66 of the rules, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison of the court within the ordinary jurisdiction of which he is apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged by the order of the court which originally issued the warrant of commitment, or otherwise by law.

(2) Where a person is arrested under a warrant, issued under section 174 or section 176 of the Act, or under Rule 66 of the rules, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison of the court within the ordinary jurisdiction of which he is apprehended; and the governor or keeper of such prison shall produce such person before the court as it may from time to time direct, and shall safely keep him until such time as the court shall otherwise order, or such person shall be otherwise discharged by law. Provided that where any such person is conveyed to a prison other than the prison used by the court which originally issued the warrant in cases of orders of commitment made by such court in the exercise of its ordinary jurisdiction, the court may by order direct such person to be transferred to such last mentioned prison; and on receipt of such order the governor or keeper of the prison to which such person has been conveyed, shall cause such person to be conveyed in proper custody to the prison mentioned in such order, and the governor or keeper of such last mentioned prison shall, on production of such order and of the warrant of arrest, receive such person, and shall produce him before the court, as it may from time to time direct, and shall safely keep him until such time as the court shall otherwise order, or such person shall be otherwise discharged by law.

MISCELLANEOUS MATTERS.

Rule 215. Board of Trade orders.

215. The Board of Trade may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or the rules which are of an administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the King's printers, and purport to be issued under the authority of the Board of Trade.

Enlargement or abridgment of time.

216. The court may, in any case in which it shall see fit, extend or abridge the time appointed by the rules or fixed by any order of the court for doing any act or taking any proceeding.

Formal defect not to invalidate proceedings.

217.—(1) No proceedings under the Act or the rules shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that court.

(2) No defect or irregularity in the appointment or election of a receiver, liquidator, or member of a committee of inspection shall vitiate any act done by him in good faith.

Application of existing procedure.

218. In all proceedings in or before the court, or any judge registrar or officer thereof, or over which the court has jurisdiction under the Act and rules, where no other provision is made by the Act or rules, the practice procedure and regulations shall unless the court otherwise in any special case directs, be, in (*a*) a county court, in accordance, as far as practicable, with the existing rules and practice of the court in proceedings for the administration of assets by the court (*b*).

NOTE.—(*a*) Provisions as to High Court omitted
NOTE.—(*b*) Rule 219 applies to High Court.

Annulment.

220. The Companies (Winding-up) Rules, 1903, and the forms thereby prescribed are hereby revoked and annulled, provided that such revocation and annulment shall not prejudice or affect anything done or suffered before the date on which these rules come into operation under any rule or order which is hereby revoked and annulled and that no rule or practice which was annulled or repealed by the said rules and orders shall be revived by reason of the revocation and annulment hereby effected.

221. These rules may be cited as the Companies (Winding-up) Rules, 1909. They shall come into operation on the 1st day of April, 1909. **Rule 221.** Short title and commencement.

LOREBURN, C.

I concur.

WINSTON S. CHURCHILL,

President of the Board of Trade.

The 29th day of March, 1909.

APPENDIX—FORMS.

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FORMS.

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No. 2. (Rule 11.)

General Title (County Court).

In the county court of , holden at .
No. of 19 .
In the matter of the Companies (Consolidation) Act, 1908.
and
In the matter of [*insert full name of company*], limited.

No. 3. (Rule 8.)

Form of Summons (General).

[*Title.*]

Let [*name of respondent*] attend at on the day of , 19 , at o'clock in the noon on the hearing of an application of [*name and description of applicant*] for an order that [*state object of application*].

Dated the day of 19 .

This summons was taken out by of Solicitors for .

To

NOTE.—If you do not attend, either in person or by your solicitor, at the time and place above-mentioned such order will be made, and proceedings taken, as the judge (or registrar) may think just and expedient.

No. 4. (Rule 25.)

Petition.

[*Title.*]

To [*insert title of court*].

The humble petition of [*insert full name, title, &c., of petitioner*] showeth as follows :—

1. The company, limited (hereinafter called the company) was in the month of , incorporated under the Companies Acts.

2. The registered office of the company is at [*state the full address of the registered office so as sufficiently to show the district in which it is situate*].

3. The nominal capital of the company is £ , divided into shares of £ each. The amount of the capital paid up or credited as paid up is £ .

4. The objects for which the company was established are as follows :—

To , and other objects set forth in the memorandum of association thereof.

[*Here set out in paragraphs the facts on which the petitioner relies, and conclude as follows*] :—

Your petitioner therefore humbly prays as follows :—

(1.) That the company, limited, may be wound up by the court under the provisions of the Companies (Consolidation) Act, 1908.

(2.) Or that such other order may be made in the premises as shall be just.

NOTE.—It is intended to serve this petition on . (*This note will be unnecessary if the company is petitioner.*)

No. 5. (Rule 25.)

Petition by unpaid Creditor on Simple Contract.

[*Title.*]

Paragraphs 1, 2, 3, and 4 as in No. 4.

5. The company is indebted to your petitioner in the sum of £ for [*state consideration for the debt, with particulars so as to establish that the debt claimed is due*].

6. Your petitioner has made application to the company for payment of his debt, but the company has failed and neglected to pay the same or any part thereof.

7. The company is [insolvent and] unable to pay its debts.

8. In the circumstances it is just and equitable that the company should be wound up.

Your petitioner therefore, &c. [as in No. 4].

No. 6. (Rule 27.)

Advertisement of Petition.

[*Title.*]

Notice is hereby given that a petition for the winding-up of the above-named company by [*if the winding-up is to be subject to supervision, insert instead of "by" the words "subject to the supervision of"*] the county court of holden at [*or, as the case may be*], was, on the day of , 19 , presented to the said court by the said company [*or,*

as the case may be]. And that the said petition is directed to be heard before the court sitting at on the day of , 19 ; and any creditor or contributory of the said company desirous to support or oppose the making of an order on the said petition may appear at the time of hearing by himself or [*in the county court add "his solicitor or"*] his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same by the undersigned on payment of the regulated charge for the same.

[Signed] [*to be signed by the solicitor to the petitioner, or by the petitioner if he has no solicitor*].
[Name.]
[Address.]

NOTE.—Any person who intends to appear on the hearing of the said petition must serve on or send by post to the above-named, notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their solicitor (if any), and must be served, or if posted, must be sent by post in sufficient time to reach the above named not later than six o'clock in the afternoon of the of , 19

No. 7. (Rule 28.)

Affidavit of Service of Petition on Members, Officers, or Servants.

[*Title.*]

In the matter of a petition dated .

I, , of , make oath and say :—

1. [*In the case of service of petition on a company by leaving it with a member, officer, or servant at the registered office, or if no registered office at the principal or last known principal place of business of the company.*]

That I did on day, the day of , 19 , serve the above named company with the above-mentioned petition by delivering to and leaving with [*name and description*] a member (or officer) (or servant) of the said company a copy of the above-mentioned petition, duly sealed with the seal of the court, at [*office or place of business as aforesaid*], before the hour of in the noon.

2. [*In the case of no member, officer, or servant of the company being found at the registered office or place of business.*]

That I did on day, the day of , 19 , having failed to find any member, officer, or servant of the above-named company at [*here state registered office or place of business*], leave there a copy of the above-mentioned petition, duly sealed with the seal of the court, before the hour of in the noon [*add with whom such sealed copy was left, or where*, e.g.; *affixed to door of offices, or placed in letter-box, or otherwise*].

3. [*In the case of directions by the court as to the member or members of the company to be served.*]

That I did on day, the day of 19 , serve [*name or names and description*] with a copy of the above-mentioned petition, duly sealed with the seal of the court, by delivering the same personally to the said , at [*place*], before the hour of in the noon.

4. The said petition is now produced and shown to me, marked A.

Sworn at, &c.

No. 8. (Rule 28.)

Affidavit of Service of Petition on Liquidator.

[*Title.*]

In the matter of a petition, dated ; for winding up the above company [by] *or* [under the supervision of] the court [*as the case may be*].

I, , of , make oath and say :—

That I did, on day, the day of 19 , serve [*name and description*] the liquidator of the above-named company with a copy of the above-mentioned petition, duly sealed with the seal of the court, by delivering the same personally to the said at [*place*], before the hour of in the noon.

The said petition is now produced and shown to me, marked A.

Sworn at, &c.

No. 9. (Rule 29.)

Affidavit Verifying Petition.

[*Title.*]

I, A. B., of &c., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A., as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, &c.

No. 10. (Rule 31.)

Order appointing the Official Receiver as Provisional Liquidator after Presentation of Petition, and before Order to Wind up.

the day of 19

[*Title.*]

Upon the application, &c., and upon reading, &c., the court doth hereby appoint [one of] the official receiver[s] attached to the court to be provisional liquidator of the above-named company. And the court doth hereby limit and restrict the powers of the said official receiver as provisional liquidator to the following acts, that is to say [*describe the acts which the provisional liquidator is to be authorised to do and the property of which he is to take possession*].

No. 11. (Rule 33.)

Notice of Intention to appear on Petition.

[*Title.*]

Take notice that A. B., of [*state full name, or if a firm, the name of the firm and address*], a creditor for £ of (*or* contributory holding [*state number and class of shares held*] shares in) the above company intends to appear on the hearing of the petition advertised to be heard on the day of 19 , and to support (*or* oppose) such petition.

(Signed) [*to be signed by the person or his solicitor*].

[*Name of person or firm.*]

[*Address.*]

To

No. 12. (Rule 34.)

List of Parties attending the hearing of a Petition.

[*Title.*]

The following are the names of those who have given notice of their intention to attend the hearing of the petition herein, on the day of 19 .

Name.	Address.	Name and Address of Solicitor of party who has given notice.	Creditors. Amount of Debt.	Contributories. Number of Shares.	Opposing.	Support-ing.

No. 13. (Rule 37.)

Notification to Official Receiver of Order pronounced on Petition for Winding-up.

[*Title.*]

To the official receiver of the court.

(*Address.*)

Order pronounced this day by the Honourable Mr. Justice [*or, as the case may be*] on petition for winding-up the under-mentioned company under the Companies (Consolidation) Act, 1908.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.	Date of Presentation of Petition.

No. 14. (Rule 37.)

Notification to Official Receiver of Order pronounced for appointment of Official Receiver as Provisional Liquidator prior to Winding-up Order being made.

[*Title.*]

To the official receiver of the court.

(*Address.*)

Order pronounced this day by the Honourable Mr. Justice [*or, as the case may be*] for the appointment of an official receiver as provisional liquidator prior to any winding-up order being made.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.	Date of Presentation of Petition.

No. 15. (Rule 40.)

Order for Winding-up by the Court.

day of , 19

[*Title.*]

Upon the petition of the above-named company [*or* A. B., of &c., a creditor [*or* contributory] of the above-named company], on the day of , 19 , preferred unto the court, and upon hearing for the petitioner, and for , and upon reading the said petition, and affidavit of (the said petitioner), filed, &c., verifying the said petition, an affidavit of L. M., filed the day of , 19 , the *London Gazette* of the day of , 19 , the newspaper of the day of [*enter any other papers*], each containing an advertisement of the said petition [*enter any other evidence*], this court doth order that the said company be wound up by this court under the provisions of the Companies (Consolidation) Act, 1908, and that [one of] the official receiver[s] attached to this court be constituted provisional liquidator of the affairs of the company.

NOTE.—It will be the duty of the directors and of the secretary or other chief officer of the company as the official receiver may require, to attend on the official receiver at [*insert the place at which attendance is required*] forthwith on the service of this order.

No. 16. (Rule 41.)

Order for Winding-up, Subject to Supervision.

day, the day of , 19

[*Title.*]

Upon the petition, &c., this court doth order that the voluntary winding-up of the said company, limited, be continued, but subject to the

supervision of this court; and any of the proceedings under the said voluntary winding-up may be adopted as the court shall think fit; and it is ordered that the liquidator appointed in the voluntary winding-up of the said company, do on the day of next, and thenceforth every three months, file with the registrar a report in writing as to the position of, and the progress made with, the winding-up of the said company, and with the realisation of the assets thereof, and as to any other matters connected with the winding-up as the court may from time to time direct. And it is ordered that no bills of costs, charges, or expenses, or special remuneration of any solicitor employed by the liquidator of the said company, or any remuneration, charges, or expenses of such liquidator, or of any manager, accountant, auctioneer, broker, or other person, be paid out of the assets of the said company, unless such costs, charges, expenses, or remuneration, shall have been taxed or allowed by the registrar. And it is ordered that all such costs, charges, expenses, and remuneration, be taxed and ascertained accordingly. And it is ordered that the costs of the petitioner and of [*here insert any directions as to allowance of costs of petitioner and of persons appearing*]. And the creditors, contributories, and liquidator of the said company, and all other persons interested, are to be at liberty to apply generally as there may be occasion.

No. 17. (Rule 41.)

Notice of Order to Wind up (for Newspaper).

The Companies (Consolidation) Act, 1908.

In the matter of , Limited.
Winding-up order made , 19 .
Date and place of first meetings:—
Creditors 19 , at .
Contributories 19 , at .

Official Receiver and Provisional Liquidator.

No. 18. (Rule 43.)

Order of Transfer.

[*Title.*]

Upon the application of [*name of applicant*] and upon hearing and upon reading it is ordered that the said proceedings be transferred from the [*court from which the transfer is to be made*] court to the [*court to which the transfer is to be made*] court.

Dated this day of 19 .

No. 19. (Rule 46.)

Notice of Transfer of Proceedings to the Board of Trade and Official Receiver.

[*Title.*]

The proceedings in the winding-up of the above-named company have been, by order dated the 19 , transferred to this court from the [High Court] *or* [the county court of , holden at ,] [*or as the case may be*] and have had the above letter and number allotted to them. The letter and number before transfer were .

Registrar.

Dated this day of 19 .

No. 20. (Rule 49.)

Affidavit by Special Manager Verifying Account.

[*Title.*]

I, of , make oath and say as follows :—

1. The account hereunto annexed, marked with the letter A, produced and shown to me at the time of swearing this my affidavit, and purporting to be my account as special manager of the estate or business of the above-named company, contains a true account of all and every sums and sum of money received by me or by any other person or persons by my order or to my knowledge or belief for my use on account or in respect of the said estate or business.

2. The several sums of money mentioned in the said account hereby verified to have been paid or allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

Sworn, &c.

No. 21. (Rule 118.)

Notice to Creditors of First Meeting.

[*Title.*]

(Under the order for winding-up the above-named company, dated the day of 19 .)

Notice is hereby given that the first meeting of creditors in the above matter will be held at on the day of 19 , at o'clock in the noon.

To entitle you to vote thereat your proof must be lodged with me not later than o'clock on the day of 19 .

Forms of proof and of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me not later than o'clock on the day of 19 .

Official Receiver.

[*Address.*]

(The statement of the company's affairs [*Here insert "has not been lodged," or "has been lodged, and summary is enclosed"*].)

NOTE.

At the first meetings of the creditors and contributories they may amongst other things :—

1. By resolution determine whether or not an application is to be made to the court to appoint a liquidator in place of the official receiver.

2. By resolution determine whether or not an application shall be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

NOTE.—If a liquidator is not appointed by the court the official receiver will be the liquidator.

No. 22. (Rule 118.)

Notice to Contributories of First Meeting.

[*Title.*]

Notice is hereby given that the first meeting of the contributories in the above matter will be held at on the day of 19 , at o'clock in the noon.

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me not later than o'clock on the day of 19 .

Dated this day of 19 .

Official Receiver.

(The company's statement of affairs [*Here insert "has not been lodged" or "has been lodged, and summary is enclosed"*].)

NOTE.

At the first meetings of creditors and contributories they may amongst other things :—

1. By resolution determine whether or not an application shall be made to the court to appoint a liquidator in place of the official receiver.

2. By resolution determine whether or not an application shall be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

NOTE.—If a liquidator is not appointed by the court the official receiver will be the liquidator.

No. 23. (Rule 119.)

Notice to Directors and Officers of Company to Attend First Meeting of Creditors or Contributories.

[*Title.*]

Take notice that the first meeting of creditors [*or* contributories] will be held on the day of 19 , at o'clock at [*here insert place where meeting will be held*] and that you are required to attend thereat, and give such information as the meeting may require.

Dated this day of 19 .

To [*Insert name of person required to attend*].

Official Receiver.

No. 24.

Memorandum of Proceedings at adjourned First Meeting.

(No quorum.)

[*Title.*]

Before at on the day of 19 , at o'clock.

Memorandum.—The adjourned meeting of [*insert "creditors" or "contributories," as the case may be*] in the above matter was held at the time and place above-mentioned; but it appearing that there was not a quorum of [*insert "creditors" or "contributories," as the case may be*] qualified to vote present or represented, no resolution was passed, and the meeting was not further adjourned.

Chairman.

No. 25.

List of Creditors (*a*) assembled to be used at every Meeting.

(*a*) Or "contributories."

No. 26. (Rule 50.)

Statement of Affairs.

No. 27. (Rule 55.)

Report of Result of Meeting of Creditors or Contributories.

No. 28. (Rule 55.)

Order appointing Liquidator.

[*Title.*]

the day of 19 .

Upon the application of the official receiver and provisional liquidator of the above-named company, by summons dated and upon hearing the applicant in person and reading the order to wind up the said company dated 19 , and the reports of the official receiver of the results of the meetings of creditors and contributories made to the court and respectively dated the , and upon reading the affidavit of as to the fitness of the liquidator hereinafter named filed .

It is ordered that of be appointed liquidator of the above-named company.

[*To be struck out if no committee of inspection appointed*]. It is also ordered that the following persons be appointed a committee of inspection to act with the said liquidator, namely :—

And it is ordered that the said liquidator do within seven days from the date of this order give security to the satisfaction of the Board of Trade as provided by the Companies (Winding-up) Rules, 1909.

And notice of this order is to be gazetted and advertised in the .

By the Court.

No. 29. (Rule 57.)

Certificate that Liquidator or Special Manager has given Security.

[*Title.*]

This is to certify that A. B., of , who was on the day of , 19 , appointed liquidator [*or* special manager] of the above-named company, has duly given security to the satisfaction of the Board of Trade.

Dated this day of , 19 .

By the Board of Trade
(Signed) J. S.

No. 30. (Rule 55.)

Advertisement of Appointment of Liquidator.

In the matter of , limited.

By order of the , dated the day of 19 , Mr. has been appointed liquidator of the above-named company with [*or* without] a committee of inspection.

Dated this day of 19 .

No. 31. (Rules 60–62.)

Order Directing a Public Examination.

[*Title.*]

Upon reading the reports of the official receiver in the above matter dated respectively the day of 19 , the day of 19 , and

It is ordered that the several persons whose names and addresses are set forth in the schedule hereto do attend before the court on a day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the company, and as to the conduct of the business of the company, and as to their conduct and dealings as directors or officers of the company.

THE SCHEDULE REFERRED TO.

Name.	Address.	Connection with the Company.

No. 32. (Rule 64.)

Order appointing a Time for Public Examination.

[*Title.*]

Upon the application of the official receiver in the above matter, it is ordered that the public examination of who, by the order of the court dated the day of 19 , was directed to attend before to be publicly examined, be held at [*insert the place for the examination*] on the day of 19 , at o'clock in the noon.

And it is ordered that the above-named do attend at the place and time above mentioned.

Dated this day of 19 .

NOTE.—Notice is hereby given that if you, the above-named fail, without reasonable excuse, to attend at the time and place aforesaid, you will be liable to be committed to prison without further notice.

No. 33. (Rule 64.)

Notice to attend Public Examination.

[*Title.*]

Whereas by an order of this court, made on the day of , 19 it was ordered that you, the under-mentioned should attend before the court on a day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the company, and as

to the conduct of the business of the company, and as to your conduct and dealings as [*insert director or officer* [*or as the case may be*]].

And whereas the day of , 19 , at o'clock, in the noon, before the sitting at has been appointed as the time and place for holding the said examination.

Notice is hereby given that you are required to attend at the said time and place, and at any adjournments of the examination which may be ordered, and to bring with you and produce all books, papers, and writings and other documents in your custody or power in any way relating to the above-named company.

And take notice that if you fail, without reasonable excuse, to attend at such time and place, and at the adjournments of the said public examination which may be ordered, you will be liable to be committed to prison without further notice.

Dated the day of 19 .

To .

Official Receiver.

No. 34. (Rule 71.)

Application for Appointment of Shorthand Writer to take down Notes of Public Examination and Order thereon.

[*Title.*]

Ex parte the official receiver.

I, the official receiver herein, do hereby, pursuant to Rule 71 of the Companies Winding-Up Rules, 1909, apply to the court for an order for the appointment of of in the county of to take down in shorthand the notes of examination of at their public examination, the costs of taking such notes, and of making a transcript thereof, to be paid in accordance with Rule 71.

Dated this day of 19 .

Official Receiver.

Before

Upon the application of the official receiver the court hereby appoints of in the county of to take down in shorthand the notes of examination of the persons mentioned in the above application at their public examination, or at any adjournment thereof, pursuant to Rule 71 of the Companies Winding-up Rules, 1909, the costs of taking such notes, and of making a transcript thereof, to be paid in accordance with Rule 71.

Dated this day of 19 .

No. 35. (Rule 71.)

Declaration by Shorthand Writer.

[*Title.*]

Before

I, , of , in the county of , the shorthand writer appointed by this court to take down the examination of , do solemnly and sincerely declare that I will truly and faithfully take down the questions and answers put to and given by the said in this matter, and will deliver true and faithful transcripts thereof as the court may direct.

Dated this day of 19 .

[Declared before me at the time and place above-mentioned.]

No. 36. (Rule 67.)

Notes of Public Examination where a Shorthand Writer is Appointed.

[*Title.*]

Public examination of [*Mr.* *an officer* [*or as the case may be*] *of the above-named company.*]

Before at the court this day of 19 .

The above-named , being sworn and examined at the time and place above-mentioned, upon the several questions following being put and propounded to him, gave the several answers thereto respectively following each question, that is to say :—

A.

These are the notes of the public examination referred to in the memorandum of public examination of , taken before me this day of 19 .

No. 37. (Rule 67.)

Notes of Public Examination where a Shorthand Writer is not Appointed.

[*Title.*]

Public examination of [*Mr.* *an officer* [*or as the case may be*] *of the above-named company*].

Before at the court , this day of 19 .

The above-named , being sworn and examined at the time and place above-mentioned, upon his oath saith as follows :—

A

These are the notes of the public examination referred to in the memorandum of public examination of , taken before me this day of , 19 .

No. 38. (Rule 72.)

Report to the Court where Person examined refuses to answer to Satisfaction of Registrar or Officer.

[*Title.*]

At the [public] examination of [e.g., A. B., *a person ordered to attend for examination*], held before me this day of , 19 , the following question was allowed by me to be put to the said [ ].

Q. [*Here state question.*]

The [*witness*] refused to answer the said question.

[*or*] The [*witness*] answered the said question as follows :—

A. [*Here insert answers (if any).*]

I thereupon named the day of , 19 , at as the time and place for such [refusal to] answer to be reported to the Hon. Mr. Justice [*or* His Honour Judge].

Dated this day of , 19 .

Registrar
[*or as the case may be*].

No. 39.

Order on Persons to attend at Chambers to be Examined.

[*Title.*]

A. B. of &c., and E. F. of &c., are hereby severally ordered to attend at [*state place of examination*], in the county of on the day of , at of the clock in the noon, to be examined on the part of the official receiver [*or* the liquidator], for the purpose of proceedings directed by the court to be taken in the above matter. [And the said A. B. is hereby required to bring with him and produce, at the time and place aforesaid, the documents mentioned in the schedule hereto, and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the above-named company.]

Dated this day of 19 .

This order was made on the application of Messrs. C. and D., of in the county of , Solicitors for .

THE SCHEDULE ABOVE REFERRED TO.

No. 40. (Rule 66.)

Warrant against Person who fails to attend Examination.

[*Title.*]

To X. Y., the officer of this court [*or where warrant issues from a county court,* to the high bailiff and others the bailiffs of the said court] and all peace officers within the jurisdiction of the said court, and to the governor or keeper of the [*here insert the prison*].

Whereas by evidence taken upon oath, it hath been made to appear to the satisfaction of the court that by order of the court, dated the day of 19 , and directed to [*name of person required to attend*] he was directed to attend personally at the [*place of examination*], and be examined before [*name or title of officer before whom examination is directed to be held*], which order was afterwards, as hath been duly proved on oath, duly served upon the said [*name of person required to attend*] [*or*, that there is probable reason to suspect and believe that the said [*name of person required to attend*], has absconded and gone abroad, [*or* quitted his place of residence, *or*] is about to go abroad [*or* quit his place of residence] with a view of avoiding examination under the Companies (Consolidation) Act, 1908].

And whereas the said [*name of person required to attend*] did without good cause fail to attend on the said day of 19 , for the purpose of being examined, according to the requirements of the said order of this court made on the , day of 19 , directing him so to attend.

These are therefore to require you the said [*or* high bailiff, bailiffs, and others], to take the said [*name of person required to attend*] and to deliver him to the governor or keeper of the above-named prison, and you the said governor or keeper to receive the said [*name of person required to attend*] and him safely to keep in the said prison until such time as this court may order.

Dated this day of 19 .

No. 41. (Rule 76.)

Notice by Liquidator requiring Payment of Money or Delivery of Books, &c., to Liquidator.

[*Title.*]

Take notice that I, the undersigned [*name of liquidator*], have been appointed liquidator of the above-named company, and that you, the under-

mentioned [*name of person to whom notice is addressed*], are required, within days after service hereof, to pay to me [*or* deliver, convey, surrender, or transfer to or into my hands] as liquidator of the said company at my office, situate at [*address of liquidator's office*], &c., the sum of £ , being the amount of debt appearing to be due from you on your account with the said company [*or* any sum or balance, books, papers, estate, or effects], [*or specifically describe the property*] now being in your hands, and to which the said company is entitled [*or otherwise as the case may be*].

Dated this day of , 19 .

Signed ,
Liquidator.

To [*name of person to whom notice is addressed*].
(*Address*)

No. 42. (Rule 77.)

Provisional List of Contributories to be made out by Liquidator.

[*Title.*]

The following is a list of members of the company liable to be placed on the list of contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses and the number of shares [*or* extent of interest] to be attributed to each, so far as I have been able to make out or ascertain the same.

In the first part of the list, the persons who are contributories in their own right are distinguished.

In the second part of the said list, the persons who are contributories as being representatives of, or being liable to the debts of others, are distinguished.

First Part.—Contributories in their own Right.

Serial No.	Name.	Address.	Description.	Number of Shares [*or* extent of Interest].

Second Part.—Contributories as being Representatives of, or liable to the Debts of, Others.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or* extent of Interest].

No. 43. (Rule 78.)

Notice to Contributories of Appointment to settle List of Contributories.

[*Title.*]

Take notice that I, , the liquidator of the above-named company, have appointed the day of 19 , at of the clock in the noon, at [*insert place of appointment*], in the county of , to settle the list of the contributories of the above-named company, made out by me, pursuant to the Companies (Consolidation) Act, 1908, and the rules thereunder, and that you are included in such list in the character and for the number of shares [*or* extent of interest] stated below; and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled, including you therein.

Dated this day of , 19 .

Liquidator.

To Mr. A. B. [and to Mr. C. D., his solicitor.]

No. on List.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or* extent of Interest].

No. 44.

Affidavit of Postage of Notices of Appointment to settle List of Contributories.

[*Title.*]

a [*state the description of the deponent*] make oath and say as follows:—

1. That I did on the day of 19 , send to each contributory mentioned in the list of contributories made out by the [official receiver and] liquidator on the day of 19 , and now on the file of proceedings of the above-named company, at the address appearing in such list, a notice of the time and place of the appointment to settle the list of contributories in the form hereunto annexed, marked "A.," except that in the tabular form at the foot of such copies respectively I inserted the number, name, address, description, in what character included and ["*number of shares*" *or* "*extent of interest*"] of the person on whom such copy of the said notice was served.

2. That I sent the said notices by putting the same prepaid into the post office at before the hour of o'clock in the noon on the said day.

Sworn, &c.

No. 45. (Rule 79.)

Certificate of Liquidator of Final Settlement of the List of Contributories.

[*Title.*]

Pursuant to the Companies (Consolidation Act, 1908, and to the rules made thereunder, I, the undersigned, being the liquidator of the above-named company, hereby certify that the result of the settlement of the list of contributories of the above-named company, so far as the said list has been settled, up to the date of this certificate, is as follows :—

1. The several persons whose names are set forth in the second column of the first schedule hereto have been included in the said list of contributories as contributories of the said company in respect of the [" *number of shares* " *or* " *extent of interest* "] set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of or being liable to the debts of others.

2. The several persons whose names are set forth in the second column of the second schedule hereto, and were included in the provisional list of contributories, have been excluded from the said list of contributories.

3. I have, in the sixth column of the first part of the first schedule and in the seventh column of the second part of the first schedule and in the same column of the second schedule, set forth opposite the name of each of the several persons respectively the date when such person was included in or excluded from the said list of contributories.

4. Before settling the said list, I was satisfied by the affidavit of , clerk to , duly filed with the proceedings herein, that notice was duly sent by post to each of the persons mentioned in the said list, informing him that he was included in such list in the character and for the [" *number of shares* " *or* " *extent of interest* "] stated therein, and of the day appointed for finally settling the said list.

Dated this day of 19 .

In the matter of , limited.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Contributories in their own Right.

Serial No. in List.	Name.	Address.	Description.	Number of Shares [*or* extent of Interest].	Date when included in the List.

In the matter of , limited.

Second Part.—Contributories as being Representatives of or liable to the Debts of Others.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or* extent of Interest].	Date when included in the List.

In the matter of , limited.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Serial No. in List.	Name.	Address.	Description.	In what Character proposed to be included.	Number of Shares [*or* extent of Interest].	Date when excluded from the List.

No. 46. (Rule 80.)

Notice to Contributory of Final Settlement of List of Contributories, and that his Name is included.

[*Title.*]

Take notice that I, , the liquidator of the above-named company, have, by certificate, dated the day of , 19 , under my hand, finally settled the list of contributories of the said company, and that you are included in such list in the character and for the number of shares [*or* extent of interest] stated below.

Any application by you to vary the said list of contributories, or that your name may be excluded therefrom, must be made by you to the court within 21 days from the service on you of this notice, or the same will not be entertained.

The said list may be inspected by you at the chambers of the registrar at [*state address*], on any day between the hours of and .
Dated this day of , 19 .

(Signed)
Liquidator.

To Mr. [*or* to Mr. .
his solicitor.]

No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or* extent of Interest].

No. 47. (Rule 82.)

Supplemental List of Contributories.

[*Title.*]

1. The following is a list of persons who, since making out the list of contributories herein dated the day of 19 , I have ascertained are, or have been, holders of shares in [*or* members of] the above-named company, and to the best of my judgment are contributories of the said company.
2. The said supplemental list contains the names of such persons, together with their respective addresses and the number of shares [*or* extent of interest] to be attributed to each.
3. In the first part of the said list such of the said persons as are contributories in their own right are distinguished.
4. In the second part of the said list such of the said persons as are contributories as being representatives of or being liable to the debts of others are distinguished.

[*The supplemental list is to be made out in the same form as the original list.*]

No. 48.

Affidavit of Service of Notice to Contributory.

[*Title.*]

I, [*state full description of the deponent*] of , make oath and say as follows :—

1. I did on the day of 19 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me and marked "A.," upon each of the respective persons whose names, addresses and descriptions appear in the second, third, and fourth columns of the first schedule to the list of contributories of the said company made out by the [official receiver and] liquidator of the company on the day

of 19 , and now on the file of proceedings of the said company, except that in the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, and ["*number of shares*" or "*extent of interest*"] of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule.

2. I served the said respective copies of the said notice, by putting such copies respectively duly addressed to such persons respectively, according to their respective names and addresses appearing in the said schedule, by placing the same prepaid in the post office at before the hour of o'clock in the noon of the said day of 19 .

Sworn, &c.

No. 49. (Rule 81.)

Order on Application to vary List of Contributories.

[*Title.*]

Upon the application of W. N., by summons dated the day of 19 , for an order that the list of contributories of the company and the liquidator's certificate finally settling the same be varied by excluding the name of the applicant therefrom [*or as the case may be*], and upon hearing, &c., and upon reading, &c., It is Ordered, That the list of contributories of the company and the liquidator's certificate finally settling the same be varied by excluding the name of the said W. N. from the said list of contributories, *or* by including the name of the said W. N. as a contributory in the said list for shares [*or as the case may be*] [*or* the Court doth not think fit to make any order on the said application, except that the said W. N. do pay to the liquidator of the said company his costs of this application, to be taxed in case the parties differ].

No. 50. (Rule 83 (1).)

Notice to each Member of Committee of Inspection of Meeting for Sanction to proposed Call.

[*Title.*]

Take notice that a meeting of the committee of inspection of the above company will be held at on the [*to be a date not less than seven days from the date when the notice will in course of post reach the person to whom it is addressed*] day of 19 , at o'clock in the noon, for the purpose of considering and obtaining the sanction of the committee to a call of £ per share proposed to be made by the liquidator on the contributories.

Annexed hereto is a statement showing the necessity for the proposed call and the amount required.

Dated this day of 19 .

(Signed)

Liquidator.

STATEMENT.

1. The amount due in respect of proofs admitted against the company, and the estimated amount of the costs, charges, and expenses of the winding-up, form in the aggregate the sum of £ or thereabouts.

2. The assets of the company are estimated to realise the sum of £ . There are no other assets, except the amounts due from certain of the contributories to the company, and in my opinion it will not be possible to realise in respect of the said amounts more than £ .

3. The list of contributories has been duly settled, and persons have been settled on the list in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the company, and of paying the costs, charges, and expenses of the winding-up, I estimate that a sum of £ will be required in addition to the amount of the company's assets herein-before mentioned.

5. In order to provide the said sum of £ it is necessary to make a call on the contributories, and having regard to the probability that some of them will partly or wholly fail to pay the amount of the call, I estimate that for the purpose of realising the amount required it is necessary that a call of £ per share should be made.

(*Annex tabular statement showing amounts of debts, costs, &c., and of assets.*)

No. 51. (Rule 83 (2).)

Advertisement of Meeting of Committee of Inspection to Sanction proposed Call.

[*Title.*]

Notice is hereby given that the undersigned liquidator of the above-named company proposes that a call should be made "on all the contributories of the said company," *or, as the case may be,* of £ per share, and that he has summoned a meeting of the committee of inspection of the company, to be held at on the day of 19 , at o'clock in the noon, to obtain their sanction to the proposed call.

Each contributory may attend the meeting, and be heard or make any communication in writing to the liquidator or the members of the committee of inspection in reference to the intended call.

A statement showing the necessity of the proposed call and the purpose for which it is intended may be obtained on application to the liquidator at his office at [*insert address*].

Dated this day of 19 .

Liquidator.

No. 52. (Rule 83 (4).)

Resolution of Committee of Inspection sanctioning Call.

Resolved, that a call of £ per share be made by the liquidator on all the contributories of the company [*or, as the case may be*].

(Signed)
Members of the Committee of Inspection.

Dated this day of 19 .

No. 53. (Rule 86.)

Notice of Call sanctioned by Committee of Inspection to be sent to Contributory.

[*Title.*]

Take notice that the committee of inspection in the winding up of this company have sanctioned a call of £ per share on all the contributories of the company.

The amount due from you in respect of the call is the sum of £ . This sum should be paid by you direct to me at my office [*state address*] on or before the day of 19 .

Dated this day of 19 .

Liquidator.

To Mr. .

No. 54. (Rule 84.)

Summons for Leave to make a Call.

[*Title.*]

Let the several persons whose names and addresses are set forth in the second column of the schedule hereto, being contributories of the above-named company, as shown in the third column of the said schedule, attend at on the day of 19 , at o'clock in the noon, on the hearing of an application on the part of the [official receiver and] liquidator of the company for an order that he may be at liberty to make a call to the amount of per share on all the contributories [*or as the case may be*] of the said company.

Dated the day of 19 .

This summons was taken out by of , Solicitors for the [official receiver and] liquidator.

To

NOTE.—If you do not attend either in person or by your Solicitor, at the time and place above-mentioned, such order will be made and proceedings taken as the court may think just and expedient.

SCHEDULE.

Number on List.	Name and Address.	In what character included.

No. 55. (Rule 84.)

Affidavit of Liquidator in support of proposal for Call.

[*Title.*]

I, , of, &c., the liquidator of the above-named company, make oath and say as follows :—

1. I have in the schedule now produced and shown to me, and marked with the letter A., set forth a statement showing the amount due in respect of the debts proved and admitted against the said company, and the estimated amount of the costs, charges and expenses of and incidental to the winding-up the affairs thereof, and which several amounts form in the aggregate the sum of £ or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of £ and no more. There are no other assets belonging to the said company, except the amounts due from certain of the contributories of the said

company, and, to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of £ or thereabouts.

3. persons have been settled by me on the list of contributories of the said company in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company and of paying the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, I believe the sum of £ will be required in addition to the amount of the assets of the said company mentioned in the said schedule A. and the said sum of £ .

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and, having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that, for the purpose of realising the amount required as before-mentioned, it is necessary that a call of £ per share should be made.

Sworn, &c.

No. 56. (Rule 84.)

Advertisement of Intended Call.

In the matter of .

Notice is hereby given that the [*name of court*] court has appointed the day of 19 , at o'clock in the noon, at [*state place of appointment*], to sanction a call on all the contributories of the said company [*or as the case may be*] and that the liquidator of the said company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour, and place, to offer objections to such call.

Dated this day of 19 .

Liquidator.

No. 57. (Rule 84.)

Order giving leave to make a Call.

The day of 19 .

[*Title.*]

Upon the application of the [official receiver and] liquidator of the above-named company, and upon reading the affidavit of the said [official receiver and] liquidator, filed the day of 19 , and the exhibit marked "A." therein referred to, and an affidavit of filed the day of 19 .

It is ordered that leave be given to the [official receiver and] liquidator to make a call of £ per share on all the contributories of the said company [*or as the case may be*].

And it is ordered that each such contributory do on or before the day of 19 , pay to the [official receiver and] liquidator of the company, the amount which will be due from him or her in respect of such call.

No. 58. (Rule 85.)

Document making a Call.

[*Title.*]

I, the [official receiver and] liquidator of the above-named company, in pursuance of [*an order of court or resolution of the committee*

of inspection], made (*or* passed) this day of 19 , hereby make a call of per share on all the contributories of the company, which sum is to be paid at my office [*insert address*], on the day of 19 .

Dated this day of 19

No. 59. (Rule 86.)

Notice to be served with the Order sanctioning a Call.

[*Title.*]

The amount due from you, A. B., in respect of the call made pursuant to leave given by the above [*or* within] order is the sum of £ , which sum is to be paid by you to me as the liquidator of the said company at my office, No. Street, in the county of .

Dated this day of 19 .

To Mr. A. B. Liquidator.

No. 60. (Rule 87.)

Affidavit in support of Application for Order for Payment of Call.

[*Title.*]

I. of, &c., the liquidator of the above-named company, make oath and say as follows :—

1. None of the contributories of the said company, whose names are set forth in the schedule hereto annexed, marked A., have paid or caused to be paid the sums set opposite their respective names in the said schedule, which sums are the amounts now due from them respectively under the call of per share, duly made under the Companies (Consolidation) Act, 1908, dated the day of 19 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively in respect of the said call.

A.

THE SCHEDULE ABOVE REFERRED TO.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.		
					£	s.	d.

Sworn, &c.

NOTE.—*In addition to the above affidavit, an affidavit of the service of the application for the call will be required in cases in which the committee of inspection or the court has authorised a call to be made.*

No. 61. (Rule 87.)

Order for Payment of Call due from a Contributory.

The day of 19 .

[*Title.*]

Upon the application of the liquidator of the above-named company, and upon reading an affidavit of , filed the day of , 19 , and an affidavit of the liquidator, filed the day of , 19 , it is ordered, that C. D., of, &c. [*or* E. F., of, &c., the legal personal representative of L. M., late of, &c., deceased], one of the contributories of the said company [*or, if against several contributories,* the several persons named in the second column of the schedule to this order, being respectively contributories of the said company], do, on or before the day of , 19 , or within four days after service of this order, pay to the liquidator of the said company at his office, No. Street, in the county of , the sum of £ [*if against a legal personal representative add,* out of the assets of the said L. M., deceased, in his hands as such legal personal representative as aforesaid, to be administered in due course of administration, if the said E. F. has in his hands so much to be administered, *or, if against several contributories,* the several sums of money set opposite to the respective names in the sixth column of the said schedule hereto], such sum [*or* sums] being the amount [*or* amounts] due from the said C. D. [*or* L. M., *or* the said several persons respectively], in respect of the call of £ per share duly made, dated the day of , 19 .

THE SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.		
						s.	*d.*

NOTE.—The copy for service of the above order must be endorsed as follows :—

"If you, the under-mentioned A. B., neglect to obey this order by the time mentioned therein you will be liable to process of execution, for th purpose of compelling you to obey the same."

No. 62. (Rule 87.)

Affidavit of Service of Order for Payment of Call.

[*Title.*]

I, J. B., of, &c., make oath and say as follows :—

1. I did on the day of , 19 , personally serve G. F., of in the county of , &c., with an order made in this matter by this court, dated the day of , 19 , whereby it was ordered [*set out the order*] by delivering to and leaving with the said G. F., at , in the county of , a true copy of the said order, and at the same time producing and showing unto him, the said G. F., the said original order.

2. There was indorsed on the said copy when so served the following words, that is to say, "If you, the under-mentioned G. F., neglect to obey

this order by the time mentioned therein, you will be liable to process of execution for the purpose of compelling you to obey the same."

Sworn, &c.

No. 63. (Rules 88—93.)

Proof of Debt. General Form.

No. 64. (Rule 99.)

Proof of Debt of Workman.

No. 65. (Rule 103.)

Notice of Rejection of Proof of Debt.

[*Title.*]

Take notice, that, as [official receiver and] liquidator of the above-named company, I have this day rejected your claim against the company [*if proof wholly rejected strike out words underlined*] [to the extent of £] on the following grounds :—

And further take notice that subject to the power of the court to extend the time, no application to reverse or vary my decision in rejecting your proof will be entertained after the expiration of [21 *days or* 7 *days as the case may be*] days from this date.

Dated this day of 19 .

Signature .

Address .

To [Official Receiver and] Liquidator.

No. 66. (Rule 110.)

List of Proofs to be Filed under Rules 110 and 111.

[*Title.*]

I hereby certify that the following is a correct list of all proofs tendered to me in the above matter during the past month.

Dated this day of 19 .

Liquidator.

Name of Creditor.	Proofs Tendered.							
	Amount of Proof.			Whether admitted, rejected, or standing over for further consideration.	If admitted, Amount.		
	£	*s.*	*d.*		£	*s.*	*d.*

No. 67. (Rule 150.)

Notice to Creditors of Intention to Declare Dividend.

[*Title.*]

A [*Insert here "first" or "second," or "final," or as the case may be*] dividend is intended to be declared in the above matter. You are mentioned in the statement of affairs, but you have not yet proved your debt.

If you do not prove your debt by the day of 19 , you will be excluded from this dividend.

Dated this day of 19 .

Liquidator,
[Address.]

To X. Y.

No. 68. (Rule 150 (5).)

Certified List of Proofs under Rule 150 (5) Companies (Winding-up) Rules, and Application for Issue of Cheques for Dividend on Companies Liquidation Account.

Companies Liquidation Account.
Ledger Folio .

Re Court No. 1 .

I hereby certify that the following list has been compared with the proofs filed, and that the names of the creditors and the amounts for which the proofs are admitted are correctly stated.

(Signature) [*If the proceedings are in a county court, to be signed by the Registrar. If the proceedings are in the High Court, to be signed by the Liquidator.*]

Dated the day of 19 .

I certify that by my books the sum of £ stands to the credit of the above company with the Companies Liquidation Account at the Bank of England, and that the sum of £ is required to meet the undermentioned dividends, on proofs which have been duly made and admitted to rank for dividend upon the company, and I have to request that orders for payment may be issued to me.

The dividend is payable on the day of 19 , and notice of declaration thereof was forwarded to the Board of Trade for insertion in *London Gazette*, on the day of 19 .

Liquidator.

Date 19 .

{ Address to which Cheques and Money Orders should be sent.

To the Board of Trade.

No.	Surname.	Christian Name.	Trade on which Post Office Money Order should be drawn.	Amount of Proof.	Sums under £2.	Sums of £2 and above.

No. 69. (Rule 150 (5).)

Certified List of Proofs Filed under Rule 150 (5) Companies (Winding-up) Rules, Special Bank Case.

[*Title.*]

I hereby certify that the following list has been compared with the proofs filed, and that the names of the creditors and the amounts for which the proofs are admitted are correctly stated.

(Signature) [*If the proceedings are in a county court, to be signed by the Registrar. If the proceedings are in the High Court, to be signed by the Liquidator.*]

Dated the day of 19 .

I hereby certify that a dividend of in the £ has been declared, and that the creditors whose names are set forth below are entitled to the amounts set opposite their respective names.

Liquidator.

Dated the day of 19 .

To the Board of Trade.

Surname.	Christian Name.	Amount of Proof.			Amount of Dividend.		

No. 70.

Notice to Persons Claiming to be Creditors of Intention to declare Final Dividend.

[*Title.*]

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the court on or before the day of , 19 , or such later day as the court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

Dated this day of , 19 .

Liquidator,
[Address.]

To X. Y.

No. 71. (Rule 150 (3).)

Notice of Dividend.

No. 72. (Rule 150 (7).)

Authority to Liquidator to Pay Dividends to Another Person.

No. 73. (Rule 151.)

Notice of Return to Contributories.

No. 74. (Rule 151.)

Schedule or List of Contributories Holding Paid-up Shares to whom a Dividend or Return is to be Paid.

No. 75. (Rule 121.)

Notice of Meeting [General Form].

[*Title.*]

Take notice that a meeting of creditors [*or* contributories] in the above matter will be held at on the day of 19 , at o'clock in the noon.

Agenda.

[*Here insert purpose for which meeting called.*]

Dated this day of 19 .

(Signed) [" *Liquidator* " *or* " *Official Receiver.*"]

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged not later than o'clock on the day of 19 .

No. 76. (Rule 124.)

Affidavit of Postage of Notices of Meeting.

No. 77. (Rule 124.)

Certificate of Postage of Notices (General).

No. 78. (Rule 131.)

Memorandum of Adjournment of Meeting.

No. 79. (Rule 127.)

Authority to Deputy to act as Chairman of Meeting and use Proxies.

No. 80. (Rule 147.)

General Proxy.

No. 81. (Rule 147.)

Special Proxy.

No. 82. (Rule 165.)

Application to Board of Trade to Authorise a Special Bank Account.

No. 83. (Rule 165.)

Order of Board of Trade for Special Bank Account.

No. 84. (Rule 168.)

Certificate and Request by Committee of Inspection as to Investment of Funds.

No. 85. (Rule 168.)

Request by Committee of Inspection to Board of Trade to Sell Securities.

No. 86. (Rule 169.)

Certificate by Committee of Inspection as to Audit of Liquidator's Accounts.

No. 87. (Rule 170.)

Affidavit Verifying Liquidator's Account under Section 155.

No. 88. (Rule 171.)

Liquidator's Trading Account under Section 155.

No. 88A. (Rule 171.)

Affidavit Verifying Liquidator's Trading Account under Section 155.

No. 89. (Rule 177.)

Request to Deliver Bill for Taxation.

[*Title.*]

I hereby request that you will, within days of this date, or such further time as the court may allow, deliver to me for taxation by the proper officer your bill of costs [*or* charges] as [*here state nature of employment*], failing which, I shall, in pursuance of the Companies (Consolidation) Act and Rules, proceed to declare and distribute a dividend without regard to any claim which you may have against the assets of the company, and your claim against the assets of the company will be liable to be forfeited.

Dated this day of , 19 .

No. 90. (Rule 182.)

Certificate of Taxation.

[*Title.*]

I hereby certify that I have taxed the bill of costs [*or* charges] [*or* expenses] of Mr. C. D. [*here state capacity in which employed or engaged*] [*where necessary add* " pursuant to an order of the court dated the day of , 19 "], and have allowed the same at the sum of pounds shillings and pence [*where necessary add* "which sum is to be paid to the said C. D. by as directed by the said order "].

Dated this day of , 19 .

Taxing Master [*or* Registrar].

£ : :

No. 91. (Rules 177–184.)

Register to be kept by Taxing Officer.

No. 92. (Rules 189 and 190.)

Statement of Receipts and Payments and General Directions as to Statements.

Liquidator's Statement of Account.

Pursuant to Section 224 *of the Companies* (*Consolidation*) *Act*, 1908.

No. 93. (Rules 189 and 190.)

Affidavit verifying Statement of Liquidator's Account under Section 224.

No. 94.

Liquidator's Trading Account under Section 224.

No. 95.

List of Dividends or Composition.

No. 96.

List of Amounts Paid or Payable to Contributories.

No. 97. (Rule 192.)

Affidavit verifying Account of Unclaimed and Undistributed Funds.

No. 98. (Rule 197.)

Notice to Creditors and Contributories of intention to apply for Release.

No. 99. (Rule 197.)

Application by Liquidator to Board of Trade for Release.

No. 100. (Rule 197.)

Statement to accompany Notice of Application for Release.

No. 101. (Rule 208.)

Register of Winding-up Orders to be kept in the Courts.

Number of Winding-up Order.	Number of Petition.	Date of Petition.	Date of Winding-up Order.	Dates of Public Examinations (if any).	Liquidator.

No. 102. (Rule 208.)

Register of Petitions to be kept in the Courts.

No of Petition.	Name of Company.	Address of Registered Office.	Description of Company.	Date of Petition.	Petitioner.	Date of Winding-up Order.

No. 103. (Rule 209.)

Notices for London Gazette.

No. 104. (Rule 210.)

Memorandum of Advertisement or Gazetting.

No. 105. (Rule 213.)

Warrant to Registrar of Court in whose District a Person against whom a Warrant of Arrest has been issued is believed to be.

Whereas the warrant of arrest hereto annexed has been issued by this court against the person named therein, namely, of under the provisions of the Companies (Consolidation) Act, 1908, and Companies (Winding-up) Rules, 1909.

And whereas he is outside the ordinary jurisdiction of this court, and is believed to be within the jurisdiction or district of the court of which you are the registrar.

These are therefore to require you to cause the said warrant to be executed within the ordinary jurisdiction of the court [*insert name of court*].

Dated this day of , 19 .

(Signed) [*to be signed by the high bailiff or other proper officer of the court*].

To the registrar of the court.

No. 106. (Rule 213.)

Endorsement of Warrant of Arrest issued by a Court to which the same has been sent for execution by the Court which originally issued it.

To the governor of the prison [*insert name of prison of the court to which the warrant has been sent*].

Take notice that in accordance with the Companies (Winding-up) Rules, 1909, this warrant of arrest has been sent to and issued by me to the high bailiff (or other officer) of this court, and that the person named in the warrant, if apprehended within the jurisdiction thereof, is to be conveyed to the prison of this court, and is to be there kept until otherwise directed by the order of the court which originally issued the warrant of arrest, or until discharged by that court, or otherwise by law.

Dated the day of , 19 .

Registrar.

SCALE OF FEES.

Table A.

	£	*s.*	*d.*
Every petition	2	0	0
Every bond with securities	0	10	0
Every subpœna or summons	0	3	0
Every order made in court (except an order upon a petition for winding-up, an order adjourning a public examination and an order appointing a shorthand writer)	1	0	0
Every order adjourning a public examination	0	5	0
Every order appointing a shorthand writer	0	5	0
Every order made in chambers	0	5	0
Every examination of a witness taken by a registrar of a county court, 10*s.* for the first hour, and 7*s.* for every additional hour, and also travelling expenses where the examination is held at any place other than where the court usually holds its sittings.			
Every affidavit filed other than proof of debts	0	2	0

	£	s.	d.
For taking an affidavit, or an affirmation or attestation upon honour in lieu of an affidavit, or a declaration, except for proof of debts, and except declaration by a shorthand writer under Rule 74 (Form 35), for each person making the same . .	0	1	6
And in addition thereto for each exhibit referred to therein and required to be marked	0	1	0
On every proof of debt above 2*l.* (other than proof for workmen's wages under Rule 102)	0	1	0
Every application for search other than by petitioner, liquidator, or officer of the company	0	1	0
Every office copy, each folio of 72 words	0	0	4
Every application to inspect liquidator's statement lodged with registrar of joint-stock companies under section 15 of the Act	0	1	0
Every copy of or extract from such statement, each folio of 72 words or figures	0	0	4
Every application by a committee of inspection to the Board of Trade for a special bank account	1	0	0
Every order of the Board of Trade for a special bank account .	2	0	0
Every application by a liquidator to an official receiver acting as committee of inspection	0	10	0
Every application under section 15 of the Act to the Board of Trade for payment of money out of the companies' liquidation account; and every application for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the companies' liquidation account :—			
Where the amount applied for does not exceed 1*l.* . . .	0	1	0
Where the amount applied for exceeds 1*l.*	0	2	6
On every application to the court to approve a reconstruction or other scheme by which the affairs of the company are to be wound up otherwise than by the realisation and distribution of the assets	5	0	0
Every registrar of a county court certifying lists of proofs in each winding-up under Rule 119 (5) for every 50 proofs, or fraction thereof, two shillings (*a*).			

NOTE.—(*a*) Substituted by Order of November 8th, 1904, for *ad valorem* fee on orders of court approving a reconstruction or scheme.

TABLE B.

I.—*On the audit of the official receiver's or liquidator's accounts by the Board of Trade, a fee according to the following scale on the amount brought to credit, including the produce of calls on contributories, but after deducting* (1) *money received and spent in carrying on the business of the company, and* (2) *amounts paid by the official receiver or liquidator to secured creditors* (*other than debenture-holders*) :—

On the first 5,000*l.* or fraction thereof .	1 per cent.
On the next 95,000*l.* „ „ .	½ „
On the next 400,000*l.* „ „ .	¼ „
On the next 500,000*l.* „ „ .	⅛ „
Above 1,000,000*l.* „ „ .	1/16 „

II.—*Where the official receiver acts as provisional liquidator only* :—

(a) Where no winding-up order is made upon the petition or

	£	s.	d.
where a winding-up order is rescinded, or all further proceedings are stayed prior to the summoning of the statutory meetings of creditors and contributories :—			
Such amount as the court may consider reasonable to be paid by the petitioner, or by the company as the court may direct, in respect of the services of the official receiver as provisional liquidator.			
(b) Where a winding-up order is made but the official receiver is not continued as liquidator after the statutory meetings of creditors and contributories :—			
(1) In respect of every 10 members, creditors and debtors, and every fraction of 10 up to 1,000	0	10	0
For every 10 or fraction of 10 above 1,000	0	5	0

Provided that where the net assets of the company, including uncalled capital, are estimated in the statement of affairs not to exceed 500*l.*, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and inland postages.)

(2) On the value of the company's property, as estimated in the statement of affairs, after deducting (in cases where a person other than the official receiver has, prior to the making of a winding-up order, been appointed receiver for debenture holders) the amount due to debenture holders :—

On the first 5,000*l.* or fraction thereof .	1 per cent.
On the next 20,000*l.* „ „ .	½ „
On the next 75,000*l.* „ „ .	¼ „
Above 100,000*l.*	⅛ „

III.—*Where the official receiver acts as liquidator of the company (including his services as provisional liquidator)* :—

(1) In respect of every 10 members, creditors and debtors, and every fraction of 10	1	0	0

Provided that where the net assets of the company, including uncalled capital, do not exceed 500*l.*, three-fifths of the above fee only shall be charged.

(This fee to include costs of official stationery, printing, books, forms, and inland postages.)

(2) Upon the total assets, including produce of calls on contributories, realised or brought to credit by the official receiver, after deducting sums on which fees are chargeable under No. IV. of this Table, and not being moneys received and spent in carrying on the business of the company :—

On the first 1,000*l.* or fraction thereof .	5 per cent.
On the next 1,500*l.* „ „ .	4 „
On the next 2,500*l.* „ „ .	3 „
On the next 5,000*l.* „ „ .	2 „
On the next 90,000*l.* „ „ .	1 „
Above 100,000*l.*	½ „

(3) On the amount distributed in dividend or paid to contributories, preferential creditors, and debenture holders by the official receiver.....Half the above percentages.

IV.—*Where the official receiver collects calls or realises property for debenture holders, or other secured creditors* :—

The same fees as under No. III. (2) and (3) of this Table, to be paid out of the proceeds of such calls or property.

V.—*Where the official receiver performs any special duties not provided for in the foregoing Tables* :—

Such amount as the court, on the application of the official receiver, with the sanction of the Board of Trade, may consider reasonable.

	£	s.	d.
VI.—Travelling, keeping possession, law costs, and other reasonable expenses of the official receiver, the amount disbursed.			
VII.—On every payment under section 15 of money out of the companies' liquidation account, threepence on each pound or fraction of a pound to be charged as follows :—			
Where the money consists of unclaimed dividends, on each dividend paid out.			
Where the money consists of undistributed funds or balances, on the amount paid out.			

TABLE C.

High bailiff for attending sittings of the court, under each winding-up order, per case	0	6	0
Serving every petition or subpœna or winding-up or other order (not serviceable by post) within two miles, including affidavit of service	0	3	6
If serviceable by post	0	1	0
Executing every warrant of seizure, or search warrant, or warrant of apprehension, or order of commitment	0	10	0
Keeping possession under a warrant, for each day the man is actually in possession; including affidavit of possession being actually kept	0	4	6
(not less than 3*s.* 6*d.* of the above sum is to be paid to the man in possession, and his receipt produced).			
High bailiff's, or (in the London district) officer's man, travelling to place of possession, or to execute a warrant of or order of commitment, or to serve a summons or subpœna, or for any other purpose specially directed by the court, per mile where distance exceeds two miles	0	0	5
His time, per day, where distance exceeds 10 miles	0	4	6
His expenses, per day	0	4	6
If high bailiff of a county court or officer of Supreme Court directed by the court personally to travel, per mile	0	0	7
His time, per day	0	10	0
His expenses, per day	0	10	0

Where the head office of the company being wound up is situated out of England, and the liquidation takes place partly in England and partly elsewhere, or where the court has sanctioned a reconstruction of the company or a scheme of arrangement of its affairs, or where for any other reason the official receiver satisfies the Board of Trade that the fees in the scale hereto annexed would be excessive, such reduction may be made in the said fees as may, on the application of the Board of Trade, be sanctioned by the Lords Commissioners of His Majesty's Treasury.

We, the undersigned Lords Commissioners of His Majesty's Treasury, do hereby sanction the foregoing scales of fees, and do direct that the fees mentioned in Table A. shall be taken in money, except when they are to be taken by an officer of the Supreme Court of Judicature, or an officer of the Board of Trade, or an officer in the companies registration office, and that the fees mentioned in Tables B. and C. shall be taken in money.

The documents to be stamped and the description of stamps to be used shall be as provided in the schedule annexed hereto.

The adhesive stamps shall be stamps over-printed with the words "Companies Winding-up," when the fee is to be taken by any officer of the Supreme Court of Judicature, or by the official receiver or any other officer of the Board of Trade; and they shall be the stamps used for the purposes of the "Companies Act" when taken by any officer in the companies registration office.

They shall be cancelled by the various court or other officials by perforation, or in such other manner as the Commissioners of Inland Revenue may from time to time direct.

The impressed stamp shall be of such character as the said Commissioners may adopt for the purpose.

And we further direct that wherever practicable the stamp shall be affixed or the money paid in respect of every fee before the proceeding is had in respect of which the fee is payable; and that the charge to be made by the *London Gazette* for the insertion of each notice authorised by the Act or Rules shall be five shillings.

H. W. Forster,
Ailwyn E. Fellowes,
Two of the Lords Commissioners
of His Majesty's Treasury.

Dated the 2nd day of December, 1903.

The Schedule above Referred to.

Proceeding.	Document to be Stamped.	Character of Stamp to be used.
Every petition	Petition	Impressed.
Every bond with sureties	Bond,	Impressed.
Every affidavit filed	Affidavit	Impressed or adhesive.
Every subpœna or summons	Subpœna or summons.	Impressed.
Every order made in court or chambers	Order	Impressed.
For taking an affidavit or an affirmation, or attestation upon honour in lieu of an affidavit or a declaration.	Affidavit	Impressed or adhesive.
Every proof of debt above 2*l.*	Proof	Impressed or adhesive.
Every application for search	Application.	Impressed.
Every application to inspect liquidator's statement.	Application.	Impressed.
Every copy or office copy	Office copy.	Impressed or adhesive.
Every certificate of taxation by any officer of the court for any costs, charges, or disbursements.	Certificate	Impressed or adhesive.

THE LIMITED PARTNERSHIPS (WINDING-UP) RULES, 1909, MADE UNDER SECTION 268 (1) (vii.) OF THE COMPANIES (CONSOLIDATION) ACT, 1908.

The provisions of the Companies (Consolidation) Act, 1908, with respect to winding-up, and the provisions of the Companies (Winding-up) Rules, 1909, so far as applicable to the proceedings in a winding-up by the court (hereinafter called "the applied provisions"), shall apply to the winding-up by the court of limited partnerships subject to the modifications following.

NOTE.—These rules are now obsolete. Limited Partnerships are treated as ordinary partnerships and fall under the Bankruptcy Act, 1914 (see sect. 127). (They are accordingly now omitted.)

COUNTY COURTS HAVING WINDING-UP JURISDICTION.

NOTE.—By sect. 96 (4) of Bankruptcy Act, 1914 (4 & 5 Geo. V. c. 59), a county court which at commencement of Act (January 1st, 1915) is excluded and the districts then existing shall respectively be excluded and subsist until the Lord Chancellor otherwise orders.

THE COUNTY COURTS (BANKRUPTCY AND COMPANIES WINDING-UP) JURISDICTION ORDER, 1899, DATED MAY 19TH, 1899.

1. This order may be cited as "The County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, 1899."

2. In and for the purposes of this order :—

"Court district" means the district of a county court as constituted by "The County Courts (Districts) Order in Council, 1899," or any order amending the same.

3. The county courts specified in the first column of the first schedule hereto shall be and they are hereby excluded from having jurisdiction in bankruptcy in respect of any matter or proceeding had or taken under the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), the Bankruptcy Act, 1883, or any Acts amending the same.

4. For the purposes of bankruptcy jurisdiction the districts of such last-named courts shall be attached to the county courts the names of which are respectively specified in the second column of the first schedule opposite to the names of the respective county courts excluded hereby from bankruptcy jurisdiction.

5. Such county courts as are by this order excluded from having jurisdiction in bankruptcy shall be excluded from having juris-

diction under the Companies (Winding-up) Act, 1890, and the district of any such court shall for the purposes of jurisdiction under the Companies (Winding-up) Act, 1890, be attached to the court to which that district is by this order attached for the purposes of jurisdiction in bankruptcy. Rules 5—8.

6. The orders specified in the second schedule hereto are hereby repealed as regards each county court and court district to which the said orders apply as from the coming into operation of this order as to such county court or court district.

7. Nothing in this order shall affect or alter the limits of the London Bankruptcy District or the jurisdiction therein of the High Court in bankruptcy or in the winding-up of companies, and nothing in this order shall confer any jurisdiction on county courts within the said London Bankruptcy District.

8. This order shall, as regards each county court or court district, come into operation at the day on which "The County Courts (Districts) Order in Council, 1899," comes into operation as to such county court or court district: Provided that where any order of the Lord Chancellor is made under Article 7 of the said County Courts (Districts) Order in Council, 1899, this article shall have effect subject to any such order of the Lord Chancellor.

SCHEDULE I.

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Northumberland, held at Alnwick, Belford, Berwick, Hexham and Bellingham, Morpeth and Blyth, North Shields, Rothbury, and Wooler; and the County Court of Durham, held at Consett, Gateshead, and South-Shields and Jarrow.	The County Court of Northumberland, held at Newcastle-upon-Tyne, in Circuit 1.
The County Court of Durham, held at Seaham-Harbour, and West-Hartlepool.	The County Court of Durham, held at Sunderland, in Circuit 2.
The County Court of Durham, held at Bishops Auckland, and Wolsingham.	The County Court of Durham, held at Durham, in Circuit 2.
The County Court of Northumberland, held at Haltwhistle and Alston; and the County Court of Cumberland, held at Brampton, Penrith, and Wigton.	The County Court of Cumberland, held at Carlisle, in Circuit 3.
The County Court of Cumberland, held at Keswick.	The County Court of Cumberland, held at Cockermouth, in Circuit 3.

SCHEDULE—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Cumberland, held at Millom.	The County Court of Cumberland, held at Whitehaven, in Circuit 3.
The County Court of Westmoreland, held at Ambleside, Appleby, and Kirkby-Lonsdale.	The County Court of Westmoreland, held at Kendal, in Circuit 3.
The County Court of Lancashire, held at Blackpool, Garstang, Kirkham, and Lancaster.	The County Court of Lancashire, held at Preston, in Circuit 4.
The County Court of Lancashire, held at Clitheroe, and Haslingden, and Accrington.	The County Court of Lancashire, held at Blackburn, in Circuit 4.
The County Court of Lancashire, held at Bury, Chorley, and Leigh.	The County Court of Lancashire, held at Bolton, in Circuit 5.
The County Court of Lancashire, held at Bacup and Rawtenstall.	The County Court of Lancashire, held at Rochdale, in Circuit 5.
The County Court of Yorkshire, held at Saddleworth.	The County Court of Lancashire, held at Oldham, in Circuit 5.
The County Court of Lancashire, held at Ormskirk and Southport, and St. Helens and Widnes.	The County Court of Lancashire, held at Liverpool, in Circuit 6.
The County Court of Cheshire, held at Runcorn.	The County Court of Lancashire, held at Warrington, in Circuit 7.
The County Court of Cheshire, held at Altrincham.	The County Court of Lancashire, held at Manchester, in Circuit 8.
The County Court of Cheshire, held at Hyde; and the County Court of Derbyshire, held at Glossop.	The County Court of Lancashire, held at Ashton-under-Lyne, in Circuit 9.
The County Court of Cheshire, held at Northwich and Winsford; and the County Court of Shropshire, held at Market-Drayton, and Whitchurch.	The County Court of Cheshire, held at Nantwich and Crewe, in Circuit 9.
The County Court of Derbyshire, held at Buxton, Chapel-en-le-Frith and New Mills.	The County Court of Cheshire, held at Stockport, in Circuit 9.
The County Court of Cheshire, held at Congleton and Sandbach; and the County Court of Staffordshire, held at Leek.	The County Court of Cheshire, held at Macclesfield, in Circuit 9.
The County Court of Yorkshire, held at Keighley, Settle, and Skipton.	The County Court of Yorkshire, held at Bradford, in Circuit 11.
The County Court of Lancashire, held at Colne; and the County Court of Yorkshire, held at Todmorden.	The County Court of Lancashire, held at Burnley, in Circuit 11.
The County Court of Yorkshire, held at Holmfirth.	The County Court of Yorkshire, held at Huddersfield, in Circuit 12.
The County Court of Yorkshire, held at Doncaster, Rotherham, and Thorne; and the County Court of Nottinghamshire, held at Worksop.	The County Court of Yorkshire held at Sheffield, in Circuit 13.
The County Court of Yorkshire, held at Goole, and Pontefract.	The County Court of Yorkshire, held at Wakefield, in Circuit 14.

SCHEDULE—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Yorkshire, held at Otley.	The County Court of Yorkshire, held at Leeds, in Circuit 14.
The County Court of Durham, held at Barnard Castle, and Darlington.	The County Court of Durham, held at Stockton-on-Tees, in Circuit 15.
The County Court of Yorkshire, held at Stokesley and Guisborough, and Whitby.	The County Court of Yorkshire, held at Middlesbrough, in Circuit 15.
The County Court of Yorkshire, held at Easingwold, Knaresborough, Pocklington, Selby, and Tadcaster.	The County Court of Yorkshire, held at York, in Circuit 15.
The County Court of Yorkshire, held at Helmsley, Leyburn, Richmond, Ripon, and Thirsk.	The County Court of Yorkshire, held at Northallerton, in Circuit 15.
The County Court of Yorkshire, held at Bridlington, and New Malton.	The County Court of Yorkshire, held at Scarborough, in Circuit 16.
The County Court of Yorkshire, held at Beverley, Great Driffield, Hedon, and Howden.	The County Court of Yorkshire, held at Kingston-on-Hull, in Circuit 16.
The County Court of Lincolnshire, held at Barton-on-Humber, Brigg, and Louth.	The County Court of Lincolnshire, held at Great Grimsby, in Circuit 17.
The County Court of Nottinghamshire, held at East Retford; and the County Court of Lincolnshire, held at Gainsborough, Horncastle, Market Rasen, and Caistor.	The County Court of Lincolnshire, held at Lincoln, in Circuit 17.
The County Court of Lincolnshire, held at Sleaford, and Spilsby.	The County Court of Lincolnshire, held at Boston, in Circuit 17.
The County Court of Nottinghamshire, held at Bingham, Mansfield, and Newark; and the County Court of Lincolnshire, held at Grantham.	The County Court of Nottinghamshire, held at Nottingham, in Circuit 18.
The County Court of Derbyshire, held at Alfreton, Bakewell, Belper and Ilkeston, and Wirksworth and Matlock.	The County Court of Derbyshire, held at Derby, in Circuit 19.
The County Court of Derbyshire, held at Ashbourne; and the County Court of Leicestershire, held at Ashby-de-la-Zouch; and the County Court of Staffordshire, held at Uttoxeter.	The County Court of Staffordshire, held at Burton-on-Trent, in Circuit 19.
The County Court of Leicestershire, held at Hinckley, Loughborough, Lutterworth, Market-Bosworth, Market-Harborough, and Melton-Mowbray; and the County Court of Rutlandshire, held at Oakham, and Uppingham.	The County Court of Leicestershire, held at Leicester, in Circuit 20.

SCHEDULE—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Warwickshire, held at Atherstone, and Solihull; the County Court of Staffordshire, held at Tamworth; and the County Court of Worcestershire, held at Redditch.	The County Court of Warwickshire, held at Birmingham, in Circuit 21.
The County Court of Warwickshire, held at Nuneaton, and Rugby.	The County Court of Warwickshire, held at Coventry, in Circuit 22.
The County Court of Warwickshire, held at Alcester, Southam, and Stratford-on-Avon.	The County Court of Warwickshire, held at Warwick, in Circuit 22.
The County Court of Shropshire, held at Cleobury-Mortimer; and the County Court of Worcestershire, held at Tenbury.	The County Court of Worcestershire, held at Kidderminster, in Circuit 23.
The County Court of Worcestershire, held at Bromsgrove, Droitwich, Evesham, Great Malvern, and Pershore; and the County Court of Herefordshire, held at Bromyard.	The County Court of Worcestershire, held at Worcester, in Circuit 23.
The County Court of Glamorganshire, held at Barry, and Bridgend.	The County Court of Glamorganshire, held at Cardiff, in Circuit 24.
The County Court of Monmouthshire, held at Chepstow, Monmouth, Pontypool and Usk.	The County Court of Monmouthshire, held at Newport, in Circuit 24.
The County Court of Monmouthshire, held at Abergavenny and Blaenavon; and the County Court of Brecknockshire, held at Crickhowell.	The County Court of Monmouthshire, held at Tredegar, in Cisuit 24.
The County Court of Staffordshire, held at Lichfield.	The County Court of Staffordshire, held at Walsall, in Circuit 25.
The County Court of Staffordshire, held at Burslem, Newcastle-under-Lyme, and Tunstall.	The County Court of Staffordshire, held at Hanley, in Circuit 26.
The County Court of Staffordshire, held at Cheadle.	The County Court of Staffordshire, held at Stoke-upon-Trent and Longton, in Circuit 26.
The County Court of Staffordshire, held at Rugeley, and Stone; and the County Court of Shropshire, held at Newport.	The County Court of Staffordshire, held at Stafford, in Circuit 26.
The County Court of Shropshire, held at Wem, Bridgnorth, Wellington, and Madeley.	The County Court of Shropshire, held at Shrewsbury, in Circuit 27.
The County Court of Brecknockshire, held at Hay; and the County Court of Herefordshire, held at Ross and Ledbury.	The County Court of Herefordshire, held at Hereford, in Circuit 27.

SCHEDULE—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Shropshire, held at Bishops-Castle, and Ludlow; the County Court of Herefordshire, held at Kington; and the County Court of Radnorshire, held at Knighton and Presteigne.	The County Court of Herefordshire, held at Leominster, in Circuit 27.
The County Court of Brecknockshire, held at Builth; the County Court of Radnorshire, held at Rhayader and Llandrindod-Wells; and the County Court of Montgomeryshire, held at Llanfyllin, Llanidloes, and Welshpool.	The County Court of Montgomeryshire, held at Newtown, in Circuit 28.
The County Court of Cardiganshire, held at Aberayron; the County Court of Merionethshire, held at Dolgelly; and the County Court of Montgomeryshire, held at Machynlleth.	The County Court of Cardiganshire, held at Aberystwith, in Circuit 28.
The County Court of Carnarvonshire, held at Pwllheli; and the County Court of Denbighshire, held at Llanrwst.	The County Court of Carnarvonshire, held at Portmadoc and Festiniog, in Circuit 28.
The County Court of Flintshire, held at St. Asaph and Rhyl; the County Court of Carnarvonshire, held at Carnarvon, and Conway and Llandudno; and the County Court of Anglesey, held at Holyhead, Llangefni and Menai Bridge.	The County Court of Carnarvonshire, held at Bangor, in Circuit 29.
The County Court of Merionethshire, held at Bala, and Corwen; the County Court of Denbighshire, held at Denbigh and Ruthin; and the County Court of Shropshire, held at Oswestry.	The County Court of Denbighshire, held at Wrexham, in Circuit 29.
The County Court of Flintshire, held at Mold and Flint, and Holywell.	The County Court of Cheshire, held at Chester, in Circuit 29.
The County Court of Brecknockshire, held at Brecknock.	The County Court of Glamorganshire, held at Merthyr Tydfil, in Circuit 30.
The County Court of Carmarthenshire, held at Llandilo Fawr, Llandovery, Llanelly, and Newcastle-in-Emlyn; and the County Court of Cardiganshire, held at Cardigan, and Lampeter.	The County Court of Carmarthenshire, held at Carmarthen, in Circuit 31.
The County Court of Pembrokeshire, held at Haverfordwest, and Narberth.	The County Court of Pembrokeshire, held at Pembroke Dock, in Circuit 31.

SCHEDULE—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Norfolk, held at Attleborough and Watton, Aylsham, East-Dereham, Holt, Little-Walsingham and Fakenham, North-Walsham, Thetford, and Wymondham.	The County Court of Norfolk, held at Norwich, in Circuit 32.
The County Court of Norfolk, held at Downham-Market, and Swaffham; the County Court of Cambridgeshire, held at Wisbech; and the County Court of Lincolnshire, held at Holbeach.	The County Court of Norfolk, held at King's Lynn, in Circuit 32.
The County Court of Suffolk, held at Mildenhall, and Stowmarket.	The County Court of Suffolk, held at Bury St. Edmunds, in Circuit 33.
The County Court of Suffolk, held at Diss and Eye, Framlingham and Saxmundham, Hadleigh, and Woodbridge and Felixstowe and the County Court of Norfolk, held at Harleston.	The County Court of Suffolk, held at Ipswich, in Circuit 33.
The County Court of Suffolk, held at Beccles and Bungay, Halesworth and Lowestoft	The County Court of Norfolk, held at Great Yarmouth, in Circuit 33.
The County Court of Lincolnshire, held at Bourne, Spalding, and Stamford; the County Court of Northamptonshire, held at Thrapston and Oundle; the County Court of Cambridgeshire, held at March; and the County Court of Huntingdonshire, held at Huntingdon.	The County Court of Northamptonshire, held at Peterborough, in Circuit 35.
The County Court of Cambridgeshire, held at Ely, Newmarket, and Soham; the County Court of Hertfordshire, held at Royston; the County Court of Essex, held at Saffron Walden; and the County Court of Suffolk, held at Haverhill.	The County Court of Cambridgeshire, held at Cambridge, in Circuit 35.
The County Court of Bedfordshire, held at Ampthill, and Biggleswade; and the County Court of Huntingdonshire, held at St. Neots.	The County Court of Bedfordshire, held at Bedford, in Circuit 35.
The County Court of Northamptonshire held at Daventry, Kettering, Towcester, and Wellingborough; and the County Court of Buckinghamshire, held at Newport-Pagnell.	The County Court of Northamptonshire, held at Northampton, in Circuit 36.
The County Court of Oxfordshire, held at Bicester, Chipping-Norton, Witney, and Woodstock; and the County Court of Berkshire, held at Abingdon, Wallingford, and Wantage.	The County Court of Oxfordshire, held at Oxford, in Circuit 36.

SCHEDULE—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Buckinghamshire, held at Buckingham; the County Court of Northamptonshire, held at Brackley; and the County Court of Worcestershire, held at Shipston-on-Stour.	The County Court of Oxfordshire, held at Banbury, in Circuit 36.
The County Court of Oxfordshire, held at Thame; and the County Court of Buckinghamshire, held at Chesham, and High Wycombe.	The County Court of Buckinghamshire, held at Aylesbury, in Circuit 37.
The County Court of Bedfordshire, held at Leighton Buzzard; and the County Court of Hertfordshire, held at Hitchin.	The County Court of Bedfordshire, held at Luton, in Circuit 37.
The County Court of Hertfordshire, held at Watford.	The County Court of Hertfordshire, held at St. Albans, in Circuit 37.
The County Court of Middlesex, held at Uxbridge.	The County Court of Berkshire, held at Windsor, in Circuit 37.
The County Court of Essex, held at Braintree, Brentwood, Dunmow, Grays Thurrock, Maldon, Romford, and Southend.	The County Court of Essex, held at Chelmsford, in Circuit 38.
The County Court of Essex, held at Halstead, and Harwich; and the County Court of Suffolk, held at Sudbury.	The County Court of Essex, held at Colchester, in Circuit 38.
The County Court of Essex, held at Waltham Abbey; and the County Court of London, held at Clerkenwell, in respect of the business arising outside the London Bankruptcy District.	The County Court of Middlesex, held at Edmonton, in Circuit 38.
The County Court of Hertfordshire, held at Bishop's Stortford.	The County Court of Hertfordshire, held at Hertford, in Circuit 38.
The County Court of Kent, held at Bromley; and the County Court of Surrey, held at Dorking, Epsom, and Redhill.	The County Court of Surrey, held at Croydon, in Circuit 45.
The County Court of Surrey, held at Farnham and Aldershot.	The County Court of Surrey, held at Guildford, in Circuit 45.
The County Court of Surrey, held at Chertsey.	The County Court of Surrey, held at Kingston, in Circuit 45.
The County Court of Berkshire, held at Hungerford.	The County Court of Berkshire, held at Newbury, in Circuit 45.
The County Court of Oxfordshire, held at Henley-on-Thames.	The County Court of Berkshire, held at Reading, in Circuit 45.
The County Court of Surrey, held at Richmond.	The County Court of London held at Wandsworth, in Circuit 45.
The County Court of London, held at Woolwich.	The County Court of London, held at Greenwich, in Circuit 47.

SCHEDULE—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Kent, held at Sevenoaks, and Tonbridge; and the County Court of Sussex, held at East Grinstead.	The County Court of Kent, held at Tunbridge Wells, in Circuit 48.
The County Court of Kent, held at Ashford, Deal, and Sandwich, Dover, Faversham, Folkestone, Hythe, Margate, and Ramsgate.	The County Court of Kent, held at Canterbury, in Circuit 49.
The County Court of Kent, held at Dartford, Gravesend, Sheerness, and Sittingbourne.	The County Court of Kent, held at Rochester, in Circuit 49.
The County Court of Sussex, held at Arundel, Chichester, Haywards Heath, Horsham, Midhurst, Petworth, and Worthing.	The County Court of Sussex, held at Brighton, in Circuit 50.
The County Court of Kent, held at Romney, and Tenterden and Cranbrook; and the County Court of Sussex, held at Rye.	The County Court of Sussex, held at Hastings, in Circuit 50.
The County Court of Hampshire, held at Petersfield.	The County Court of Hampshire, held at Portsmouth, in Circuit 51.
The County Court of Hampshire, held at Bishop's-Waltham, Lymington, and Romsey.	The County Court of Hampshire, held at Southampton, in Circuit 51.
The County Court of Hampshire, held at Alton, and Basingstoke.	The County Court of Hampshire, held at Winchester, in Circuit 51.
The County Court of Wiltshire, held at Warminster and Westbury.	The County Court of Somersetshire, held at Frome, in Circuit 52.
The County Court of Wiltshire, held at Calne, Malmesbury, and Marlborough; the County Court of Gloucestershire, held at Cirencester; and the County Court of Berkshire, held at Faringdon.	The County Court of Wiltshire, held at Swindon, in Circuit 52.
The County Court of Wiltshire, held at Bradford and Trowbridge, Chippenham, Devizes, and Melksham.	The County Court of Somersetshire, held at Bath, in Circuit 52.
The County Court of Gloucestershire, held at Northleach, Stow-on-the-Wold, Tewkesbury, and Winchcomb.	The Count Court of Gloucestershire, held at Cheltenham, in Circuit 53.
The County Court of Gloucestershire, held at Dursley, Newent, Newnham, and Stroud.	The County Court of Gloucestershire, held at Gloucester, in Circuit 53.
The County Court of Gloucestershire, held at Chipping-Sodbury, and Thornbury.	The County Court of Gloucestershire, held at Bristol, in Circuit 54.
The County Court of Somersetshire, held at Axbridge, and Temple-Cloud.	The County Court of Somersetshire, held at Wells, in Circuit 54.

SCHEDULE—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Dorsetshire, held at Blandford, Bridport, and Weymouth.	The County Court of Dorsetshire, held at Dorchester, in Circuit 55.
The County Court of Dorsetshire, held at Wareham, and Wimborne-Minster; and the County Court of Hampshire, held at Christchurch and Bournemouth.	The County Court of Dorsetshire, held at Poole, in Circuit 55.
The County Court of Hampshire, held at Andover, and Fordingbridge and Ringwood; and the County Court of Dorsetshire, held at Shaftesbury.	The County Court of Wiltshire, held at Salisbury, in Circuit 55.
The County Court of Somersetshire, held at Crewkerne, Langport, and Wincanton.	The County Court of Somersetshire, held at Yeovil, in Circuit 55.
The County Court of Somersetshire, held at Weston-super-Mare.	The County Court of Somersetshire, held at Bridgewater, in Circuit 57.
The County Court of Somersetshire, held at Chard, Wellington, and Williton.	The County Court of Somersetshire, held at Taunton, in Circuit 57.
The County Court of Devonshire, held at Bideford, Holsworthy, South-Molton, and Torrington.	The County Court of Devonshire, held at Barnstaple, in Circuit 57.
The County Court of Devonshire, held at Axminster, Crediton, Honiton, Tiverton, and Newton Abbot and Torquay.	The County Court of Devonshire, held at Exeter, in Circuit 58.
The County Court of Devonshire, held at Kingsbridge, Okehampton, Tavistock, and Totnes and Paignton; and the County Court of Cornwall, held at Launceston, and Liskeard.	The County Court of Devonshire, held at Plymouth and East Stonehouse, in Circuit 58.
The County Court of Cornwall, held at Bodmin, Camelford, Falmouth, Helston, Penzance, Redruth, St.-Austell, and St.-Columb-Major.	The County Court of Cornwall, held at Truro, in Circuit 59.

NOTE.

The following county courts, not having had attached to them the district of any county court excluded from jurisdiction in bankruptcy or under the Companies (Winding-up) Act, 1890, and not being themselves excluded from such jurisdictions, are not mentioned in the foregoing order; but as they have jurisdiction in bankruptcy, and under the Companies (Winding-up) Act, 1890, their names are here given for the information of the public.

The County Court of Lancashire, held at Barrow-in-Furness and Ulverston, in Circuit 3.

The County Court of Lancashire, held at Wigan, in Circuit 5.

The County Court of Cheshire, held at Birkenhead, in Circuit 7.

The County Court of Lancashire, held at Salford, in Circuit 8.

The County Court of Yorkshire, held at Dewsbury, in Circuit 12.

The County Court of Yorkshire, held at Halifax, in Circuit 12.
The County Court of Yorkshire, held at Barnsley, in Circuit 16.
The County Court of Derbyshire, held at Chesterfield, in Circuit 19.
The County Court of Worcestershire, held at Stourbridge, in Circuit 23.
The County Court of Worcestershire, held at Dudley, in Circuit 25.
The County Court of Staffordshire, held at West Bromwich, in Circuit 25.
The County Court of Staffordshire, held at Wolverhampton, in Circuit 25.
The County Court of Glamorganshire, held at Swansea, in Circuit 30.
The County Court of Glamorganshire, held at Aberdare and Mountain Ash, in Circuit 30.
The County Court of Glamorganshire, held at Pontypridd, Ystradyfodwg and Porth, in Circuit 30.
The County Court of Glamorganshire, held at Neath and Aberavon, in Circuit 31.
The County Court of Hertfordshire, held at Barnet, in Circuit 37.
The County Court of Middlesex, held at Brentford, in Circuit 37.
The County Court of Kent, held at Maidstone, in Circuit 48.
The County Court of Sussex, held at Lewes and Eastbourne, in Circuit 50.
The County Court of Hampshire, held at Newport and Ryde, in Circuit 51

SCHEDULE II.

ORDERS REPEALED.

Date.	Nature of Order.
January 1, 1870 . .	Exclusion of county courts from bankruptcy jurisdiction.
March 19, 1875 . .	The like.
April 25, 1878. . .	The like (two orders).
January 2, 1888 . .	The like.
November 29, 1890 . .	Jurisdiction of county courts under the Companies (Winding-up) Act, 1890.
August 23, 1893 . .	Jurisdiction of county courts in bankruptcy.
October 6, 1893 . .	Jurisdiction of county courts under the Companies (Winding-up) Act, 1890.
May 28, 1898 . . .	Bankruptcy and companies' jurisdiction of county courts.

Dated May 19, 1899.

HALSBURY, C.

CUSTOMS CONSOLIDATION ACT, 1876.

[39 & 40 VICT. c. 36.]

By sect. 284 of this Act, "justice" is to include county court judge, but the county court itself is not mentioned in the Act. The effect of the Act apparently is that the judge can sit and form one of a bench of justices when hearing cases arising under the Act.

[For DEBTORS ACT, 1869, see p. 235.]

DEEDS OF ARRANGEMENT ACT, 1887.

[50 & 51 Vict. c. 57.]

Repealed (except as to Ireland) by sect. 31 of the Deeds of Arrangement Act, 1914 (4 & 5 Geo. 5, c. 47), sched.

BANKRUPTCY AND DEEDS OF ARRANGEMENT ACT, 1913.

Repealed as to Deeds of Arrangement by sect. 31 of Deeds of Arrangement Act, 1914 (4 & 5 Geo. 5, c. 47), sched.

DEEDS OF ARRANGEMENT ACT, 1914.

[4 & 5 Geo. 5, c. 47.]

Section 10. Local registration of copy of deeds.

10.—(1) Where the place of business or residence of the debtor, who is one of the parties to a deed of arrangement, or who is referred to therein, is situate in some place outside the London bankruptcy district, the registrar shall, within three clear days after registration, and in accordance with the prescribed directions, transmit a copy of such deed to the registrar of the county court in the district of which such place of business or residence is situate.

(2) Every copy so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of, the registered copy, in the like manner and upon the like terms as to payment or otherwise, as near as may be, as in the case of deeds registered under this Act.

Whether a deed must be registered depends upon whether it is for the benefit of all the creditors, or only of a named part of the same (*In re Allix*, (1914) 2 K. B. 77; 83 L. J. K. B. 665).

* * * * *

23. Any application by the trustee under a deed of arrangement which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement for the enforcement of the trusts or the determination of questions under it, shall be made to the Court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed. . . .

Note.—A county court judge exercising bankruptcy jurisdiction has no power under this section to declare a deed of arrangement void (*Wilson's Deed, In re*, (1916) 85 L. J. K. B. 329).

* * * * *

Fees.

26.—(1) There shall be taken, in respect of the registration of deeds of arrangement, and in respect of any office copies or extracts, or official searches made by the registrar, such fees as may be from time to time prescribed; and nothing in this Act contained shall make it obligatory on the registrar to do, or permit to be done, any act in respect of which any fee is specified or prescribed, except on payment of such fee.

DEEDS OF ARRANGEMENT RULES, 1915. DATED DECEMBER 28TH, 1914.

SEARCHES AND EXTRACTS.

Rule 9.

Extracts from filed copy of deed.

9. Extracts from the filed copy of a deed shall be limited to the date of execution and registration, the names, addresses, and descriptions of the debtor and the parties to the deed, and a short statement of the nature and effect of the deed.

Search and inspection in county court.

10. The county court registrar shall allow any person to search the index kept by him at any time during which he is required by the county court rules for the time being to keep his office open, and to make the same extracts as are permitted by the last preceding rule upon payment by such person of the same fee as is payable in the central office. The county court registrar shall also, if required, cause an office copy to be made of any copy of a deed filed in his office, and shall be entitled for making, marking, and sealing the same, to the same fee as is payable for an office copy of a deed in the central office.

TRANSMISSION OF COPIES TO COUNTY COURTS.

Indorsement to be made on copies transmitted to county court registrars.

11. Upon every copy of a deed which pursuant to the Act is transmitted to a county court registrar there shall be written copies of every indorsement or certificate written on the original deed or on the filed copy thereof. Such copies shall be signed by the proper officer of the central office.

Transmission by post of copy.

12. The copy of a deed which pursuant to the Act is required to be transmitted to a county court registrar may be transmitted to him by post.

Copies to be numbered and filed in county court office.

13. The county court registrar shall number the copies of deeds received by him in the order in which they shall respectively be received, and shall file and keep them in his office.

Index to be kept in county court office.

14. The county court registrar shall keep an index, alphabetically arranged, in which he shall enter, under the first letter of the surname of the debtor, such surname, with his Christian name, address, and description, and the number which has been affixed to the copy.

Filing.

By order dated December 28th, 1914, the following fees were directed to be taken :—

1. Where the total estimated amount of property included under or the total amount of composition payable under a deed shall appear from the affidavit of the debtor not to exceed the following amounts, the fee on filing such deed shall be as under :—

	£	s.	d.
Where the property does not exceed 1,000*l.*	1	0	0
Exceeds 1,000*l.* but „ „ 2,000*l.*	2	0	0
„ 2,000*l.* „ „ „ 3,000*l.*	3	0	0
„ 3,000*l.* „ „ „ 4,000*l.*	4	0	0
Exceeds .. .. 4,000*l.*	5	0	0
In every case to which the above fees do not apply..	2	0	0

2. On every certificate, indorsed on an original deed, of the registration thereof 0 2 6

3. On every copy of a deed transmitted to a county court registrar, for every folio or part of a folio contained in such copy 0 0 1½

But if the total amount shall involve a fraction of a penny, then such fraction shall be charged as 1*d.*

	£	s.	d.	
4. On every statutory declaration or notice filed in the office for the registration of deeds of arrangement, pursuant to the Deeds of Arrangement Act, 1914, or the Deeds of Arrangement Rules, 1915	0	2	6	
5. On searching the register (for every name inspected) and on inspecting the filed copy, including the limited extract to be taken pursuant to the Act and rules	0	2	6	Searches.
6. On office copies and extracts of or from the filed copy of a deed, for every folio (72 words) or fractional part of a folio	0	0	6	Copies.
7. On examining a copy brought in to be marked as an office copy, for every folio or fractional part of a folio	0	0	2	

8. On applying to give security under a deed of arrangement pursuant to section 11 (1) of the Act, for taking security and giving certificate. Security.

	£	s.	d.
Where the estimated assets available for distribution amongst the unsecured creditors, as shown by the affidavit filed on registration, are less than 100*l.*	0	10	0
In all other cases	1	0	0

9. On any proceedings under sections 3 (1), 3 (4), 11 (2), 16, 18, or 23 or under Rule 22 of the Deeds of Arrangement Rules, 1915, the like fee as is payable on a similar proceeding under the Bankruptcy Acts and Rules.

10. On all other documents and proceedings not otherwise provided for the same fees as are payable in respect of the like documents and proceedings under the Order as to Supreme Court Fees, 1884. Miscellaneous.

LAW OF DISTRESS AND AMENDMENT ACTS, 1888, 1895, AND 1908.

[51 & 52 Vict. c. 21; 58 & 59 Vict. c. 24; 8 Edw. VII., c. 53.]

Jurisdiction.]—By sect. 7 of the 1888 Act no person shall act as a bailiff to levy any distress for rent unless authorised so to act by either a general certificate, *i.e.*, a certificate authorising the bailiff to levy at any place in England or Wales (Rules of 1888, r. 4), or by a special certificate, *i.e.*, a certificate specifying the particular distress or distresses to which it applies.

The applicant, whether for a general or special certificate must satisfy the County Court judge that he is a fit and proper person to hold a certificate.

Where the applicant is not a ratepayer rated on a rateable valuation of not less than 25*l.*, he may be required to give security in the case of a general certificate for 20*l.*, and in the case of a special certificate for 5*l.*, for the due performance of his duties.

Expiration and Renewal of certificates is provided for by the Rules of November, 1895, *post*, p. 2018.

Fees, Charges and Expenses which may be demanded by bailiffs, are settled by Appendix II. to the Rules of 1888, *post*, pp. 2016—2017.

Fees to be taken by the Registrar, governed by the Lord Chancellor's order, and the Schedule of Fees annexed thereto, *post*, p. 2018.

Power to Cancel the certificate is given to the judge for misconduct, and he may forfeit the security either in whole or in part, and direct the amount

forfeited to be paid to the party aggrieved (Rules of 1888, r. 12, *post*, p. 2015).

A general certificate can only be granted by a judge; a special certificate may be granted either by a judge or by a registrar (Rules of 1888, r. 3, *post*, p. 2014).

The Act of 1908 (Law of Distress Amendment Act) (8 Edw. VII. c. 53) contains important general provisions exempting the goods of an undertenant, a lodger, or any other person having no beneficial interest in the premises from liability to distraint at the instance of the superior landlord subject to complying with certain conditions (see Act, *post*, p. 2011).

As to rights of the Crown to distrain, see *Macgregor* v. *Clamp*, (1914) 83 L. J. K. B. 240; 1 K. B. 288.

Section 7.

51 & 52 VICT. C. 21.

Distress to be levied by certified bailiffs.

7. From and after the commencement of this Act no person shall act as a bailiff to levy any distress for rent unless he shall be authorised to act as a bailiff by a certificate in writing under the hand of a county court judge; and such certificate may be general or apply to a particular distress or distresses, and may be granted at any time after the passing of this Act in such manner as may be prescribed by rules under this Act. (Residue of clause repealed, 58 & 59 Vict. c. 24, s. 1.)

Nothing in this section shall be deemed to exempt such bailiff from any other penalty or proceeding to which he may be liable in respect of such extortion or misconduct.

A county court registrar may exercise the power of granting certificates hereby conferred upon a county court judge in cases in which he may be authorised to do so by rules made under this Act.

If any person not holding a certificate under this section shall levy a distress contrary to the provisions of this Act, the person so levying, and any person who has authorised him so to levy, shall be deemed to have committed a trespass.

Power to make rules.

8. After the passing of this Act the Lord Chancellor may from time to time make, alter, and revoke rules—

(1) For regulating the security (if any) to be required from bailiffs;

(2) For regulating the fees, charges, and expenses in and incidental to distresses; and

(3) For carrying into effect the objects of this Act.

58 & 59 VICT. C. 24.

Power to cancel bailiffs' certificates. 51 & 52 Vict. c. 21.

1. A certificate granted to a bailiff by the judge of a county court under the Law of Distress Amendment Act, 1888, may at any time be cancelled or declared void by a judge of that county court, and so much of section 7 of that Act as refers to the cancellation of certificates is hereby repealed.

Penalty for acting without certificate.

2. If any person not holding a certificate for the time being in force under the Law of Distress Amendment Act, 1888, levies a distress contrary to the provisions of that Act, he shall without prejudice to any civil liability be liable on summary conviction to a fine not exceeding 10*l*.

Duration of certificates.

3. The power to make rules under the Law of Distress Amendment Act, 1888, shall extend to making provision for fixing the duration of certificates granted, or to be hereafter granted, to bailiffs.

A distress made by the manager of a company on behalf of the company and without a certificate is illegal (*Hogarth* v. *Jennings* (C. A.), (1892) 1 Q. B. 907; 61 L. J. Q. B. 601).

The Acts apply to distresses under the Agricultural Holdings Act, 1883; a general appointment will authorise a bailiff to act in any part of England and Wales (see *Re Sanders*, (1885) 54 L. J. Q. B. 331; and Rule 4).

If an uncertificated bailiff, in levying a distress, seizes the goods of a third party, the landlord who authorised the distress is liable in damages to the owner (*Perring* v. *Emerson*, (1906) 1 K. B. 1; 75 L. J. K. B. 12).

LAW OF DISTRESS AMENDMENT ACT, 1908.

[8 Edw. 7, c. 53.]

(See p. 928.)

Section 1.

Under tenant, or lodger, if distress levied, to make declaration that immediate tenant has no property in goods distrained.

1. If any superior landlord shall levy, or authorise to be levied, a distress on any furniture, goods, or chattels of—

(*a*) any under tenant liable to pay by equal instalments not less often than every actual or customary quarter of a year a rent (*a*) which would return in any whole year the full annual value of the premises or of such part thereof as is comprised in the under tenancy, or

(*b*) any lodger, or

(*c*) any other person whatsoever not being a tenant of the premises or of any part thereof, and not having any beneficial interest in any tenancy of the premises or of any part thereof,

for arrears of rent due to such superior landlord by his immediate tenant, such under tenant, lodger, or other person aforesaid may serve such superior landlord, or the bailiff or other agent employed by him to levy such distress, with a declaration in writing made by such under tenant, lodger, or other person aforesaid, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, goods, or chattels so distrained or threatened to be distrained upon, and that such furniture, goods, or chattels are the property or in the lawful possession of such under tenant, lodger, or other person aforesaid, and are not goods or live stock to which this Act is expressed not to apply; and also, in the case of an under tenant or lodger, setting forth the amount of rent (if any) then due to his immediate landlord, and the times at which future instalments of rent will become due, and the amount thereof, and containing an undertaking to pay to the superior landlord any rent so due or to become due to the immediate landlord, until the arrears of rent in respect of which the distress was levied or authorised to be levied have been paid off, and to such declaration shall be annexed a correct

Section 1.

inventory, subscribed by the under tenant, lodger, or other person aforesaid, of the furniture, goods, and chattels referred to in the declaration; and, if any under tenant, lodger, or other person aforesaid, shall make or subscribe such declaration and inventory knowing the same or either of them to be untrue in any material particular, he shall be deemed guilty of a misdemeanour.

NOTE (*a*).—The word "rent" here means money, not another or contingent source of profit though it arises from the tenancy (*Parsons* v. *Hambridge*, (1916) 33 T. L. R. 117).

Penalty.

2. If any superior landlord, or any bailiff or other agent employed by him, shall, after being served with the before-mentioned declaration and inventory, and in the case of an under tenant or lodger after such undertaking as aforesaid has been given, and the amount of rent (if any) then due has been paid or tendered in accordance with that undertaking, levy or proceed with a distress on the furniture, goods, or chattels of the under tenant, lodger, or other person aforesaid, such superior landlord, bailiff, or other agent shall be deemed guilty of an illegal distress, and the under tenant, lodger, or other person aforesaid, may apply to a justice of the peace for an order for the restoration to him of such goods, and such application shall be heard before a stipendiary magistrate, or before two justices in places where there is no stipendiary magistrate, and such magistrate or justices shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the goods or otherwise as to him or them may seem just, and the superior landlord shall also be liable to an action at law at the suit of the under tenant, lodger, or other person aforesaid, in which action the truth of the declaration and inventory may likewise be inquired into.

Payments by under tenant or lodger to superior landlord.

3. For the purposes of the recovery of any sums payable by an under tenant or lodger to a superior landlord under such an undertaking as aforesaid, or under a notice served in accordance with section six of this Act, the under tenant or lodger shall be deemed to be the immediate tenant of the superior landlord, and the sums payable shall be deemed to be rent; but, where the under tenant or lodger has, in pursuance of any such undertaking or notice as aforesaid, paid any sums to the superior landlord, he may deduct the amount thereof from any rent due or which may become due from him to his immediate landlord, and any person (other than the tenant for whose rent the distress is levied or authorised to be levied) from whose rent a deduction has been made in respect of such a payment may make the like

deductions from any rent due or which may become due from him to his immediate landlord. Section 3.

Exclusion of certain goods.

4. This Act shall not apply—

(1) to goods belonging to the husband or wife of the tenant whose rent is in arrear, nor to goods comprised in any bill of sale, hire purchase agreement, or settlement made by such tenant, nor to goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof, nor to any live stock to which section twenty-nine of the Agricultural Holdings Act, 1908, applies; 8 Edw. 7, c. 28.

(2) (*a*) to goods of a partner of the immediate tenant; (*b*) to goods (not being goods of a lodger) upon premises where any trade or business is carried on in which both the immediate tenant and the under tenant have an interest; (*c*) to goods (not being goods of a lodger) on premises used as offices or warehouses where the owner of the goods neglects for one calendar month after notice (which shall be given in like manner as a notice to quit) to remove the goods and vacate the premises; (*d*) to goods belonging to and in the offices of any company or corporation on premises the immediate tenant whereof is a director or officer, or in the employment of such company or corporation;

Provided that it shall be competent for a stipendiary magistrate, or where there is no stipendiary magistrate for two justices, upon application by the superior landlord or any under tenant or other such person as aforesaid, upon hearing the parties to determine whether any goods are in fact goods covered by sub-section (2) of this section.

Exclusion of certain under tenants.

5. This Act shall not apply to any under tenant where the under tenancy has been created in breach of any covenant or agreement in writing between the landlord and his immediate tenant, or where the under tenancy has been created under a lease existing at the date of the passing of this Act contrary to the wish of the landlord in that behalf, expressed in writing and delivered at the premises within a reasonable time after the circumstances have come, or with due diligence would have come, to his knowledge.

To avoid distress.

6. In cases where the rent of the immediate tenant of the superior landlord is in arrear it shall be lawful for such superior

Section 6. landlord to serve upon any under tenant or lodger a notice (by registered post addressed to such under tenant or lodger upon the premises) stating the amount of such arrears of rent, and requiring all future payments of rent, whether the same has already accrued due or not, by such under tenant or lodger to be made direct to the superior landlord giving such notice until such arrears shall have been duly paid, and such notice shall operate to transfer to the superior landlord the right to recover, receive, and give a discharge for such rent.

Commencement of Act. **7.** This Act shall come into operation on the first day of July one thousand nine hundred and nine.

Repeal of 34 & 35 Vict. c. 79. **8.** The Lodgers' Goods Protection Act, 1871, shall, wherever and so far as this Act applies, be repealed as from the commencement of this Act.

Definitions. **9.** In this Act the words "superior landlord" shall be deemed to include a landlord in cases where the goods seized are not those of an under tenant or lodger; and the words "tenant" and "under tenant" do not include a lodger.

Act not to extend to Scotland. **10.** This Act shall not extend to Scotland and shall only apply in Ireland to a rent issuing out of lands or tenements situate wholly within the boundaries of a municipality or of a township having town commissioners.

Short title. **11.** This Act may be cited as the Law of Distress Amendment Act, 1908.

THE DISTRESS FOR RENT RULES, 1888.

[*Rules made pursuant to section* 8 *of the Law of Distress Amendment Act,* 1888.]

Rule 1. 1. These rules may be cited as the Distress for Rent Rules, 1888.

2. Certificates granted under the Law of Distress Amendment Act, 1888, hereinafter called the Act, may be either general or special. A special certificate shall specify the particular distress or distresses to which it applies. Certificates shall be in the Forms Nos. 1 and 2 in Appendix I. to these rules, with such variations as circumstances may require.

3. A special certificate may be granted by the judge or registrar, but a general certificate shall only be granted by the judge in person.

4. A general certificate shall authorise the bailiff named in it to levy at any place in England or Wales.

5. Any person (not being an officer of a county court) holding a certificate under the Agricultural Holdings Act, 1883, shall on application be entitled to obtain, without fee, a general certificate.

6. No certificate shall be granted to any officer of a county court. Rule 6.

Shall not apply to an officer who was an officer before the date of these rules (Rule, December 7th, 1888).

7. Any practising solicitor of the supreme court shall, on application, and on payment of the prescribed fee, be entitled to a general or special certificate.

8. A general or special certificate may, on payment of the prescribed fee, be granted to any applicant who satisfies the authority granting the same that he is a fit and proper person to hold the certificate.

9. Where the applicant for a certificate is not a ratepayer, rated on a rateable value of not less than 25*l.* per annum, he may, if the authority applied to thinks fit, be required to give security for the due performance of his duties.

10. The security shall be security to the satisfaction of the registrar. In the case of a general certificate the amount shall be 20*l.*, and in the case of a special certificate the amount shall be 5*l.*

11. The security shall be given to the registrar. It may be given by deposit, or by bond, or by guarantee, as the registrar may think fit.

12. On any application to cancel a certificate the judge may, whether he cancels the certificate or not, order that the security shall be forfeited either wholly or in part, and that the amount directed to be forfeited shall be paid to the party aggrieved.

13. Where the judge orders that the security shall be forfeited, either wholly or in part, but does not cancel the certificate, he may direct that the bailiff shall give fresh security as a condition of retaining his certificate.

14. Subject to Rule 12, where a certificate is cancelled by the judge the security shall also be cancelled, and the deposit (if any) returned.

15. No person shall be entitled to any fees, charges, or expenses for levying a distress, or for doing any act or thing in relation thereto, other than those specified in, and authorised by, the table in Appendix II. to these rules.

16. Where the rent due exceeds 20*l.*, the fees, charges, and expenses specified in Scale I. shall be allowed, and where the rent due does not exceed 20*l.* the fees, charges, and expenses specified in Scale II. shall be allowed.

17. In case of any difference as to fees, charges, and expenses between the parties, or any of them, the fees, charges, and expenses shall be taxed by the registrar of the district in which the distress is levied. The registrar may make such order as he thinks fit as to the cost of such taxation.

18. A copy of the table of fees, charges, and expenses authorised by these rules shall be posted up by the registrar in a conspicuous

Rule 18.

place in his office, and every bailiff levying a distress shall, on the request of the tenant, produce to him his certificate and a copy of the table.

19. "Judge" means a judge of county courts.

"Certificate" means a certificate to act as a bailiff under section seven of the Act.

"Registrar" means a registrar of a county court, and each registrar where there is more than one, and includes a deputy registrar.

August 31, 1888. (Signed) HALSBURY, C.

APPENDIX I.

FORM 1.

General Certificate.

[Date.]

In the county court of , holden at .

Pursuant to section seven of the Law of Distress Amendment Act, 1888, I hereby (*a*) authorise A. B., of , to act as a bailiff to levy distresses for rent in England and Wales .

Signed

L. S.

Judge.

FORM 2.

Special Certificate.

[Date.]

In the county court of , holden at .

Pursuant to section seven of the Law of Distress Amendment Act, 1888, I hereby authorise A. B., of , to act as bailiff to levy a distress on the premises of C. D., of , for rent alleged to be due to E. F., of .

Signed

L.S.

Judge.
or Registrar.

NOTE.—(*a*) In a renewed certificate instead of "hereby" insert "by this renewed certificate" (Rule 4, under Distress (Amendment) Act, 1895).

APPENDIX II.

TABLE OF FEES, CHARGES, AND EXPENSES (*a*).

SCALE I.

Distresses for Rent where the Sum demanded and due shall exceed 20*l.*

For levying distress. Three per cent. on any sum exceeding 20*l.*, and not exceeding 50*l.* Two and a half per cent. on any sum exceeding 50*l.* and not exceeding 200*l.*; and one per cent. on any additional sum.

For man in possession, 5*s.* per day; to provide his own board in every case.

For advertisements the sum actually and necessarily paid.

For commission to the auctioneer. On sale by auction seven and a half per cent. on the sum realised not exceeding 100*l.*, five per cent. on the next 200*l.*, four per cent. on the next 200*l.*; and on any sum exceeding 500*l.* three per cent. up to 1,000*l.*; and two and a half per cent. on any sum exceeding 1,000*l.* A fraction of 1*l.* to be in all cases reckoned 1*l.*

Reasonable fees, charges, and expenses (subject to Rule 17) where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress.

For appraisement, on tenant's written request, whether by one broker or more, 6*d.* in the pound on the value as appraised, in addition to the amount for the stamp.

SCALE II.

Distresses for Rent where the Sum demanded and due shall not exceed 20l.

For levying distress, 3*s.*

For man in possession, 4*s.* 6*d.* per day; to provide his own board in every case.

For appraisement, on the tenant's written request, whether by one broker or more, 6*d.* in the pound on the value as appraised, in addition to the amount for the stamp.

For all expenses of advertisements, if any, 10*s.*

Catalogues, sale and commission, and delivery, 1*s.* in the pound on the net produce of the sale.

For removal at tenant's request, the reasonable expenses (subject to Rule 17) attending such removal.

NOTE.—(*a*) These scales supersede those in the schedule to the Distress (Costs) Act, 1817 (*Walker* v. *Retter*, (1911) 1 K. B. 1103; 80 L. J. K. B. 623).

TREASURY ORDER REGULATING COURT FEES.

In pursuance of the powers given by the County Courts Acts, and of all other powers enabling us in this behalf, we, the undersigned, two of the commissioners of Her Majesty's Treasury, whose names are hereunto subscribed, do hereby, with the consent of the Lord Chancellor, order that the several fees, or sums in the name of fees, specified in the schedule hereunder written, shall be taken on the proceedings therein mentioned, and that the fees so authorised to be taken shall be received by the registrars for the use of themselves.

(Signed) HERBERT EUSTACE MAXWELL.
SIDNEY HERBERT.

15th September, 1888.

I approve of the annexed schedule of fees.

(Signed) HALSBURY, C.

SCHEDULE.

The Law of Distress Amendment Act, 1888, and the Rules made thereunder.

Fees to be taken in the following matters :—

	£	s.	d.
For every application for a general certificate	0	5	0
For every application for a special certificate	0	2	6
For approving of security by bond	0	10	6
For receiving deposit in lieu of bond	0	4	0
For taxation, where required, if the rent exceeds 20*l.*	0	10	0
For taxation, where required, if the rent does not exceed 20*l.*	0	5	0

RULES, dated November 29, 1895, under the Law of Distress (Amendment) Act, 1895.

1. An applicant for a general certificate shall satisfy the judge that he is resident or has his principal place of business in the district of the court, and shall state whether he has ever been refused a certificate or had a former certificate cancelled.

2. A general certificate shall (unless previously determined) have effect until the 1st of February next after the expiration of twelve months from the granting thereof, provided that the judge of the court where the certificate was granted may renew the same from time to time for the like period. This rule shall apply to every certificate granted before the passing of these rules as if it had been granted at the date of the commencement of the Act.

3. A certificate shall have effect, notwithstanding cancellation or expiration by non-renewal, for the purpose of any distress where the bailiff has entered into possession before the date of the cancellation or expiration.

4. On the renewal of a certificate the registrar shall be satisfied that the security required under Rules 9 and 10 of the Distress Rules, 1888, is subsisting. The fee on the application for renewal shall be two shillings and sixpence.

5. A renewed certificate shall be under the hand of the judge in the Form No. 1 in the Distress Rules, 1888, except that instead of the word "hereby" the words "by this renewed certificate" shall be inserted, and that the date at which the renewed certificate shall become terminable shall be added at the foot thereof.

6. There shall be made and signed by the registrar on the 1st of February in every year, and exhibited in the office of every court a list of the bailiffs holding certificates for the time being; and the fact of the subsequent cancellation of any such certificate shall be notified by the registrar on such list and published by him in some local newspaper.

CANCELLATION OF CERTIFICATE.

Date.

In the county court of holden at

In pursuance of section 1 of the Law of Distress Amendment Act, 1895, I hereby cancel and make void the certificate granted to *A.B.*, of , to act as bailiff to levy distress for rent in England and Wales, or (terms of special certificate) *save and except as to any distress whereon the said A.B. has distrained and is in possession of the goods.*

(Signed)

Judge.

The 29th of November, 1895.

(Signed) HALSBURY, C.

RULE UNDER THE LAW OF DISTRESS (AMENDMENT) ACT, 1895.

The date referred to in Rule 2 of the Rules dated November 29th, 1895, under the Law of Distress (Amendment) Act, 1895, as "the commencement of the Act," is the 6th of July, 1895, and the said Rule shall be construed and take effect accordingly.

February 13th, 1896.

(Signed) HALSBURY, C.

ELECTRIC LIGHTING (CLAUSES) ACT, 1899.

[62 & 63 VICT. c. 19.]

This Act incorporates certain clauses of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41). The effect is that electric lighting rents, like gas rents, can be recovered in the county courts.

[FOR EMPLOYERS' LIABILITY ACT, 1880, see PART IV., CHAPTER III.]

EMPLOYERS AND WORKMEN ACT, 1875.

[38 & 39 VICT. c. 90.]

Jurisdiction.]—In any proceeding before the county court in relation to any dispute between an employer and a workman (as defined by sect. 10) arising out of their relationship as such, the court may, in addition to any other jurisdiction, exercise all or any of the powers given by sect. 3 of the Act. But although the court may adjust and set off claims, there is no obligation on either party to bring them forward, and they may be dealt with in separate proceedings (*Hindly* v. *Haslam*, (1878) 3 Q. B. D. 481; see *Stanton* v. *Styles*, (1850) 5 Ex. 578; 19 L. J. Ex. 336; *Jones* v. *Jones*, (1874) 22 W. R. 577).

Practice will follow the ordinary procedure commenced by plaint and summons.

An employer whose workman absents himself from work may treat the contract of service as broken, or as subsisting and claim damages, but he cannot suspend the workman from work by way of penalty (*Hanley* v. *Pease*, (1915) 1 K. B. 698; 84 L. J. K. B. 532).

Power of county court as to ordering payment of money, set-off, and rescission of contract and taking security.

3. In any proceeding before a county court in relation to any dispute between an employer and a workman arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act) the court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers; that is to say,

(1) It may adjust and set off the one against the other all such claims on the part either of the employer or of the workman arising out of or incidental to the relations between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise; and,

(2) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just; and,

(3) Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded, or some part of such damages.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant; and where such security has been given in or under the direction of a court of summary jurisdiction, that court may order payment to the surety of the sum which has so become due to him from the defendant.

* * * * *

Mode of giving security.

8. A person may give security under this Act in a county court or court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time

being in force, and in any case where security is so given, the court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security. Section 8.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules with respect to giving security under this Act.

* * * * *

10. In this Act— Definitions.

The expression "workman" does not include a domestic or menial servant, but, save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour. "Workman."

See *Squire* v. *Midland Lace Co.*, (1905) 2 K. B. 448; 74 L. J. K. B. 614. See as to meaning of "workman" cases under Employers' Liability Act, 1880, Part 4.

11. In the case of a child, young person, or woman subject to the provisions of the Factory Acts, 1833 to 1874, any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work. Set-off in case of factory workers.

The following is the Form of Undertaking prescribed by the County Court Rules, 1903:—

COUNTY COURT FORMS. FORM 432.

Undertaking in Writing by Defendant to Perform Contract.

The Employers and Workmen Act, 1875.

[*Not to be printed.*]

In the county court of , holden at .

(Seal.

Between A. B., plaintiff,
and
C. D., defendant.

Whereas it has been found by this court, on the day of 19 , that the defendant had broken the contract for the breach of which he was summoned.

And whereas the court would have awarded to the plaintiff the sum of £ by way of damages suffered by him in consequence of such breach, and would have ordered the defendant to have paid such sum, but that the defendant was willing to give security for the performance by him of so much of the contract as remains unperformed. 38 & 39 Vict. c. 90, s. 3.

Now, therefore, I, the undersigned defendant and we the undersigned sureties [*or* the undersigned surety], do undertake that the said defendant will perform so much of the said contract as remains unperformed, that is to say, [*here set out so much of the contract as remains to be performed*].

And I, the said defendant, and we [*or* I], the said sureties [*or* surety], hereby severally acknowledge ourselves bound to forfeit to A. B., the

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plaintiff, the sum of pounds and shillings, in case the said defendant fails to perform what he has hereby undertaken to perform.

(Signed, *when not taken orally*) C. D., defendant.
E. F., G. H., Sureties.

Taken [orally] before me this day of 19 .

Registrar.

NOTE.—*Where the undertaking is given orally, strike out the words "undersigned" where they occur, and insert the word "orally" after "taken."*

EXPLOSIVES ACT, 1875.

[38 & 39 VICT. c. 17.]

By sect. 66 of this Act one of the principal secretaries of state is empowered to appoint a county court judge, or such person as is named in the Act, to make, with the assistance of a government inspector or other assessor as a court, a formal investigation in cases of serious explosions. The inquiry is to be made in open court, and the court has all the powers of a court of summary jurisdiction, as well as special powers in regard to the enforcing of the attendance of witnesses, production of documents, and other matters; it also has power to enter and inspect any place or building.

The court holding an investigation into any accident under this section shall make a report to the Secretary of State.

EXTRAORDINARY TITHE REDEMPTION ACT, 1886.

[49 & 50 VICT. c. 54.]

(As amended by 60 & 61 Vict. c. 23).

After the passing of this Act, no extraordinary tithe was to be charged or levied, but provision was made for ascertaining the capital value (sect. 3) of the said charge, and by sect. 4, interest at 4 per centum was to be paid on such capital value until redemption, half yearly, on the days on which the extraordinary charge had hitherto been payable.

Jurisdiction by sect. 4 is given to recover in the High Court or the county court any instalment of the rentcharge by action.

Practice will be the ordinary procedure by plaint and summons brought in the court within the district of which the defendant resides or carries on business.

Interest on capitalised value of extraordinary charge to be until redemption first charge on land.

4.—(1) Subject to the provisions of this Act with respect to the redemption of charges, land in respect of which at the date of the passing of this Act extraordinary charge is payable shall, so soon as the capital value of the said charge shall have been certified under the provisions of this Act, be charged with the payment of an annual rentcharge equal to four per centum on such capital value, in lieu of the extraordinary charge which shall cease on the half-yearly day of payment thereof which shall immediately precede the date of the said certificate, such rentcharge to be a charge upon the particular farm or parcel of land in respect of which the same has been assessed.

(2) Provided that the commissioners may from time to time, if they think fit, on application by or on behalf of any person

Section 4.

interested in land so charged, by order under their seal exonerate from the charge the whole or any part of that land, and may, if necessary, substitute other land for the land so exonerated, provided that the value of the land charged with the payment of the rentcharge shall be in their opinion equal to at least three times the capital value of the rentcharge and that such land is held under the same title, and subject to the same limitations as the land so exonerated.

(3) The rentcharge shall be payable half-yearly on the days on which the extraordinary charge in the parish has hitherto been payable, and the first payment thereof shall be made on the one of the said two days which shall first occur after the capital value shall have been certified as aforesaid, the first payment to be a full half-yearly payment. The rentcharge shall have priority over all existing and future estates, interests, and incumbrances whatever.

(4) The rentcharge shall be payable to the person who would but for this Act have been for the time being entitled to receive the extraordinary charge, and shall be held on the trusts and subject to the provisions and conditions (if any) applicable to that charge.

(5) If default is made in payment of any instalment of the rentcharge it may be recovered by action in Her Majesty's High Court of Justice, or a county court, or in the same way that rentcharge in lieu of ordinary tithe is recoverable and subject to like conditions, or by entry upon and perception of the rents and profits of the land subject to such rentcharge. The said rentcharge shall not be subject to any parochial, county, or other rate, charge, or assessment.

THE FACTORY AND WORKSHOP ACT, 1901.

[1 Edw. VII. c. 22.]

Jurisdiction of the county court is founded on sect. 14, sub-s. 4, and is exclusive. This section, sect. 14, makes provision for factories being provided with adequate means of escape in case of fire. The jurisdiction of the county court is, as between the owner and occupier of the factory, to decide who should bear this expense, or the proportions in which it should be borne between them.

Practice is governed by Order L., rule 34, below.

Appeal is by sect. 120 of the County Courts Act, 1888 (see p. 123).

Provision of means of escape in case of fire.

14.—(1) Every factory of which the construction was not commenced on or before the first day of January one thousand eight hundred and ninety-two, and in which more than forty persons are employed, and every workshop of which the construction was not commenced before the first day of January one thousand eight hundred and ninety-six, and in which more than forty persons are employed, must be furnished with a certificate from the district council of the district in which the factory or workshop is situate that the factory or workshop is provided with such means of escape in case of fire for the persons employed therein as can reasonably be required under the circumstances of each case, and if the factory or workshop is not so furnished it shall be deemed not to be kept in conformity with

Section 14.

this Act; and it shall be the duty of the council to examine every such factory and workshop, and, on being satisfied that the factory or workshop is so provided, to give such a certificate as aforesaid. The certificate must specify in detail the means of escape so provided.

(2) With respect to all factories and workshops to which the foregoing provisions of this section do not apply, and in which more than forty persons are employed, it shall be the duty of the district council of every district from time to time to ascertain whether all such factories and workshops within their district are provided with such means of escape as aforesaid, and, in the case of any factory or workshop which is not so provided, to serve on the owner of the factory or workshop a notice in writing specifying the measures necessary for providing such means of escape as aforesaid, and requiring him to carry them out before a specified date, and thereupon the owner shall, notwithstanding any agreement with the occupier, have power to take such steps as are necessary for complying with the requirements, and unless the requirements are complied with, the owner shall be liable to a fine not exceeding one pound for every day that the non-compliance continues.

(3) In case of a difference of opinion between the owner of the factory or workshop and the council under the last foregoing subsection, the difference shall, on the application of either party, to be made within one month after the time when the difference arises, be referred to arbitration, and thereupon the provisions of the first schedule to this Act shall have effect, and the award on the arbitration shall be binding on the parties thereto, and the notice of the council shall be discharged, amended, or confirmed in accordance with the award.

(4) If the owner alleges that the occupier of the factory or workshop ought to bear or contribute to the expenses of complying with the requirement, he may apply to the county court having jurisdiction where the factory or workshop is situate, and thereupon the county court, after hearing the occupier, may make such order as appears to the court just and equitable under all the circumstances of the case.

[The residue of the section does not concern county court jurisdiction.]

The same words in sect. 7, sub-s. 2, of the 1891 Act have been held to give the county court jurisdiction, whatever may be the legal effect of the covenants, to apportion the expenses as between the owner and occupier as may seem just and equitable under all the circumstances of the case (*Monk* v. *Arnold*, (1902) 1 K. B. 761; 71 L. J. K. B. 441). Where the tenant covenants to pay "all parliamentary, parochial and other rates, assessments and impositions which may be imposed during the term," the landlord's remedy is restricted to a proceeding in the county court under this section, and he cannot sue in the High Court on the covenant (*Horner* v. *Franklin* (C. A.), (1905) 1 K. B. 479; 74 L. J. K. B. 291; impliedly overruling *Shephard* v. *Barber*, (1903) 67 J. P. 239).

The following rule of practice has been made:—

COUNTY COURT RULES. ORDER L., RULE 34.

Application under 1 Edw. VII. c. 22, s. 14, sub-s. 4.

An application to the court under sect. 14, sub-sect. 4, of the Factory and Workshop Act, 1901, shall be made by action com-

menced by plaint and summons in the ordinary way. Particulars of demand shall be filed with every such application, stating concisely the relief or order which the plaintiff claims. Order 50.

FINANCE ACTS, 1894 AND 1896.

[57 & 58 Vict. c. 30; 59 & 60 Vict. c. 28.]

Jurisdiction.]—The sole effect, so far as county courts are concerned, of the 1896 Act is by sect. 22 to add to sect. 10, sub-s. 5 of the 1894 Act a proviso giving, as of right, an appeal from the county court to the Court of Appeal under this section.

By sect. 10 of the 1894 Act, an appeal is given from the Commissioners to the county court for the county or place where the appellant resides, or the property is situate, in cases where the value of the property in respect of which the dispute arises, is alleged by the Commissioners not to exceed 10,000*l.*

By sect. 14 of the same Act, any dispute as to the proportion of estate duty to be borne by any property or person may, where the amount is less than 50*l.*, be determined by the county court for the county or place where the person who is authorised or required to pay the estate duty under the circumstances mentioned in sect. 14, sub-s. 1 resides, or the property in respect of which the duty has been paid is situate.

Practice.]—Any person who desires to appeal under sect. 10, sub-s. 5 must within one month from the date of the notification to him or his solicitor of the decision or claim of the Commissioners, deliver to them a written statement of the grounds of such appeal as provided by Order XLII. r. 2. By Rule 3 the Commissioners must deliver their reply within one month; if the Commissioners maintain their decision or claim in whole or in part, within one month from the date of the notification of such determination by the Commissioners, the appellant may proceed by filing a petition (see as to the proceedings, Order XLII. rr. 1—11, *post*), p. 2027.

As to proceedings to determine a dispute under sect. 14, see Order XLII. r. 12, *post*, p. 2028.

Appeal.]—The appeal from the county court under sect. 10, sub-s. 5 is direct to the Court of Appeal, but that does not seem to apply to sect. 14; the appeal as to matters under sect. 14 will be according to sect. 120 of the County Courts Act, 1888 (see p. 123). See Acts of 1910 and 1912, *post*, pp. 2028—2033.

57 & 58 Vict. c. 30.

10.—(1) Any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess duty paid, or by the amount of any duty claimed by the Commissioners, whether on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the Commissioners or such portion of it as is then payable by him, appeal to the High Court, within the time, and in the manner and on the conditions directed by rules of court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the Commissioners the excess shall be repaid.

(2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal. Further appeal by leave.

(3) The costs of the appeal shall be in the discretion of the court, and the court, where it appears to the court just, may order the appeal. Costs of appeal.

Section 10.

Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the court just.

Appeal without payment of duty claimed.

(4) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners, or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the court seems reasonable, and on security to the satisfaction of the court being given for the duty, or so much of the duty as is not so paid, but in such case the court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the court.

Appeal to county court.

(5) Where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court.

59 & 60 VICT. c. 28.

Appeal from county court under 57 & 58 Vi ct. c. 30, s. 10.

22. There shall be added to subsection five of section ten of the principal Act the following proviso: Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal.

Appoint ment of valuers by county councils.

(6) The county council of every county or county borough in Great Britain, shall, within twelve months after the commencement of this Act, and may thereafter from time to time appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the court may refer any question of disputed value under this section to the arbitration of any persons so appointed for the county in which the appellant resides or the property is situate; and the cost of any such arbitration shall be part of the costs of the appeal.

Apportionment of duty.

14.—(1) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorised or required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary.

(2) Any dispute as to the proportion of estate duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by rules of court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

(3) Any person from whom a rateable part of estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners. Section 14.

COUNTY COURT RULES. ORDER XLII.

THE SUCCESSION DUTY ACT, 1853, SECT. 50. THE FINANCE ACT, 1894, SECTS. 10 AND 14.

1. An appeal against any assessment of the Commissioners under sect. 50 of the Succession Duty Act, 1853, shall be by petition intituled in the matter of the Succession Duty Act, 1853, and the Acts amending the same, and in the matter of the particular succession, and Rules 5 to 9 and 11 of this Order shall apply to the service of and proceedings on such petition. Appeal under 16 & 17 Vict. c. 51, s. 50.

2. Any aggrieved person within the meaning of section 10, sub-section (1) of the Finance Act, 1894, who desires to appeal to the court under sub-section (5) in any of the cases mentioned in the said sub-section (1), shall, within one month from the date of the notification to him or his solicitor of the decision or claim of the Commissioners, deliver to them a written statement of the grounds of such appeal. Delivery of statement of grounds of appeal under 57 & 58 Vict. c. 30, s. 10.

The statement shall state specifically the several grounds upon which the appellant contends that the decision or claim of the Commissioners was erroneous, and if he contends that the value put upon any property by the Commissioners is excessive, he shall therein identify such property, and state the value which he contends should be put upon the same.

3. The Commissioners shall, within one month from the delivery to them of the statement of the grounds of appeal, notify to the appellant or his solicitor whether they have withdrawn the decision or claim appealed against, or have determined to maintain the same either in whole or in part. Reply thereto.

4. At any time thereafter, not exceeding one month from the date of the notification by the Commissioners of their determination to maintain their decision or claim, either in whole or in part, the appellant may proceed with his appeal by filing a petition. Appeal by petition.

5. Such petition shall be intituled " In the matter of the Finance Act, 1894, and in the matter of the Estate Duty on the property passing on the death of , late of , deceased," and a copy thereof, with a notice of the day and hour on which the petition will be heard, shall be served on the Commissioners in accordance with Rules 3 and 4 of Order XXXVIII. Title and service of petition.

6. Subject to the provisions of these rules, the appellant shall not in his petition state or at the hearing be allowed to rely upon any grounds of appeal not specifically set forth in the statement of the grounds of appeal. Limitation of grounds of appeal.

7. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing. Oral evidence.

8. The Crown shall have the same right as an ordinary suitor of administering interrogatories and of obtaining discovery and inspection of documents. Interrogatories, etc.

Rule 9. Amendment.

9. The judge may, at any time before or at the hearing, allow the appellant to amend his petition, upon such terms as the judge may think right.

Application for leave to appeal without payment of duty.

10. An application for leave to bring an appeal without payment or on part payment only of the duty, under the provisions of sub-section (4) of section 10 of the Finance Act, 1894, shall be made to the judge in accordance with the rules as to interlocutory applications, subject to the following modifications :—

(1) the application shall be made on notice in writing, and on affidavit ;

(2) the appellant shall serve notice of the application on the Commissioners three clear days before the day of the hearing of the application, and shall deliver to the Commissioners, with such notice, a copy of any affidavit which he intends to use at the hearing of the application.

Order on petition.

11. Where the judge makes an order upon a petition under this Order the registrar shall, as soon thereafter as conveniently may be draw up, seal, and file such order.

Proceedings for determination of disputes under 57 & 58 Vict. c. 30, s. 14.

12. Proceedings for the determination of a dispute as to the proportion of estate duty to be borne by any property or person under section 14 of the Finance Act, 1894, shall be commenced by plaint and summons in the ordinary way, in which the person claiming to recover the amount in dispute shall be plaintiff, and the person resisting such payment shall be defendant. Particulars of demand shall be filed in every such proceeding, and shall state concisely the nature of the dispute and the relief or order which the plaintiff claims.

FINANCE (1909–10) ACT, 1910.

[10 Edw. VII. c. 8.]

As soon as might be after the passing of the said Act, the Commissioners must cause a valuation to be made of all land in the United Kingdom, showing separately the total value and the site value respectively of the land.

Jurisdiction.]—By sect. 33, sub-s. 1 any person aggrieved may appeal against the determination by the Commissioners of the total or site value of any land, and also against the determination of such Commissioners as to other matters, to a referee appointed under the Act. Where the total or site value as alleged by the Commissioners does not exceed 500*l.*, any person aggrieved by the decision of the referee may appeal to the county court for the county or place in which the appellant resides or the property is situate.

Practice.]—The appellant must within one month from the date of the decision of the referee file a petition setting forth specifically the facts and contentions of law upon which he alleges the decision of the referee was erroneous, and giving an address at which documents may be served on him (Order XLII. r. 13, *post*, p. 2030). Rule 15 contains provisions as to the title of the petition and its service. By Rule 16, the respondent must, within ten days, state to what extent he admits the facts stated in the petition, and giving an address where documents may be served. By Rule 17, the

respondent must, within twenty-eight days after service of the petition, serve upon the appellant a further notice stating the facts and the contentions of law upon which he intends to rely, and (if he thinks fit) requiring the appellant to admit those facts; when so required, the appellant must, within ten days, state to what extent he admits such facts; after ten days from the service of respondent's notice, all matters (except to the extent respectively admitted) shall be deemed to be at issue (Rule 18). The parties without leave of the judge cannot rely upon any facts or contentions of law other than those stated in such notice (Rule 20). Other rules provide for discovery and inspection of documents (Rule 21); for admission of certain material as *primâ facie* evidence (Rule 22); for extension of time and for amendment of petition and notices (Rules 23, 24); and service of documents (Rule 26).

Security for Duty.]—Where the Commissioners are respondents, and claim that duty is due from the appellant, they may apply (in accordance with rules as to interlocutory applications) (see p. 460) and as provided by Rule 18 for security for the duty claimed.

Appeal.]—By sect. 33, sub-s. 4, any party has the right of appeal to the Court of Appeal.

Appeals to referees.

33.—(1) Except as expressly provided in this part of this Act any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the first or any subsequent determination by the Commissioners of the total value or site value of any land; or against the amount of any assessment of duty under this part of this Act; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed, where the Commissioners have the power to make such allowance under this part of this Act; or against any apportionment of the value of land or of the duty or of any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this part of this Act; or against the determination of any other matter which the Commissioners are to determine or may determine under this part of this Act:

Provided that:

(a) An appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act; and

(b) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act, and shall not be questioned in any case on an appeal against an assessment of duty.

(2) An appeal under this section shall be referred to such one of the panel of referees appointed under this part of this Act as may be selected in manner provided by rules under this section, and the decision of the referee to whom the matter is so referred shall be given in the form provided by rules under this section and shall, subject to appeal to the court under this section, be final.

(3) The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant, or any

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persons nominated by the Commissioners and the appellant respectively for this purpose, and may, if he thinks fit, order that any expenses incurred by the appellant be paid by the Commissioners, and that any such expenses incurred by the Commissioners be paid by the appellant.

Any order of the referee as to expenses may be made a rule of the High Court.

Whether the person assessed is the owner of the land in respect of which the assessment is made is a matter of appeal (*Allen* v. *Commrs. of Inland Revenue*, [1914] 1 K. B. 327; 83 L. J. K. B. 611; affirmed [1914] 2 K. B. 327; 83 L. J. K. B. 649).

Costs.]—To enable costs to be ascertained by taxation an order of the referee "that costs of appellant . . . be borne by the Commissioners" is good and can be made a rule of Court (*Matthews* v. *Commissioners of Inland Revenue*, [1914] 3 K. B. 192; 83 L. J. K. B. 1552).

(4) Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by rules of court (including conditions enabling the court to require the payment of or the giving of security for any duty claimed); and sub-sections two, three, and four of section ten of the Finance Act, 1894, shall apply with reference to any such appeal:

57 & 58 Vict. c. 30.

Provided that where the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed five hundred pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court, and in every such case any party shall have a right of appeal to the Court of Appeal.

(5) Provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to a referee under this section, and with respect to the mode in which the referee to whom any reference is to be made is to be selected, and with respect to the form in which any decision of a referee is to be given, and with respect to any other matter for which it appears necessary or expedient to provide in order to carry this section into effect.

COUNTY COURT RULES. ORDER XLII.

[*Rules 6 to 21. April 7th*, 1913.]

THE FINANCE (1909–10) ACT, 1910, SECT. 33 (4).

Order XLII. Rules 13 to 28, are hereby annulled, and the following rules shall stand in lieu thereof, viz.:—

Appeal under 10 Edw. VII. c. 8, s. 33 (4), to be by petition.

13. Any person aggrieved by the decision of a referee under the Finance (1909–10) Act, 1910, who desires to appeal to the court against the decision, shall proceed by filing a petition setting forth specifically the several facts and contentions of law upon which he alleges that the decision of the referee was erroneous, and stating an address at which documents may be served on him.

Time for appealing.

14. Subject to the provisions of these rules, a petition of appeal must be filed within one month from the date of the decision of the referee.

Rule 15.

Title, date of hearing, and service of petition.

15.—(1) The petition shall be intituled "in the matter of the Finance (1909-10) Act, 1910, and in the matter of an appeal by , under section 33 of the said Act."

(2) On the filing of a petition the registrar shall fix a day and hour on and at which the petition will be heard, the day to be fixed at a date not less than 60 days from the filing of the petition, so as to allow time for the provisions of these rules to be complied with.

(3) On the day of hearing being fixed, the registrar shall seal a copy of the petition, and shall deliver to the appellant two copies of a notice according to the form in the Appendix, signed by the registrar and under the seal of the court; and the sealed copy of the petition, with one of such notices annexed thereto, shall within seven days after the filing of the petition be served by the appellant upon the respondent. [*See* Form 341.]

(4) Where the Commissioners of Inland Revenue are respondents, a copy of the petition shall be deemed to have been duly served if served upon the Solicitor of Inland Revenue, Somerset House, London, W.C.

Notice of admissions by respondent.

16. Within ten days after service of a copy of the petition upon the respondent, the respondent shall serve upon the appellant a notice stating whether, and to what extent, he admits the facts stated in the petition, and stating an address at which documents may be served upon him.

Notice to be given by respondent of facts and contentions of law relied on.

17.—(1) Within twenty-eight days after service of a copy of the petition upon the respondent, the respondent shall serve upon the appellant a further notice stating the facts and the contentions of law upon which he intends to rely at the hearing, and (if he so thinks fit) requiring the appellant to admit those facts.

(2) The appellant, if he is so required to admit facts shall, and in any case may, within ten days after service upon him of the notice required to be served by the respondent under this rule, serve upon the respondent a notice stating whether, and to what extent, he admits the facts stated in the notice served by the respondent.

Matters, when deemed to be at issue.

18. Upon the expiration of ten days after the service of the notice required to be served by the respondent under the last preceding rule all matters shall, except to the extent admitted by both parties, be deemed to be at issue.

Oral evidence.

19. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing.

Parties limited to grounds stated in petition and notice.

20. The appellant shall not without the leave of the judge be entitled to rely upon any facts or contentions of law other than those stated in the petition, and the respondent shall not without the leave of the judge be entitled to rely upon any facts or contentions of law other than those stated in the notice required to be served by him under these rules.

Discovery and inspection of documents.

21.—(1) It shall be the duty of the appellant and the respondent respectively to exchange lists of all documents in their possession relating to the matter at issue, and to give to each other inspection at all reasonable times of any of those documents which may

Rule 21.

not be protected by any privilege, and, if so required, to provide copies thereof on the usual terms.

(2) If the Commissioners are dissatisfied with the list so supplied by the appellant or by the respondent, as the case may be, they may apply to the court for an order for discovery of documents in the same manner and to the same extent as a party to an action in the court, but in considering any such application the court shall take into account the willingness or otherwise of the Commissioners to disclose or allow inspection of any documents in their possession.

Admission of certain material as *primâ facie* evidence.

22. The judge may, at any stage of the proceedings, either upon or without the application of either party, order that any material, whether strictly admissible as evidence or not, which in the opinion of the judge ought, having regard to the question of costs or otherwise, fairly to be admitted as *primâ facie* evidence of any fact, shall be *primâ facie* evidence of that fact so as to shift the burden of proving the contrary on to the other party.

Extension of time for appealing and for serving documents.

23. The judge may extend the time for filing or serving a petition of appeal, or for serving any notice, under these rules upon such terms (if any) as the justice of the case may require, and any such extension may be ordered although the application for the same is not made until after the expiration of the time allowed under these rules.

Amendment of petition or notices.

24. The judge may at any stage of the proceedings allow the amendment of the petition, or of any notices under these rules, upon such terms as the judge may think right.

Power to stay proceedings till duty paid or secured.

25.—(1) Where the Commissioners are respondents, and claim that any sum is due from the appellant by way of duty, they may apply for an order that proceedings on the appeal shall be stayed until the appellant has paid, or has given security for, the duty claimed.

(2) Any such application shall be made to the judge in accordance with the rules as to interlocutory applications, subject to the following modifications:—

(i.) the application shall be made on notice in writing, and on affidavit;

(ii.) the Commissioners shall serve notice of the application on the appellant three days at least before the hearing of the application, and shall deliver to the appellant, together with such notice, a copy of any affidavit which they intend to use at the hearing of the application.

(3) The judge shall make such order on any such application as seems to him reasonable in the circumstances of the case, and any order so made may, on an application made in accordance with this rule either by the Commissioners or by the appellant, be subsequently varied or discharged.

Service of documents.

26. Any notice or other document required or authorised to be served upon or sent to the appellant or respondent under these rules shall be sufficiently served or sent if sent by post in a prepaid letter addressed to him at his address for service as stated, in the case of the appellant, in his petition, and in the case of the respondent, in his notice under Rule 16, and unless the contrary

is proved, any notice or document sent as aforesaid shall be deemed to have been served at the time at which the letter would be delivered in the ordinary course of post. Rule 26.

27. Where the judge makes an order upon a petition under these rules, the registrar shall as soon thereafter as conveniently may be, draw up, seal, and file such order. Order on petition.

28. Nothing in these rules shall be construed to affect any right vested in the Crown by virtue of the Royal Prerogative. Saving for right of Crown.

FORM 341.

Notice of Day upon which Petition will be Heard.

In the county court of , holden at .
In the matter of the County Courts Act, 1888; and
In the matter of the trusts of [*as the case may be*].
Take notice, that the petition, a sealed copy of which is served herewith, will be heard at a county court to be holden at on the day of 19 , at the hour of o'clock in the noon, and that if you do not attend either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just.
Dated this day of 19 .

Registrar.

To .

FINANCE ACT, 1912.

[2 & 3 GEO. V. c. 8. SECT. 2.]

(Repealed.)

Jurisdiction.]—Where licensed premises are held under a lease or agreement for a lease made before the passing of the Finance Act, 1910 (April 29th, 1910), which does not tie the lessee to obtain intoxicating liquors from the grantor of the lease or agreement, the lessee shall be entitled, notwithstanding any agreement to the contrary, to recover as a debt from the grantor of such lease so much of the increase of the duty payable in respect of the licence, under the provisions of the 1910 Act, as may be agreed or determined by a county court as proportionate to any increased rent or premium payable in respect of the premises being let as licensed premises (sect. 2).

Practice.]—By Order XLII. r. 29, *post*, p. 2034, the application was to be made by plaint and summons to the county court of the district within which the licensed premises are situate.

Repealed as from 23rd of December, 1915, by Finance (No. 2) Act, 1915 (5 & 6 Geo. V., c. 89), s. 18, without prejudice to the validity of any payments made in pursuance of that section before the passing of this Act.

As to rights already accrued see *Lewis* v. *Hughes*, (1916) 85 L. J. K. B. 1019.

2. Where the licensed premises are held under a lease or agreement for lease made before the passing of the Finance (1909–10) Act, 1910, which does not contain or import any covenant, agreement, or undertaking on the part of the lessee under such lease or agreement for lease to obtain a supply of intoxicating liquor from the grantor of the lease or agreement for lease, the lessee under such lease or agreement for lease shall be entitled, notwithstanding any agreement to the contrary, to recover as a debt due from, or deduct from any sum due to, the grantor of such lease or agreement for lease so much of any increase of the

Section 2.

duty payable in respect of the licence under the provisions of the Finance (1909–10) Act, 1910, as may be agreed upon as proportionate to any increased rent or premium (*a*) payable in respect of the premises being let as licensed premises, and, in default of agreement, the amount proportionate to such increased rent or premium shall be determined in manner directed by rules of court by a county court in England or Ireland, and by a sheriff court in Scotland.

The words "lease," "leased," "agreement for lease," and "lessee" in this section include sub-lease, sub-leased, agreement for sub-lease, and sub-lessee respectively.

(**Repealed** as from 23rd December, 1915, by sect. 18 of Finance (No. 2) Act, 1915 (5 & 6 Geo. V., c. 89).)

(*a*).—Money spent in improving premises, or the surrender of an unexpired lease is not a "premium" (*King* v. *Cadogan*, (1915) 1 K. B. 821; 84 L. J. K. B. 779); on appeal, (1915) 84 L. J. K. B. 2069).

In this section "grantor of the lease" means the person who actually puts his signature and seal to the lease as lessor, not the persons who for the time being are in receipt of the rent of the licensed premises (*Bodega Co.* v. *Read*, (1914) 2 Ch. 757; (1915) 84 L. J. Ch. 36; *Bodega Co.* v. *Martin*, (1916) 85 L. J. Ch. 17).

The words "where the licensed premises are held under a lease or agreement for a lease" apply where the lessee has sub-let to the licence holder and is not in possession. He is entitled to recover from his lessor a contribution of the licence duty (*Watney, Combe, Reid & Co.* v. *Berners* (1915) 84 L. J. K. B. 1561; 31 T. L. R. (H. L.) 449; reversing Court of Appeal).

As to principle to be acted upon in determining what is proportionate to increased rent or premium payable in respect of the premises being let as licensed premises, see *Procter* v. *Tarry*, (1915) 2 K. B. 242; 84 L. J. K. B. 1096.

A county court judge has no jurisdiction to decide whether the conditions exist which would entitle a lessee to the benefit of the section (*Tratt* v. *Good*, (1915) 3 K. B. 59; 84 L. J. K. B. 1550).

COUNTY COURT RULES. ORDER XLII. RULE 29.

THE FINANCE ACT, 1912, SECT. 2.

Applications under 2 & 3 Geo. V. c. 8, s. 2.

(1) An application to the court to determine the amount which a lessee under a lease or an agreement for a lease of licensed premises is entitled to recover from, or to deduct from any sum due to, the grantor of such lease or agreement under section 2 of the Finance Act, 1912, shall be made to the court in the district of which the licensed premises are situate.

(2) Any such application shall be made by action commenced by plaint and summons in the ordinary way.

(3) Particulars of demand shall be filed with every such application, stating concisely the relief or order which the plaintiff claims.

(Obsolete see *supra*).

THE FRIENDLY SOCIETIES ACTS, 1896 AND 1908.

[59 & 60 VICT. C. 25; 8 EDW. VII. C. 32.]

All future copies of the Act of 1896 are directed to be printed with the corrections made by the 1908 Act. The necessary corrections have been made in the Act of 1896.

Jurisdiction is conferred in the following matters by the 1896 Act: (1)

default of officers (sect. 55); (2) disputes (sect. 68); (3) amalgamation of registered societies (sect. 70); (4) dissolution of registered societies (sect. 78); (5) enforcing awards of dissolution (sect. 80, sub-s. 5); (6) recovery of moneys from members (sect. 31).

The Court in which to proceed is, as to a member claiming relief from an order of amalgamation, by sect. 70, sub-s. 7, the county court of the district within which the chief place of business of the society is situate, and this practice had better be followed in all cases where the society is sued; where the society sues, the safest course would be to sue in the court within the district of which the defendant dwells (*Shea* v. *Society of St. Patrick*, (1867) L. R. 3 C. P. 21; 37 L. J. C. P. 50).

Practice is determined by Order XLI. (see Building Societies, p. 1781), and by sect. 94, which provides for the description of both plaintiffs and defendants, and the service of the summons or other proceedings. The proceedings are to be by plaint and summons.

Trade Unions.]—The provisions of The Friendly Societies Act, 1896, other than sects. 62 to 67, which replace sect. 28 of the 1875 Act, do not extend to any trade union; and the attempted registration of any trade union, either under that Act or The Industrial and Provident Societies Act, to be presently noticed, would be absolutely void (34 & 35 Vict. c. 31, s. 5). No application can be entertained, under the foregoing provisions, by the county court for the settlement of any dispute in any such society, nor can certain of their contracts be enforced in any court (*Ib.* sect. 4; *Rigby* v. *Connol*, (1880) 14 Ch. D. 482; 49 L. J. Ch. 328. (Provisions for the benefit of trade unions are made by 34 & 35 Vict. c. 31, 39 & 40 Vict. c. 22, and 46 & 47 Vict. c. 47)).

Where a society is registered as a trade union, and its main object is in restraint of trade, it would appear that no provisions of its rules for the benefit of members, similar to those of a friendly society, are enforceable in any courts (*Old* v. *Robson*, (1890) 59 L. J. M. C. 41; *Burke* v. *Amalgamated Society of Dyers*, (1906) 2 K. B. 583; 75 L. J. K. B. 533). Even the nomination provisions of 39 & 40 Vict. c. 22, do not enable the courts to enforce them (*Crocker* v. *Knight*, (1892) 1 Q. B. 702; 61 L. J. Q. B. 466). If the general objects of an unregistered society are for the relief of members, the mere fact that some of the rules are in restraint of trade will not make it illegal (*Swaine* v. *Wilson* (C. A.), (1889) 24 Q. B. D. 252; 59 L. J. Q. B. 76).

An action will not lie against a trade union, or any of its members or officials on behalf of themselves and all other members of the union, in respect of torts alleged to have been committed by or on behalf of the union (6 Edw. VII. c. 47, s. 4 (Trade Disputes Act, 1906)).

Appeal from County Court not provided for in the Act, but there is an appeal which is by motion (*Wilkinson* v. *Jagger*, (1887) 20 Q. B. D. 423; 57 L. J. Q. B. 254). A special case may be stated by the court (sect. 68, sub-s. 7).

59 & 60 Vict. c. 25.

[The first sixteen sections of the Act relate to the Registry Office.]

Registry of Societies.

[Section 8, which is amended by section 1 of the Friendly Societies Act, 1908, enumerates the societies which may be registered.]

Societies with Branches.

Registry of societies with branches.

17.—(1) Where a society has branches, the application for registry shall be accompanied with—

(*a*) a list of all the branches, and notice of the place where the registered office of each branch is situate; and

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(*b*) if any branch is to have trustees or officers authorised to sue and be sued on its behalf, other than the trustees or officers authorised to sue and be sued on behalf of the society, a list of the names of all such trustees or officers, distinguishing the branches for which they are authorised to sue and be sued ; and

(*c*) if the rules of all the branches (in this Act called branch rules) are or are intended to be identical, a statement to that effect, and copies of those rules ; and

(*d*) if the branch rules are not or are not intended to be identical, a statement to that effect, and copies of all branch rules.

(2) A society having a fund under the control of a central body to which every branch is bound to contribute may be registered as a single society, and where any such society has branches in more than one part of the United Kingdom the provision of this Act as to the registry of societies doing business in more than one such part shall apply to that society.

Establishment of new branches.

18.—(1) There shall be sent under the hand of the secretary of a registered society to the registrar—

(*a*) notice of the establishment of every new branch of the society ; and

(*b*) notice of the place where the registered office of the branch is situate ; and

(*c*) if the branch is to have trustees or officers authorised to sue and be sued on its behalf other than the trustees or officers authorised to sue and be sued on behalf of the society, a list of the names of such trustees or officers ; and

(*d*) a statement whether or not the rules of the branch are identical with those of the other branches of the society, and, if not so, a copy of the rules of the branch.

(2) Where the rules of the new branch are not identical with those of the other branches of the society, the society shall not be entitled to any of the privileges of this Act in respect of that branch until that branch has been registered in the part of the United Kingdom in which the registered office of the branch is to be situate.

Application of previous provisions to branches.

19. The provisions of this Act as to—

(*a*) the acknowledgment of registry of societies and amendments of rules ; and

(*b*) appeals from refusals to register societies and amendments of rules and the result thereof ; and

(*c*) the registry of amendments of rules ; and

(*d*) evidence of registry and of the appointment of trustees and officers

shall apply to branches and amendments of branch rules.

Requisites for registry of branches as societies.

20.—(1) A body which has been registered as a branch of a society shall not be registered as a society except on production to the registrar of a certificate under the hand of the chief secretary or other principal officer of the society of which it was a branch, that the body has wholly seceded or has been expelled from the society.

(2) An appeal shall lie from the refusal of the chief secretary or other principal officer of the society, or his omission after three months from the receipt of a request in writing made on behalf of the body to grant a certificate, to the High Court in England or Ireland or to the Court of Session in Scotland.

Name of seceding or expelled branch.

21. A body which, having been a branch of a society, has wholly seceded or been expelled from that society shall not thereafter use the name of that society or any name implying that it is a branch thereof, or the number by which it was designated as such branch.

Contributions from one society to another.

22.—(1) A registered society or branch may contribute to the funds and take part by delegates or otherwise in the government of any other registered society or registered branch of a society, as provided in the rules of that first-named society or branch, without becoming a branch under this Act of that other society or branch.

(2) This section shall in respect of contributing to the funds and taking part in the government of a medical society, that is to say, a society for the purpose of relief in sickness by providing medical attendance and medicine, extend to any registered trade union or branch of a registered trade union.

(3) A registered society or trade union or branch shall not withdraw from contributing to the funds of any such medical society except on three months' notice to the society and on payment of all contributions accrued or accruing due to the date of the expiration of the notice.

Consequences of Registry.

Subscriptions not recoverable at law.

23. Save as provided by section thirty-one of this Act, the subscription of a person being or having been a member of a registered society or branch shall not be recoverable at law.

Registered office.

24.—(1) Every registered society and branch shall have a registered office to which all communications and notices may be addressed, and shall send to the registrar notice of the situation of that office, and of every change therein.

(2) In the case of a branch the notice shall be sent to the registrar through an officer appointed in that behalf by the society of which the branch forms part.

[Sections 25 to 30 inclusive relate to appointment of trustees, audit, annual returns, etc., etc.]

Registered cattle insurance and other societies.

31.—(1) The rules of a registered cattle insurance society or branch, and of such specially authorised societies or branches thereof as the Treasury may allow to take the benefit of this section, shall bind the society or branch and the members thereof, and all persons claiming through them respectively, to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the rules contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to the rules subject to the provisions of this Act.

(2) All sums of money payable by a member to such society or branch as aforesaid shall be deemed to be a debt due from the

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member to the society or branch, and shall be recoverable as such in the county court of the district in which the member resides.

[Sections 32 to 37 relate to the privileges of registered societies.]

[Section 36 is amended by s. 2 of the Act of 1908.]

Rights of Members.

Right to supply of copies of the rules.

38. Every registered society and branch shall deliver to every person on demand, on payment of a sum not exceeding one shilling, a copy of the rules of the society or branch.

Right to supply of copies of annual return.

39. Every registered society and branch shall supply gratuitously to every member or person interested in its funds, on his application, either

(*a*) a copy of the last annual return of the society or branch; or

(*b*) a balance sheet or other document duly audited containing the same particulars as to the receipts and expenditure, funds, and effects, of the society or branch as are contained in the annual return.

Inspection of books by members.

40. A member or person having an interest in the funds of a registered society or branch may inspect the books at all reasonable hours at the registered office of the society or branch, or at any place where the books are kept, except that the member or person shall not, unless he is an officer of the society or branch, or is specially authorised by a resolution of the society or branch to do so, have the right to inspect the loan account of any other member without the written consent of that member.

Limitation of benefits.

41.—(1) A member, or person claiming through a member, of a registered friendly society or branch, shall not be entitled to receive more than three hundred pounds by way of gross sum, together with any bonuses or additions declared upon assurances not exceeding that amount, or (except as provided by this Act) fifty-two pounds a year by way of annuity, from any one or more such societies or branches.

The old limitations to 200*l.* gross sum, and 50*l.* a year, have been altered to 300*l.* and 52*l.* by sect. 3 of the Friendly Societies Act, 1908.

(2) Any such society or branch may require a member, or person claiming through a member, to make and sign a statutory declaration that the total amount to which that member or person is entitled from one or more such societies or branches does not exceed the sums aforesaid.

Accumulation of surplus of contributions.

42. The rules of a registered society or branch may provide for accumulating at interest, for the use of any member, any surplus of his contributions to the funds of the society or branch which may remain after providing for any assurance in respect of which they are paid and for the withdrawal of the accumulations.

Militiamen and volunteers.

43.—(1) A person shall not, by reason of his enrolment or service in the militia or as a naval coast volunteer, Royal Naval volunteer, naval artillery volunteer, or in any corps of yeomanry or volunteers whatsoever, lose or forfeit any interest in a friendly

society or branch whether registered or unregistered which he possesses at the time of his being so enrolled or serving, or be fined for absence from or non-attendance at any meeting of the society or branch, if his absence or non-attendance is occasioned by the discharge of his military or naval duty as certified by his commanding officer, any rules of the society or branch to the contrary notwithstanding.

(2) A dispute between any such society or branch and person by reason of that enrolment or service shall be decided by a court of summary jurisdiction.

(3) If the rules of a society or branch certified before the twenty-third day of July, one thousand eight hundred and fifty-five, and in force at the time of the enrolment or service, provide that a member shall be deprived of any benefit by reason of that enrolment or service, the society or branch may require of the member a contribution exceeding the rate of contribution otherwise payable by him to an amount not exceeding one tenth of that rate during the time the member is serving out of the United Kingdom, or may suspend all claim of the member to any benefits assured by the society or branch, and all claim of the society or branch to any contributions payable by the member, during the time only he is serving out of the United Kingdom, but so that if he returns to the United Kingdom he shall forthwith be replaced on the same footing as before he went abroad on service.

[Sections 44 to 50 relate to property, funds, and investments, and the vesting and devolution thereof. The powers of investment contained in s. 44 are widened by s. 4 of the Act of 1908.]

See, as to unauthorised loan under sect. 46, *Lougher and ors.* v. *Molyneux*, (1916) 85 L. J. K. B. 911.

Description in legal proceedings.

51. In all legal proceedings whatsoever concerning any property vested in the trustees of a registered society or branch, the property may be stated to be the property of the trustees in their proper names as trustees for the society or branch without further description.

[Sections 52 and 53 relate to investments and discharge of mortgages.]

Officers in Receipt or Charge of Money.

Security by officers.

54. Every officer of a registered society or branch having receipt or charge of money shall, if the rules of the society or branch so require, before taking upon himself the execution of his office, become bound with one sufficient surety at the least in a bond or give the security of a guarantee society, in such sum as the society or branch directs, conditioned for his rendering a just and true account of all sums of money received and paid by him on account of the society or branch at such times as its rules appoint, or as the society or branch or the trustees or committee thereof require him to do, and for the payment by him of all sums due from him to the society or branch.

Accounts of officers.

55.—(1) Every officer of a registered society or branch having receipt or charge of money shall, at such times as by the rules of the society or branch he should render account, or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the society or branch, or by the trustees or committee thereof, to be examined

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and allowed or disallowed by them, and shall, on the like demand or notice, pay over all sums of money and deliver all property in his hands or custody to such person as the society or branch, or the committee or the trustees, appoint.

(2) In case of any neglect or refusal to deliver the account, or to pay over the sums of money or to deliver the property in manner aforesaid, the trustees or authorised officers of the society or branch may sue upon the bond or security before mentioned, or may apply to the county court or to a court of summary jurisdiction, and the order of either such court shall be final and conclusive.

PAYMENTS ON DEATH GENERALLY.

Power of member to dispose of sums payable on death by nomination.

56.—(1) A member of a registered society (other than a benevolent society or working-men's club) or branch thereof, not being under the age of sixteen years, may, by writing under his hand delivered at or sent to the registered office of the society or branch, or made in a book kept at that office, nominate a person to whom any sum of money payable by the society or branch, on the death of that member, not exceeding one hundred pounds, shall be paid at his decease.

Life policy is assignable by deed as well as by nomination (*In re Griffin*, (1902) 1 Ch. 135; 71 L. J. Ch. 112; overruling *Caddick* v. *Highton*, (1901) 2 Ch. 476, n.; 68 L. J. Q. B. 281; *Re Redman*, (1901) 2 Ch. 471; 70 L. J. Ch. 669).

(2) The sum of money payable by the society or branch on the death of a member, shall include sums of money contributed to or deposited in the separate loan account and the sums of money accumulated for the use of the member under the provisions of this Act with interest thereon.

(3) The person so nominated must not be an officer or servant of the society or branch, unless that officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator.

(4) A nomination so made may be revoked and varied by any similar document under the hand of the nominator, delivered, sent, or made as aforesaid.

Cannot be revoked otherwise than as prescribed by the sub-section (*Bennett* v. *Slater*, (1899) 1 Q. B. 45; 68 L. J. Q. B. 45).

(5) The marriage of a member of a society or branch shall operate as a revocation of any nomination theretofore made by that member under this section.

(6) A nomination or a variation or revocation of a nomination by writing under the hand of a member of a registered branch and delivered at or sent to the registered office of that branch, or made in a book kept at that office, shall be effectual notwithstanding that the money to which the nomination relates or some part thereof is not payable by that branch, but is payable by the society or some other branch.

Sub-s. 6 added by sect. 5 of the Act of 1908.

Proceedings on death of a nominator.

57.—(1) On receiving satisfactory proof of the death of a nominator, the society or branch shall pay to the nominee the

amount due to the deceased member, not exceeding the said sum of one hundred pounds. Section 57.

(2) The receipt of a nominee over sixteen years of age for any amount so paid shall be valid.

(3) If the total sum in respect to which a nomination may be made under this Act by a member, after deducting any sums of money payable under the rules of the society or branch, or otherwise, for the purpose of defraying funeral expenses, exceeds at the time of the death of that member eighty pounds, the society or branch shall before making any payment require the production of a duly stamped receipt for the succession or legacy duty payable thereon, or a letter or certificate from the Commissioners of Inland Revenue stating that no such duty is payable.

(4) The Commissioners shall give such receipt, letter, or certificate on the payment of the duty or satisfactory proof of no duty being payable, as the case may be.

58.—(1) If any member of a registered society or branch, entitled from the funds thereof to a sum not exceeding one hundred pounds, dies intestate and without having made any nomination thereof then subsisting, the society or branch may, without letters of administration, distribute the sum among such persons as appear to a majority of the trustees, upon such evidence as they may deem satisfactory, to be entitled by law to receive that sum, subject if that sum, after making such deductions as aforesaid, exceeds eighty pounds, to the obtaining from the Commissioners of Inland Revenue a receipt for the succession or legacy duty payable thereon, or a letter or certificate stating that no such duty is payable. Intestacy.

(2) If any such member is illegitimate, the trustees may pay the sum of money which that member might have nominated to or among the persons who, in the opinion of a majority of them, would have been entitled thereto if that member had been legitimate, or if there are no such persons, the society or branch shall deal with the money as the Treasury may direct.

59. When the principal value of the estate in respect of which estate duty is payable of any person entitled to make a nomination under this Act exceeds one hundred pounds, any sum paid under this Act without probate or letters of administration shall, notwithstanding such nomination or payment, be liable to estate duty as part of the amount on which that duty is charged, and the trustees of the society or branch may before making any such payment require a statutory declaration by the claimant, or by one of the claimants, that the principal value of that estate, including the sum in question, does not after deduction of debts and funeral expenses exceed the value of one hundred pounds. Estate duty to be paid when the whole estate exceeds 100*l*.

60.—(1) A payment made by a registered society or branch, under the foregoing provisions of this Act with respect to payments on death generally to the person who at the time appears to a majority of the trustees to be entitled thereunder, shall be valid and effectual against any demand made upon the trustees or the society or branch by any other person, but the next-of-kin or lawful representative of the deceased member shall have remedy Validity of payments.

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for recovery of the money, so paid as aforesaid, against the person who has received that money.

(2) Where the society or branch has paid money to a nominee in ignorance of a marriage subsequent to the nomination, the receipt of the nominee shall be a valid discharge to the society or branch.

Certificates of death.

61.—(1) A registered society or branch shall not pay any sum of money upon the death of a member or other person whose death is or ought to be entered in any register of deaths, except upon the production of a certificate of that death under the hand of the registrar of deaths or other person having care of the register of deaths in which that death is or ought to be entered.

(2) This section shall not apply to deaths at sea, nor to a death by colliery explosion or other accident where the body cannot be found, nor to any death certified by a coroner or procurator fiscal to be the subject of a pending inquest or inquiry.

Payments on Death of Children.

Limitation of amount payable.

62. A society or branch, whether registered or unregistered shall not insure or pay on the death of a child under five years of age any sum of money which, added to any amount payable on the death of that child by any other society or branch, exceeds six pounds, or on the death of a child under ten years of age any sum of money which, added to any amount payable on the death of that child by any other society or branch, exceeds ten pounds.

Person to whom payment may be made.

63. A society or branch, whether registered or unregistered, shall not pay any sum on the death of a child under ten years of age except to the parent of the child, or to the personal representative of the parent, and upon production by the parent or his personal representative of a certificate of death issued by the registrar of deaths, or other person having the care of the register of deaths, containing the particulars mentioned in this Act.

Particulars of certificates.

64.—(1) Where application is made for a certificate of the death of a child for the purpose of obtaining a sum of money from a society or branch, the name of the society or branch, and the sum sought to be obtained therefrom shall be stated to the registrar of deaths.

(2) The registrar of deaths shall write on or at the foot of the certificate the words "to be produced to the society or branch (naming the same) said to be liable for payment of the sum of *l.* (stating the same)."

(3) All certificates of the same death shall be numbered in consecutive order.

Cases in which certificates may be given.

65.—(1) A registrar of deaths shall not give any one or more certificates of death for the payment in the whole of any sum of money exceeding six pounds on the death of a child under five years, or for the payment in the whole of a sum exceeding ten pounds on the death of a child under ten years.

(2) A registrar of deaths shall not grant any such certificate unless the cause of death has been previously entered in the

register of deaths on the certificate of a coroner, or of a registered medical practitioner who attended the deceased child during its last illness, or except upon the production of a certificate of the probable cause of death under the hand of a registered medical practitioner, or of other satisfactory evidence thereof. Section 65.

66. A society or branch, whether registered or unregistered, to which is produced a certificate of the death of a child which does not purport to be the first shall, before paying any money thereon, inquire whether any and what sums of money have been paid on the same death by any other society or branch. Inquiries by societies.

67. Nothing in this Act respecting payments on the death of children shall apply to insurances on the lives of children of any age, where the person insuring has an interest in the life of the person insured. Saving as to insurable interests, etc.

Disputes.

68.—(1) Every dispute between— Decision of disputes.

(*a*) a member or person claiming through a member or under the rules of a registered society or branch, and the society or branch or an officer thereof; or

(*b*) any person aggrieved who has (*a*) ceased to be a member of a registered society or branch, or any person claiming through such person aggrieved, and the society or branch, or an officer thereof; or

Note.—(*a*) The words "for not more than six months" were repealed by sect. 6 of the Act of 1908.

(*c*) any registered branch of any society or branch, and the society or branch of which it is a branch; or

(*d*) an officer of any such registered branch and the society or branch of which that registered branch is a branch (*a*); or

Note.—(*a*) But notwithstanding this sub-section, an action can be maintained by the trustees of the society, against the trustees, secretary and treasurer of a registered branch for breach of trust in applying the trust funds in an unauthorised way (*Winter* v. *Wilkinson*, (1915) 1 Ch. 317; 84 L. J. Ch. 237).

(*e*) any two or more registered branches of any society or branch, or any officers thereof respectively,

shall be decided in manner directed by the rules of the society or branch, and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the county court.

(2) The parties to a dispute in a registered society or branch may, by consent (unless the rules of the society or branch expressly forbid it), refer the dispute to the chief registrar, or in Scotland or Ireland to the assistant registrar.

(3) The chief or other registrar to whom a dispute is referred shall, with the consent of the Treasury, either by himself or by any other registrar, hear and determine the dispute, and shall have power to order the expenses of determining the dispute to be paid either out of the funds of the society or branch, or by

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such parties to the dispute as he may think fit, and his determination and order shall have the same effect, and be enforceable in like manner as a decision made in the manner directed by the rules of the society or branch.

(4) The chief or other registrar to whom a dispute is referred may administer oaths, and may require the attendance of all parties concerned, and of witnesses, and the production of all books and documents relating to the matter in question.

(5) Where the rules of a registered society or branch direct that disputes shall be referred to justices, the dispute shall be determined by a court of summary jurisdiction, or, if the parties thereto consent, by the county court.

(6) Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society or branch for a reference under its rules, the member or person aggrieved may apply either to the county court, or to a court of summary jurisdiction, and the court to which application is so made, may hear and determine the matter in dispute ; but in the case of a society with branches, the said forty days shall not begin to run until application has been made in succession to all the bodies entitled to determine the dispute under the rules of the society or branch, so, however, that no rules shall require a greater delay than three months between each successive determination.

When the right to make such an application to the county court to recover a benefit under the rules has once become vested, the society cannot, by an amendment of its rules, take away that vested right (*Ritson* v. *Dobson*, (1911) 104 L. T. 808).

In the case of a society with branches, the forty days do not begin to run until application has been made in succession to all the bodies entitled to determine the dispute under the rules of the society or branch, so, however, that no rules shall require a greater delay than three months between each successive determination (for form of order, see Form 167) (*Jessop* v. *The Huddersfield Industrial Society*, (1899) 80 L. T. 598).

See, as to jurisdiction of county court where the rules of the society were uncertain, and the decision contrary to natural justice (*Wayman* v. *Perseverance Lodge of Cambridgeshire Order of United Brethren Friendly Society*, (1917) 1 K. B. 677; 86 L. J. K. B. 243).

52 & 53 Vict. c. 49.

(7) Notwithstanding anything contained in the Arbitration Act, 1889, or in any other Act, the court and the chief or other registrar or any arbitrator or umpire to whom a dispute is referred under the rules of a registered society or branch, shall not be compelled to state a special case on any question of law arising in the case, but the court, or chief or other registrar, may, at the request of either party, state a case for the opinion in England or Ireland of the Supreme Court, and in Scotland of either division of the Inner House of the Court of Session, on any question of law, and may also grant to either party such discovery as to documents and otherwise, or such inspection of documents, and in Scotland, may grant warrant for the recovery of documents and examination of havers, as might be granted by any court of law or equity, and the discovery shall be made on behalf of the society or branch by such officer thereof as the court or registrar may determine.

(8) In this section the expression "dispute" includes any dispute arising on the question whether a member or person aggrieved is entitled to be or to continue to be a member or to be reinstated as a member, but, save as aforesaid, in the case of a person who has ceased to be a member, does not include any dispute other than a dispute on a question between him and the society or branch or an officer thereof which arose whilst he was a member, or arises out of his previous relation as a member to that society or branch. Section 68.

Sub-s. 8 was added by sect. 6 of the Act of 1908.

The decision of an arbitration committee is not binding if given without jurisdiction, as where a member was summoned before a committee for a breach of rules and was in his absence expelled upon a different charge (one of fraud and disgraceful conduct); in such a case the jurisdiction of the courts is not ousted (*Andrews* v. *Mitchell*, (1905) A. C. 78; 74 L. J. K. B. 333).

Under sect. 22 of the 1875 Act, and sect. 10, sub-s. 1 of the 1895 Act, repealed but practically re-enacted in sect. 68, sub-s. 1, of the 1896 Act, it was held that the provisions of those sections did not extend to disputes as to the title of a person to be a member of the society, and that as to such disputes the jurisdiction of the courts was not ousted (*Palliser* v. *Dale* (C. A.), (1897) 1 Q. B. 257; 66 L. J. Q. B. 236); this case since the passing of the 1908 Act is no longer law. Questions about sick pay and expenses are disputes (*Catt* v. *Wood*, (1910) A. C. 404; 79 L. J. K. B. 782).

Change of Name, Amalgamation, and Conversion of Societies.

Power to change name

69.—(1) A registered society may, by special resolution, with the approval in writing of the chief registrar, or in the case of societies registered and doing business exclusively in Scotland or Ireland, the assistant registrar for Scotland or Ireland respectively, change its name, and shall not change its name in any other manner.

(2) Any such change of name shall not affect any right or obligation of the society, or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the society, or any other officer who may sue or be sued on behalf of the society, notwithstanding its new name.

Amalgamation and transfer of engagements.

70.—(1) Any two or more registered societies may, by special resolution of both or all such societies, become amalgamated together as one society, with or without any dissolution or division of the funds of those societies or either of them.

(2) A registered society may, by special resolution, transfer its engagements to any other registered society which may undertake to fulfil the engagements of that society.

(3) A special resolution by a registered friendly society for an amalgamation or transfer of engagements under this Act shall not be valid without—

(*a*) the assent thereto of five-sixths in value of the members, given either at the meetings at which the resolution is, according to the provisions of this Act, passed and confirmed, or at one of them, or, if the members were not present thereat, in writing; and

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(*b*) the written consent of every person receiving or entitled to any relief, annuity, or other benefit from the funds of the society, unless the claim of that person is first duly satisfied, or adequate provision is made for satisfying that claim.

(4) Provided that on application of the trustees or committee of a registered friendly society desiring to amalgamate or transfer its engagements, and upon notice of that application being published in the *Gazette*, the chief registrar, after hearing the trustees or committee and any other persons whom he considers entitled to be heard upon the application, may, with the consent of the Treasury, order that any of the assents, consents, and conditions required by this Act, or by any regulations made under this Act, be dispensed with, and may confirm the amalgamation or transfer.

(5) A registered society, consisting wholly of members under twenty-one years of age, and a registered society or branch or branches of a society having members above twenty-one years of age, may, by resolution registered in the manner required for the registration of an amendment of rules, become amalgamated together as one society or branch, or provide for distributing among several branches the members of a society consisting wholly of members under twenty-one years of age, and the other provisions of this section shall not apply to that amalgamation.

(6) The value of members shall be ascertained by giving one vote to every member, and an additional vote for every five years that he has been a member, but to no one member more than five votes in the whole.

(7) If any member of a friendly society which has amalgamated or transferred its engagements, or if any person claiming any relief, annuity, or other benefit, from the funds thereof, is dissatisfied with the provision made for satisfying his claim, that member or person may apply to the county court of the district within which the chief or any other place of business of the society is situate for relief or other order, and that court shall have the same powers in the matter as in regard to the settlement of disputes under this Act.

Conversion of society into company.

71.—(1) A registered society may, by special resolution, determine to convert itself into a company under the Companies Acts, 1862 to 1890, or to amalgamate with or transfer its engagements to any such company.

(2) If a special resolution for converting a society into a company contains the particulars required by the Companies Acts, 1862 to 1890, to be contained in the memorandum of association of a company, and a copy thereof has been registered at the central office, a copy of that resolution under the seal or stamp of the central office shall have the same effect as a memorandum of association duly signed and attested under the said Acts.

(3) If a society is registered as, or amalgamates with, or transfers all its engagements to, a company, the registry of the society under this Act shall thereupon become void, and shall be cancelled by the chief registrar or by the assistant registrar for Scotland or Ireland under his direction; but the registration of a society as a company shall not affect any right or claim subsisting against that society, or any penalty incurred by that society; and for

the purpose of enforcing any such right, claim, or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company; and every such right or claim, or the liability to any such penalty, shall have priority, as against the property of the company, over all other rights or claims against or liabilities of the company.

On conversion of a friendly society under this section into a limited company the members of the society are not simultaneously converted into members of the company (*Blackburn Philanthropic Assurance Co., Ld., In re,* (1915) 2 Ch. 430; 84 L. J. Ch. 145).

Saving for right of creditors.

72. An amalgamation or transfer of engagements in pursuance of this Act shall not prejudice any right of a creditor of either or any society party thereto.

Conversion of society into branch.

73.—(1) A registered society may, by a resolution passed by a majority of the members or delegates present and entitled to vote at any general meeting, of which notice specifying the intention to propose any such resolution has been duly given according to the rules, determine to become a branch of any other registered society, and also, if thought fit, of any registered branch thereof.

(2) If the rules of the society do not comply with all the provisions of this Act and of the Treasury regulations in respect of the registry of branches, the meeting at which any such resolution is passed, may amend the rules, so as to bring the rules into compliance with this Act and with the Treasury regulations.

(3) A copy of the rules of the society marked to show the amendments, if any, made at the meeting, and two copies of the resolution and of such amendment of rules, if any, as aforesaid, each signed by the chairman of the meeting, and by the secretary of the society, so determining to become a branch of another society, and countersigned by the secretary of that other society, shall be sent to the registrar.

(4) If the registrar finds that the rules, with or without such amendment as aforesaid, comply with the provisions of this Act and of the Treasury regulations, he shall cancel the registry of the first-mentioned society, and register it as a branch of that other society, and also, if so specified in the resolution before mentioned, of any branch of that other society, without further request or notice, and shall register such amendment of rules without further application or evidence, and until such registry as aforesaid the resolution shall not take effect.

(5) An advertisement of any cancelling of registry under this section shall not be requisite.

(6) The rules of a society which becomes a branch under this section shall, so far as they are not contrary to any express provision of this Act or of the Treasury regulations, and subject to any such amendment thereof as aforesaid, continue in force as the rules of the branch until amended.

(7) This section shall apply only to societies registered before the first day of January, one thousand eight hundred and seventy-six.

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Meaning of special resolution.

74. For the purposes of this Act, a special resolution shall mean a resolution which is—

(*a*) passed by a majority of not less than three-fourths of such members of a registered society, entitled under the rules to vote as may be present in person or by proxy (where the rules allow proxies) at any general meeting of which notice specifying the intention to propose that resolution has been duly given according to the rules; and

(*b*) confirmed by a majority of such members entitled under the rules to vote as may be present in person or by proxy (where the rules allow proxies), at a subsequent general meeting of which notice has been duly given, held not less than fourteen days nor more than one month from the day of the meeting at which such resolution was first passed.

At any meeting mentioned in this section a declaration by the chairman that the resolution has been carried shall be conclusive evidence of the fact.

Registration of special resolutions.

75. A copy of every special resolution for any of the purposes mentioned in this Act, signed by the chairman of the meeting and countersigned by the secretary, shall be sent to the central office and registered there, and until that copy is so registered the special resolution shall not take effect.

[Sections 76 and 77 relate to inspection: cancelling (*a*) and suspension of registry.]

NOTE.—(*a*) See *Middle Age Pension Friendly Society, In re*, (1915) 1 K. B. 432; 84 L. J. K. B. 378.

Dissolution of societies.

78.—(1) Subject to the provision of this Act as to the dissolution of societies with branches, a registered society or branch may terminate or be dissolved in any of the following ways:—

(*a*) upon the happening of any event declared by the rules to be the termination of the society or branch; or

(*b*) as respects societies or branches other than friendly societies or branches, by the consent of three-fourths of the members, testified by their signatures to the instrument of dissolution; or

(*c*) as respects friendly societies or branches, by the consent of five-sixths in value of the members (including honorary members, if any), testified by their signatures to the instrument of dissolution, and also by the written consent of every person receiving or entitled to receive any relief, annuity, or other benefit from the funds of the society or branch, unless the claim of that person is first duly satisfied, or adequate provision made for satisfying that claim, and, in the case of a branch, with the consent of the central body of the society or in accordance with the general rules of the society; or

(*d*) by the award of the chief registrar or assistant registrars in the cases specified in this Act.

(2) The provisions of this Act as to the method of calculating the value of members and the remedy of members and persons dissatisfied with the provisions made for satisfying their claims in the case of the amalgamation or transfer of engagements of

a registered friendly society shall apply to the dissolution of a registered friendly society or branch. Section 78.

79. When a registered society or branch is terminated by an instrument of dissolution :— Instrument of dissolution.

(1) The instrument shall set forth—

(*a*) the liabilities and assets of the society or branch in detail ; and

(*b*) the number of members and the nature of their interests in the society or branch ; and

(*c*) the claims of creditors (if any), and the provision to be made for their payment ; and

(*d*) the intended appropriation or division of the funds and property of the society or branch, unless the appropriation or division is stated in the instrument of dissolution to be left to the award of the chief registrar.

(2) Alterations in the instrument of dissolution may be made with the like consents as are in this Act required for the dissolution of a society or branch, testified in the same manner.

(3) A statutory declaration shall be made by one of the trustees, or by three members and the secretary of the society or branch, that the provisions of this Act have been complied with, and shall be sent to the registrar with the instrument of dissolution.

(4) The instrument shall not in the case of a registered friendly society or branch direct or contain any provision for a division or appropriation of the funds of the society or branch, or any part thereof, otherwise than for the purpose of carrying into effect the objects of the society or branch as declared in the rules thereof, unless the claim of every member or person claiming any relief, annuity, or other benefit from the funds thereof is first duly satisfied, or adequate provisions are made for satisfying those claims.

(5) The instrument of dissolution and all alterations therein shall be registered in manner in this Act provided for the registry of amendments of rules, and shall be binding upon all the members of the society or branch.

(6) The registrar shall cause a notice of the dissolution to be advertised at the expense of the society or branch, and, unless within three months from the date of the *Gazette* in which the advertisement appears, a member or other person interested in or having any claim on the funds of the society or branch commences proceedings to set aside the dissolution of the society or branch, and the dissolution is set aside accordingly, the society or branch shall be legally dissolved from the date of that advertisement, and the requisite consents to the instrument of dissolution shall be considered to have been duly obtained without proof of the signatures thereto.

80. — (1) Upon the application made in writing under their hands— Dissolution by award.

(*a*) of one-fifth of the whole number of members of a registered society or branch ; or

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(*b*) in the case of a registered society or branch of one thousand members and not exceeding ten thousand, of one hundred members; or

(*c*) in the case of a registered society or branch of more than ten thousand members, of five hundred members,

the chief registrar may by himself or by any assistant registrar, or by any actuary or public auditor whom the chief registrar may appoint in writing under his hand, investigate the affairs of the society or branch, but shall give, not less than one month previous, notice in writing to the society or branch whose affairs are to be investigated.

One month substituted for two months by sect. 8 of the Act of 1908.

(2) The application shall—

(*a*) state that the funds of the society or branch are insufficient to meet the existing claims thereon, or that the rates of contribution fixed in the rules of the society or branch are insufficient to cover the benefits assured; and

(*b*) set forth the grounds on which the insufficiency is alleged; and

(*c*) request an investigation into the affairs of the society or branch with a view to the dissolution thereof.

(3) If upon the investigation it appears that the funds of the society or branch are insufficient to meet the existing claims thereon, or that the rates of contribution fixed in the rules of the society or branch are insufficient to cover the benefits assured to be given by the society or branch, the chief registrar may, if he considers it expedient so to do, award that the society or branch be dissolved, and its affairs wound up, and shall direct in what manner the assets of the society or branch shall be divided or appropriated: Provided always, that the chief registrar may suspend his award for such period as he may deem necessary to enable the society or branch to make such alterations and adjustments of contributions and benefits as will in his judgment prevent the necessity of the award of dissolution being made.

(4) A registrar proceeding under this section shall have all the same powers and authorities, enforceable by the same penalties, as in the case of a dispute referred to him under this Act.

(5) Every award under this section, whether for dissolution or distribution of funds, shall be final and conclusive on the society or branch in respect of which the award is made, and on all members of the society or branch and on all other persons having any claim on the funds of the society or branch, without appeal, and shall be enforced in the same manner as a decision on a dispute under this Act.

(6) The expenses of every investigation and award, and of publishing every notice of dissolution, shall be paid out of the funds of the society or branch before any other appropriation thereof is made.

(7) Notice of every award for dissolution shall, within twenty-one days after the award has been made, be advertised by the central office, and unless, within three months from the date on which that advertisement appears, a member or person interested in or having any claim on the funds of the society or branch

commences proceedings to set aside the dissolution of the society or branch consequent upon such award, and the dissolution is set aside accordingly, the society or branch shall be legally dissolved from the date of the advertisement, and the requisite consents to the application to the registrar shall be considered to have been duly obtained without proof of the signatures thereto. Section 80.

81. A notice required by this Act to be advertised shall be published in the *Gazette* and in some newspaper in general circulation in the neighbourhood of the registered office of the society or branch. Advertisement of notices.

82. The provisions of this Act respecting the dissolution of societies shall not apply to any society having branches except with the consent of the central body of the society. Dissolution of societies having branches.

83.—(1) Where a person takes any proceeding to set aside the dissolution of a society or branch, he shall give notice of the proceeding to the central office not less than seven days before the proceeding is commenced. Notices of proceeding or order to set aside dissolution.

(2) Where an order is made setting aside the dissolution of a society or branch, the society or branch shall give notice of the order to the central office within seven days after the order has been made.

[Sections 84 to 93 relate to offences and penalties.]

94.—(1) The trustees of a registered society or branch, or any other officers authorised by the rules thereof, may bring or defend, or cause to be brought or defended, any action or other legal proceeding in any court whatsoever, touching or concerning any property, right, or claim of the society or branch, and may sue and be sued in their proper names, without other description than the title of their office. Legal proceedings.

(2) In legal proceedings brought under this Act by a member, or person claiming through a member, a registered society or branch may also be sued in the name, as defendant, of any officer or person who receives contributions or issues policies on behalf of the society or branch within the jurisdiction of the court in which the legal proceeding is brought, with the addition of the words " on behalf of the society or branch " (naming the same).

(3) A legal proceeding shall not abate or be discontinued by the death, resignation, or removal from office of any officer, or by any act of any such officer after the commencement of the proceedings.

(4) The summons, writ, process, or other proceeding, to be issued to or against the officer or other person sued on behalf of a registered society or branch, shall be sufficiently served by personally serving that officer or other person, or by leaving a true copy thereof at the registered office of the society or branch, or at any place of business of the society or branch within the jurisdiction of the court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door of that office or place of business.

(5) In all cases where the said summons, writ, process, or other proceeding is not served by means of such personal service, or by leaving a true copy thereof at the registered office of the

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society or branch as aforesaid, a copy thereof shall be sent in a registered letter addressed to the committee at the registered office of the society or branch, and posted at least six days before any further step is taken on the proceeding.

(6) Where proceedings are taken against a society or branch for the recovery of any fine under this Act the summons or other process shall be sufficiently served by leaving a true copy thereof at the registered office of the society or branch, or at any place of business of the society or branch, within the jurisdiction of the court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door of that office or place of business.

(7) Where the person against whom the proceedings are to be taken is himself a trustee of the society or branch the proceedings may be brought by the other trustees or trustee of the society or branch.

Sub-ss. 6 and 7 added by sect. 11 of the Act of 1908. By sect. 91 of the Act of 1896, fines under that Act are only recoverable in a court of summary jurisdiction.

Fees: Forms: Regulations: Evidence.

Remuneration of county court officers.

95. The registrars and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under this Act in such manner as the Treasury, with the consent of the Lord Chancellor, may direct.

Fees.

96.—(1) The Treasury may determine a scale of fees to be paid for matters to be transacted, or for the inspection of documents under this Act.

(2) A fee shall not be payable on the registry of any friendly, benevolent, or cattle insurance society, or working-men's club, or of any amendment of the rules thereof.

(3) All fees which may be received by any registrar under or by virtue of this Act shall be paid into the exchequer.

Fees payable to registrar of births and deaths.

97.—(1) For the purpose of this Act, a certificate of the birth or death of any member of or person insured or to be insured with a registered friendly society or branch shall, on application being made as in this Act provided, be given under his hand by the registrar of births or deaths, for a sum not exceeding one shilling, in place of all fees or payments otherwise payable in respect thereof.

(2) Whenever application is made at one time to any such registrar for more certificates than one of the same birth or death for the purposes of and in the manner prescribed by this Act, the sum charged for every such certificate other than the first shall not exceed sixpence.

(3) Whenever the registrar is required by the person applying for any certificate of birth or death to fill up the form of application, he may demand a sum not exceeding threepence for so doing.

(4) For the purposes of this section, the expression "registrar of births or deaths" shall include any person having the care of the register of births or deaths in which the birth or death is entered.

Section 98. Forms.

98.—(1) The forms to be used for registry shall be those contained in Part I. of the second schedule to this Act, or such other forms as are prescribed by Treasury regulations.

(2) The acknowledgment of registry of a branch and of any amendment of the rules of a branch shall be in the forms provided in Part II. of the same schedule.

(3) Every annual or other return, abstract of valuation, and other document required for the purposes of this Act shall be made in such form, and shall contain such particulars as the chief registrar prescribes.

(4) A receipt under this Act endorsed upon or annexed to a mortgage or other assurance shall be in the form set forth in Part III. of the same schedule, or in any form specified in the rules of the society or branch or any schedule thereto, and a bond to be given by an officer in receipt or charge of money shall be in one of the forms set forth in the said part.

(5) Applications for certificates of births and deaths under this Act shall be in such form and under such regulations as may be approved of by the Registrar-General of Births, Deaths, and Marriages for England, Scotland, and Ireland respectively.

Regulations for carrying out Act.

99.—(1) The Treasury may make regulations respecting registry and procedure under this Act, and the seal to be used for registry, and the duties and functions of the registrar, and the inspection of documents kept by the registrar under this Act, and generally for carrying this Act into effect.

(2) All such regulations shall forthwith be laid before both Houses of Parliament.

Evidence of documents.

100. Every document bearing the seal or stamp of the central office shall be received in evidence without further proof; and every document purporting to be signed by the chief or any assistant registrar, or any inspector, or public auditor or valuer under this Act, shall, in the absence of any evidence to the contrary, be received in evidence without proof of the signature.

Application of Act.

Application to existing societies.

101.—(1) This Act shall apply to societies and branches subsisting at the commencement of this Act which, or the rules of which have been registered, enrolled, or certified, under any Act relating to friendly societies or cattle insurance societies, as if they had been registered under this Act, and the rules of those societies and branches shall, so far as they are not contrary to any express provision of this Act, continue in force until altered or rescinded.

(2) Where the contingent annual payments to which the members or the nominees of the members of friendly societies or branches, established before the fifteenth day of August, one thousand eight hundred and fifty, may become entitled exceed the limit fixed by this Act, the rules of those societies and branches shall continue to be valid, anything in this Act to the contrary notwithstanding.

[Sections 102 to 105 relate to the application of the Act to Scotland, Isle of Man, etc.]

Section 106. SUPPLEMENTAL.

Definitions.

106. In this Act unless a contrary intention appears :

The expression " the registrar " shall mean for England the central office, and for Scotland or Ireland the assistant registrar for Scotland or Ireland :

The expression " land " shall include any interest in land :

The expression " property " shall extend to all property whether real or personal (including books and papers) :

The expression " registered society " shall mean a society registered under this Act, and shall include societies subsisting at the commencement of this Act to which the provisions of this Act apply :

The expression " amendment of rule " shall include a new rule, and a resolution rescinding a rule :

The expression " branch " shall mean any number of the members of a society, under the control of a central body, having a separate fund, administered by themselves, or by a committee or officers appointed by themselves, and bound to contribute to a fund under the control of a central body :

The expression " committee " shall mean the committee of management or other directing body of a society or branch :

The expression " persons claiming through a member " shall include the nominees of the member where nomination is allowed :

The expression " officer " shall include any trustee, treasurer, secretary, or member of the committee of management of a society or branch, or person appointed by the society or branch to sue and be sued on its behalf :

The expression " meeting " shall include (where the rules of a society or branch so allow) a meeting of delegates appointed by members :

The expression " *Gazette* " shall mean the *London Gazette* for England, the *Edinburgh Gazette* for Scotland, and the *Dublin Gazette* for Ireland :

The expression " Treasury regulations " shall mean any regulations made and approved by the Treasury and in force under this Act.

The expression " signed " in relation to a body corporate shall mean sealed.

Added by sect. 13 of the Act of 1908. That Act provides that in future the Act of 1896 is to be printed with the corrections made by the Act of 1908, and with the omissions of the parts expressly repealed.

Repeal.

107. The Acts mentioned in the third schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Commencement and extent of Act.

108. This Act shall come into operation on the first day of January next after the passing thereof and shall extend to the whole of the British Islands.

Short title.

109. This Act may be cited as the Friendly Societies Act, 1896.

SCHEDULES.

THE FIRST SCHEDULE.

MATTERS TO BE PROVIDED FOR BY THE RULES OF SOCIETIES REGISTERED UNDER THIS ACT.

1. The name and place of office of the society.

2. The whole of the objects for which the society is to be established, the purposes for which the funds thereof shall be applicable, the terms of admission of members, the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member, and the consequences of non-payment of any subscription or fine.

38 & 39 Vict. c. 60, Schedule II.; 50 & 51 Vict. c. 56, ss. 14, 15; and 58 & 59 Vict. c. 26, s. 18.

3. The mode of holding meetings and right of voting, and the manner of making, altering, or rescinding rules.

4. The appointment and removal of a committee of management (by whatever name), of a treasurer and other officers, and of trustees, and in the case of a society with branches, the composition and powers of the central body, and the conditions under which a branch may secede from the society.

5. The investment of the funds, the keeping of the accounts, and the audit of the same once a year at least.

6. Annual returns to the registrar of the receipts, funds, effects, and expenditure and numbers of members, of the society.

7. The inspection of the books of the society by every person having an interest in the funds of the society.

8. The manner in which disputes shall be settled.

9. In case of dividing societies, a provision for meeting all claims upon the society existing at the time of division before any such division takes place.

And also in the case of friendly and cattle insurance societies:—

10. The keeping separate accounts of all moneys received or paid on account of every particular fund or benefit assured for which a separate table of contributions payable shall have been adopted, and the keeping separate account of the expenses of management, and of all contributions on account thereof.

11. (Except as to cattle insurance societies) a valuation once at least in every five years of the assets and liabilities of the society, including the estimated risks and contributions.

12. The voluntary dissolution of the society by consent in a friendly society of not less than five-sixths in value of the members, and of every person for the time being entitled to any benefit from the funds of the society, unless his claim be first satisfied or adequately provided for; and in a cattle insurance society by consent of three-fourths in number of the members.

13. The right of one-fifth of the total number of members, or of one hundred members in the case of a society of one thousand members and not exceeding ten thousand, or of five hundred members in the case of a society of more than ten thousand members, to apply to the chief registrar, or in case of societies registered and doing business exclusively in Scotland or Ireland to the assistant registrar for Scotland or Ireland, for an investigation of the affairs of the society, or for winding up the same.

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THE SECOND SCHEDULE.

Forms.

Part I.

38 & 39 Vict. c. 60, Schedule IV.

Acknowledgment of Registry of Society.

The Society is registered as a [*friendly society, cattle insurance society, benevolent society, working-men's club,* or *specially authorised society*] under the Friendly Societies Act, 1896, this day of .

[*Seal or stamp of central office,* or *signature of Assistant Registrar for Scotland or Ireland.*]

Acknowledgment of Registry of Amendment of Rules.

The foregoing amendment of the rules of the Society is registered under the Friendly Societies Act, 1896, this day of .

[*Seal or stamp of central office,* or *signature of Assistant Registrar for Scotland or Ireland.*]

Part II.

50 & 51 Vict. c. 56, Schedule I.

Acknowledgment of Registry of Branch.

The is registered as a branch of the Society [and of the branch of the same] under the Friendly Societies Act, 1896, this day of .

[*Seal of central office,* or *signature of Assistant Registrar for Scotland or Ireland.*]

Acknowledgment of Registry of Amendment of Branch Rules.

The foregoing amendment of the branch rules of the is registered under the Friendly Societies Act, 1896, this day of .

[*Seal of central office,* or *signature of Assistant Registrar for Scotland or Ireland.*]

Part III.

38 & 39 Vict. c. 60, Schedule III.

Form of Bond.

(I.)—In England or Ireland.

Know all men by these presents, that we, A. B., of , one of the officers of the Society [*or* of the branch of the Society] having its registered office at , in the county of , and C. D., of (as surety on behalf of the said A. B.), are jointly and severally held and firmly bound to E. F., of , G. H., of , and I. K., of , the trustees of the said society [*or* branch], in the sum of , to be paid to the said E. F., G. H., and I. K., as such trustees or their successors, trustees for the time being, or their certain attorney; for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord .

Whereas the above-bounden A. B. has been duly appointed to the office of of the Society [*or* of the branch of the Society] having its registered office situate as aforesaid, and he, together with the above-bounden C. D. as his surety, have entered into the above-written bond, subject to the condition hereinafter contained: Now therefore the condition of the above-written bond is such, that if the said A. B. do render a just

and true account of all moneys received and paid by him on account of the said society [*or* branch], at such times as the rules thereof appoint, and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all property (including books and papers) belonging to the said society [*or* branch] in his hands or custody to such person or persons as the said society [*or* branch], or the trustees or committee of management thereof, shall appoint, according to the rules of the said society [*or* branch], together with the proper and legal receipts or vouchers for such payments, then the above-written bond shall be void, otherwise shall remain in full force.

Sealed and delivered in the presence of [*two witnesses.*]

[By this Act and the Collecting Societies and Industrial Assurance Companies Act, 1896, the Friendly Societies Acts, 1875, 1887, 1889, 1893, and 1895 were repealed.]

For Order XLI., see p. 1781, *ante.*
For Forms 167—169, see p. 1784, *ante.*

GOVERNMENT ANNUITIES ACTS, 1864 AND 1882.

[27 & 28 VICT. C. 43; 45 & 46 VICT. C. 51.]

Jurisdiction.]—By sect. 10 of the 1864 Act, if payment of money due on a contract under the Act be refused by the said Commissioners, the party beneficially interested may, instead of proceeding to arbitration as provided by the Savings Bank Act, sue the said Commissioners in the county court of the district in which such insured party resided at the time of the contract, or, with the Commissioners' consent, in the court within the district where the party resides; the decision of the said court is final and without appeal.

By sect. 12, sub-s. 1, of the 1882 Act, anyone who receives any payment in respect of a savings bank annuity after the death of the annuitant, or before death receives any insurance payable at death, is liable to pay the National Debt Commissioners double the amount received with 5 per cent. interest, recoverable in a county court as a debt to His Majesty; by sub-s. 2 of the same section, if such money was received with intent to defraud, the person so receiving is liable to twelve months' hard labour.

Practice.]—The action under the 1882 Act should be brought in the district in which the defendant dwells or carries on business; the proceedings will be by plaint and summons (see Order L. rr. 35, 36).

It is not considered necessary to set out the sections of the statutes.

THE GUARDIANSHIP OF INFANTS ACT, 1886.

[49 & 50 VICT. C. 27.]

Jurisdiction of the county court is co-extensive with that of the High Court, and consists in power to appoint a guardian or guardians where the father of an infant is dead (sect. 1); in deciding matters in difference where guardians disagree (sect. 3); in making orders for the custody of infants (sect. 5); in the removal of a guardian (sect. 6).

Removal of Proceedings to the High Court shall (on terms as to costs) be made on the application of either party (sect. 10; see Rules 7, 8).

Practice.]—Applications are to be by petition. Order XLVII. (*post*, p. 2060) determines the persons upon whom the petition is to be served, and the Rules of the Supreme Court (*post*, p. 2059), provide for the removal of petitions to the High Court and for appeals to that court.

Appeal to High Court is by sect. 10 to a judge of the Chancery Division of the High Court (see R. S. C., rules 7, 11, 13). Order LIX. rr. 10–17.

County Court Rules, Order XLVII., *post*, p. 2060.

1. This Act may be cited as the Guardianship of Infants Act, 1886.

On death of father, mother to be guardian alone or jointly with others.

2. On the death of the father of an infant, and in case the father shall have died prior to the passing of this Act, then from and after the passing of this Act, the mother if surviving shall be the guardian of such infant, either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead, or refuses or refuse to act, the court may, if it shall think fit, from time to time appoint a guardian or guardians to act jointly with the mother.

Mother may appoint guardian, in certain cases.

3.—(1) The mother of any infant may by deed or will appoint any person or persons to be guardian or guardians of such infant after the death of herself and the father of such infant (if such infant be then unmarried), and where guardians are appointed by both parents they shall act jointly.

(2) The mother of any infant may by deed or will provisionally nominate some fit person or persons to act as guardian or guardians of such infant after her death jointly with the father of such infant, and the court, after her death, if it be shown to the satisfaction of the court that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be authorised and empowered so to act as aforesaid, or make such other order in respect of the guardianship as the court shall think right.

(3) In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the court for its direction, and the court may make such order or orders regarding the matters in difference as it shall think proper.

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Court may make orders as to custody.

5. The court may, upon the application of the mother of any infant (who may apply without next friend), make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or after the death of either parent, of any guardian under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs as it may think just.

Power to court to

6. In England and Ireland the High Court of Justice, in any division thereof, and in Scotland either division of the Court of

Session, may, in their discretion, on being satisfied that it is for the welfare of the infant, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this Act, and may also, if they shall deem it to be for the welfare of the infant, appoint another guardian in place of the guardian so removed. Section 6. —— remove guardian.

* * * * *

9. In the construction of this Act the expression "the court" shall mean— Interpretation of terms.

In England the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside.

10. In England and Ireland when any application has been made under this Act to a county court the High Court of Justice shall, at the instance of any party to such application, order such application to be removed to the High Court of Justice and there proceeded with before a judge of the Chancery Division, on such terms as to costs as it may think proper. As to removing proceedings and appeals.

In England and Ireland an appeal shall lie to the High Court of Justice from any order made by a county court under this Act; and, subject to any rules of court made after the passing of this Act, any such appeal shall be heard by a judge of the Chancery Division of the High Court of Justice at chambers or in court, as he shall direct.

11. Rules for regulating the practice and procedure in any proceedings under this Act, and the forms in such proceedings may from time to time be made— Rules as to procedure.

(*a*) so far as respects any county court in England or Ireland and the Sheriff Court in Scotland in like manner as rules and orders respecting those courts can respectively for the time being be made.

RULES OF THE SUPREME COURT, GUARDIANSHIP OF INFANTS.

(December 17, 1887.)

7. All matters relating to removals and appeals from county courts in respect of which jurisdiction is given to the High Court by the Act shall be transacted and disposed of in court or in chambers by or under the directions of any judge of the Chancery Division (hereinafter called the judge) named for that purpose by the Lord Chancellor. Rules of Supreme Court.

8. The application of any party under section 10 of the Act for an order of removal from a county court to the High Court shall be by an originating summons in the Chancery Division in the matter of the infant, and shall be marked with the name of the judge. It shall not be necessary to serve the summons upon any person. When the judge upon hearing the summons shall (on such terms as to costs as he may think proper) have ordered the application to be removed to the High Court, the application shall be proceeded with before such judge; and the applicant shall serve a copy of the order upon the registrar of the county

Rule 8.

court, who shall forthwith transmit all documents (if any) in the matter filed or lodged in the county court to such officer as the judge may direct.

* * * * *

11. Order LIX. rules 10, 11, 12, 13, 16, and 17, shall apply to appeals to the Chancery Division of the High Court from county courts under the Act. The appeal shall not operate as a stay of proceedings under the decisions appealed from unless the county court shall so order.

12. The judge may, after an appeal has been entered, make such orders, either *ex parte* or otherwise, with regard to the custody of the infant pending the appeal and otherwise as he may think proper.

13. Subject to these rules, the rules for the time being in force with respect to appeals to the Queen's Bench Division from inferior courts, and also the rules for the time being in force with respect to appeals from the High Court to the Court of Appeal, shall, so far as practicable, apply to appeals from county courts to the High Court under the Act.

GUARDIANSHIP OF INFANTS.—THE COUNTY COURT RULES, 1903.

ORDER XLVII.

Petition. 49 & 50 Vict. c. 27.

1. An application under the Guardianship of Infants Act, 1886, shall be made by a petition.

Under s. 2.

2. A petition under section two of the said Act, may be filed by any next friend of the infant, and shall be served upon the mother of the infant.

Under s. 3, by next friend.

3. A petition under section three, sub-section two, of the said Act may be filed by any next friend of the infant, and shall be served upon the father of the infant.

Under s. 3, by guardian.

4. A petition under section three, sub-section three, of the said Act, may be filed by any guardian of the infant, and shall be served upon the other guardian or guardians.

Under s. 5, by mother.

5. A petition under section five of the said Act filed by the mother of any infant shall be served upon the father of the infant, or, if he be dead, upon the guardian or guardians of the infant, if any such there be, other than the mother.

Under s. 5, by father.

6. A petition under section five of the said Act filed by the father of any infant shall be served upon the mother of the infant, or, if she be dead, upon the guardian or guardians of the infant, if any such there be, other than the father.

Under s. 5, by guardian.

7. A petition under section five of the said Act filed by any guardian of an infant, other than a parent, shall be served upon the other guardian or guardians of the infant, if any such there be, other than a surviving parent, and also upon the surviving parent, if any.

Service by order of judge.

8. The judge may direct such persons, other than those above mentioned, to be served with the petition as he may think fit.

9. A petition for the appointment of a guardian of an infant shall show— Rule 9.

The age of the infant; the nature and amount of the infant's fortune and income; and what relations the infant has. What petition must show.

10. On a petition under the said Act, the same procedure shall be followed and costs allowed as on any other petition to the court, regard being had to the amount of the property of the infant. Procedure and costs

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For Highways and Locomotives Amendment Act, 1878,
See Locomotives Act, 1898, p. 2102.

HOP (PREVENTION OF FRAUDS) ACT, 1866.

[29 & 30 Vict. c. 37.]

Sect. 13.—Penalties imposed by this Act may be recovered in manner provided by the fifteenth section of the Merchandise Marks Act, 1862, *i.e.*, in the county court.

Note.—This Act is repealed by the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28, s. 23), but any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the corresponding provision of this Act.

Note.—There are no provisions of this Act corresponding with sect. 15 of the Act of 1862. As this later Act makes offences against its provisions triable by a Court of summary jurisdiction, it is possible that penalties incurred under the Hop (Prevention of Frauds) Act, 1866, are not now recoverable in the County Court, but the question is a difficult one.

THE HOSIERY MANUFACTURE (WAGES) ACT, 1874.

[37 & 38 Vict. c. 48.]

Jurisdiction and Practice.]—The county court of the district within which the offence is committed has jurisdiction (sects. 3, 4). The fines are to be recovered by plaint and summons according to the ordinary practice of the court (see Order L. rr. 35, 36, p. 631).

Appeal will be under sect. 120 of the County Courts Act, 1888 (see p. 123).

Whereas a custom has prevailed among the employers of artificers in the hosiery manufacture of letting out frames and machinery to the artificers employed by them, and it is desirable to prohibit such letting of frames and machinery, and the stoppage of wages for frame rents and charges in the hosiery manufacture:

Be it enacted . . . as follows:

1. In all contracts for wages the full and entire amount of all wages the earnings of labour in the hosiery manufacture shall be actually and positively made payable in net, in the current coin of the realm, and not otherwise, without any deduction or stoppage of any description whatever, save and except for bad and disputed workmanship. Wages to be paid without any stoppages whatever.

Section 2.

Contracts to stop wages and for frame rents illegal.

2. All contracts to stop wages, and all contracts for frame rents and charges, between employer and artificers, shall be and are hereby declared to be illegal, null, and void.

Penalty for bargaining to deduct and for deducting from wages.

3. If any employer shall bargain to deduct or shall deduct, directly or indirectly, from the wages of any artificer in his employ any part of such wages for frame rent and standing or other charges, or shall refuse or neglect to pay the same or any part thereof in the current coin of the realm, he shall forfeit a sum of five pounds for every offence, to be recovered by the said artificer or any other person suing for the same in the county court in the district where the offence is committed, with full costs of suit.

A deduction of a fine from a workman's wages, in accordance with the rules of a factory, for absenting himself from work, is not within this section (*Willis* v. *Thorp*, (1875) L. R. 10 Q. B. 383; 44 L. J. Q. B. 137).

Penalty for using frame otherwise than for the purpose for which same lent.

4. If any frame or machine which shall have been entrusted to any artificer or other person by his employer for the purpose of being used in the hosiery manufacture for such employer, or in any process incident to such manufacture, shall, whilst the same shall be so entrusted, be worked, used, or employed without the consent in writing of such employer or other person so entrusting such frame or machine, in the manufacture of any goods or articles whatever for any other person than the person by whom such frame or machine shall have been so entrusted, then and in every such case the artificer or other person to whom the same shall have been so entrusted shall forfeit and pay the sum of ten shillings for every day on any part of which any such frame or machine shall have been so worked, used, or employed, to be recoverable by and for the benefit of the person who shall have so entrusted the same, in the county court for the district where the offence shall have been committed, with full costs of suit.

No action to be allowed in respect of any such bargaining.

5. No action, suit, or set-off between employer and artificer shall be allowed for any deduction or stoppage of wages, nor for any contract hereby declared illegal.

Not to prevent the recovery by employer of any debt due to him from artificer.

6. Nothing in this Act contained shall extend to prevent the recovery in the ordinary course of law, by suit brought or commenced for the purpose, of any debt due from the artificer to the employer.

Terms.

7. Within the meaning and for the purposes of this Act, all workmen, labourers, and other persons in any manner engaged in the performance of any employment or operation, of what nature soever, in or about the hosiery manufacture, shall be and be deemed "artificers"; and within the meaning and for the purposes aforesaid, all masters, foremen, managers, clerks, contractors, sub-contractors, middlemen, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificers shall be and be deemed to be "employers"; and, within the meaning and for the purposes of this Act, any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or for an amount uncertain, shall be deemed and taken to be the wages of such labour; and, within the meaning and for the purposes aforesaid, any agreement, understanding,

device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificers are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a "contract." Section 7.

HOUSING OF THE WORKING CLASSES ACTS, 1890 AND 1903.

THE HOUSING AND TOWN PLANNING, ETC., ACT, 1909.

[53 & 54 Vict. c. 70; 3 Edw. VII. c. 39; 9 Edw. VII. c. 44.]

Note.—As to so much of the 53 & 54 Vict. c. 70 as amended and extended the Settled Land Acts, see *post*, Settled Land Acts, p. 2244.

Jurisdiction.]—The only section in the above-mentioned Acts giving any special jurisdiction to the county courts is sect. 10 of the 1903 Act (3 Edw. VII. c. 70), which enables, where default has been made in obeying a closing order, the owner or the local authority to obtain possession of any dwelling-house, whatever the value or the rent of the dwelling-house might be, under sects. 138—145 of the County Courts Act, 1888. This jurisdiction is exclusive and unlimited.

As to the manner in which the Local Government Board are entitled to conduct an appeal to them from an order to close premises, see *Local Government Board* v. *Arlidge*, (1915) A. C. 120; 84 L. J. K. B. (H. L.) 72. As to power of Local Government Board to quash or alter the order of the local authority, although the local authority had no option but to make the demolition order, see *Lancaster* v. *Burnley Corporation*, (1915) 1 K. B. 259; 84 L. J. K. B. 181. As to date at which value has to be ascertained, see *London County Council* v. *Wilson's Executors*, (1916) 1 K. B. 837.

Practice.]—The owner or local authority may recover possession as if they were landlord of the premises. Sect. 10 of the 1903 Act seems to make the closing order equivalent to a notice to quit and a determination of any tenancy, it will therefore be expedient to be in a position to prove the making of and the default in obeying the closing order. Notice of a closing order, if owner cannot be found, is sufficiently served by leaving a sealed copy of the order addressed to the owner at the premises in manner directed by sect. 49 (2) of the Housing of the Working Classes Act, 1890 (*Arlidge* v. *Hampstead Borough Council*, (1916) 85 L. J. Ch. 91. As to recovery of premises, see sects. 138—145 of County Courts Act, Part I., p. 162 *et seq.*

3 Edw. VII. c. 39.

10. Where default is made as respects any dwelling-house in obeying a closing order, possession of the house may be obtained (without prejudice to the enforcement of any penalty under that provision), whatever may be the value or rent of the house, by or on behalf of the owner or local authority, either under sections one hundred and thirty-eight to one hundred and forty-five of the County Courts Act, 1888, or under the small Tenements Recovery Act, 1838, as in the cases therein provided Recovery of possession from occupying tenants in pursuance of closing orders. 51 & 52 Vict. c. 43.

Section 10.

for, and in either case may be obtained as if the owner or local authority were the landlord.

1 & 2 Vict. c. 74.

Any expenses incurred by a local authority under this section may be recovered from the owner of the dwelling-house as a civil debt in manner provided by the Summary Jurisdiction Acts.

NOTE.—As mentioned above no special jurisdiction is given by other sections in these Acts to the county court, but as the sections set out below are quoted in many cases coming into county courts it has been thought expedient to set them out.

The effect of the Acts is that where a house or part of a house is let for a term of less than three years at the rent mentioned a condition is implied that at the commencement of the holding it is in all respects fit for human habitation and shall be so kept by the landlord during the holding; the landlord or the local authority or any person authorised by them, having the right to view the premises at reasonable times of the day on giving twenty-four hours' notice. Any agreement made to the contrary after the passing of the 1903 Act being void.

For sect. 74 amending Settled Land Act, 1882, see p. 2252.

53 & 54 VICT. c. 70.

Condition to be implied on letting houses for the working classes.

75. In any contract made after the 14th August, 1885, for letting for habitation by persons of the working classes a house or part of a house, there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation. In this section the expression "letting for habitation by persons of the working classes" means the letting for habitation of a house or part of a house at a rent not exceeding in England the sum named as the limit for the composition of rates by section three of the Poor Rate Assessment and Collection Act, 1869, and in Scotland or Ireland four pounds.

32 & 33 Vict. c. 41.

3 EDW. VII. c. 39.

Condition in contracts for letting houses for the working classes.

12. Section seventy-five of the principal Act (which relates to the condition to be implied on letting houses for the working classes) shall, as respects any contract made after the passing of this Act, take effect notwithstanding any agreement to the contrary, and any such agreement made after the passing of this Act shall be void.

9 EDW. VII. c. 44.

14. In any contract made after the passing of this Act for letting for habitation a house or part of a house at a rent not exceeding—

(*a*) in the case of a house situate in the administrative county of London, forty pounds;

(*b*) in the case of a house situate in a borough or urban district with a population according to the last census for the time being of 50,000 or upwards, twenty-six pounds;

(*c*) in the case of a house situate elsewhere, sixteen pounds;

there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation, but the condition aforesaid shall not be implied where a house or part of a house is let for a term of not less than three years upon the terms that it be put by the lessee into a condition reasonably fit for occupation and the lease is not determinable at the option of either party before the expiration of that term.

Section 15.

15.—(1) The last foregoing section shall as respects contracts to which that section applies, take effect as if the condition implied by that section included an undertaking that the house shall during the holding be kept by the landlord in all respects fit for human habitation.

(2) The landlord or the local authority or any person authorised by him or them in writing, may at reasonable times of the day on giving twenty-four hours' notice in writing to the tenant or occupier enter any house, premises or building to which this section applies for the purpose of viewing the state and condition thereof.

In *Ryall* v. *Kidwell & Son*, (1913) 3 K. B. 123; 82 L. J. K. B. 877; C. A. [1914] 3 K. B. 135; 83 L. J. K. B. 1140, the court held that a stranger to the contract of tenancy has no remedy for a breach of the undertaking mentioned in the above sections (see *Cavalier* v. *Pope*, (1905) 2 K. B. 757; 74 L. J. K. B. 857; (1906) A. C. 428; 75 L. J. K. B. 609), hence the infant daughter of tenant cannot recover damages for injuries caused by landlord's default (*Dobson* v. *Horsley*, (1915) 1 K. B. 634; 84 L. J. K. B. 399, distinguishing *Miller* v. *Hancock*, (1893) 2 Q. B. 177. See also *Groves* v. *Western Mansions, Ltd.*, (1916) 33 T. L. R. 76).

On taking furnished lodgings no warranty is implied that the proposed tenant is a fit and proper person to occupy them (*Humphrey* v. *Miller and Others*, (1917) 2 K. B. 122).

INCLOSURE, EXCHANGE, ETC., EXPENSES ACT, 1868.

[31 & 32 Vict. c. 89.]

Jurisdiction is given to the county court under sects. 3 and 4. By sect. 3 the Commissioners may by an order under their hands and seal, declare by whom and what costs shall be paid to them, and have power by application to *any* county court, to recover the same from the person liable, together with all costs. By sect. 4, the Commissioners may by an order under their hands and seal require persons in possession of documents relating to an inclosure, to deliver the same to them, and in default, to summons such person before the judge of the county court for the county in which the lands or any part thereof authorised to be inclosed shall be situate. Note that the court having jurisdiction under sect. 3 is any court, whilst under sect. 4 it is limited to the judge of the court within the district of which the inclosure is situated.

Practice is governed by Order L. rr. 1, 2, 3, *post*, p. 2066, and should be commenced by plaint and summons; by sect. 3 the order of the Commissioners is made conclusive evidence of the debt, and by sect. 4 the judge upon production of the order, shall enforce such order at the expense of the person in default by attachment (see Rule 3).

Costs in default of any direction by the judge shall be taxed on Scale B, Order L. r. 2, *post*, p. 2066.

Costs of taxation, how to be recovered.

3. In all cases in which any dispute as to the expenses incidental to an enfranchisement, or as to the compensation to be paid to the steward, shall be referred to the Commissioners for their certificate, the costs incurred by them in ascertaining the same shall be paid to the Commissioners, either by the person making such reference or applying for such certificate, or by the person whose costs are so taxed, as the Commissioners, by order under their hands

Section 3.

and seal, may direct, and such order shall state the amount of such costs; and the Commissioners shall have power, by application to any county court, to recover the same from the person liable under such order, together with all costs of such application, and such order shall be conclusive evidence of such debt.

Power to Commissioners to enforce production of documents belonging to inclosure.

4. In any case in which an inclosure has been authorised by Parliament, and a valuer appointed, it shall be lawful for the Commissioners, at any time they shall see occasion, by an order under their hands and seal, to require such valuer, or any other person who shall have charge of or be in possession of any schedule, valuation, plan, report, award, or other document relating to such inclosure, to deliver the same to them at their office; and in default of such delivery within the time named in such order it shall be lawful for the Commissioners to summons such valuer or other person before the judge of the county court for the county in which the lands or any part thereof authorised to be inclosed shall be situate; and the judge of such court shall, upon production of the order of the Commissioners, give such direction to enforce such order, at the expense of the person neglecting or refusing to obey the same, as he is now by law enabled to give to compel the production of papers and documents before such court.

COUNTY COURT RULES.—ORDER L.

The Inclosure, &c., Expenses Act, 1868.

Application under 31 & 32 Vict. c. 89, ss. 3, 4.

1. An application to the court under s. 3 or s. 4 of the Inclosure, &c., Expenses Act, 1868, shall be made by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed with every such application, stating concisely the relief or order which the plaintiff claims.

Costs in actions under 31 & 32 Vict. c. 89, s. 4.

2. The costs in any action under the said s. 4 shall be taxed on such scale as the judge shall direct, and in default of such direction shall be taxed under column B.

Non-compliance with order for delivery under 31 & 32 Vict. c. 89, s. 4.

3. If the defendant in any action under s. 4 fails to comply with an order for delivery made in such action, he shall be liable to attachment.

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893; AND AMENDMENT ACT, 1913.

[56 & 57 Vict. c. 39; 3 & 4 Geo. V. c. 31.]

Jurisdiction under this Act relates to: (1) recovery of money payable to societies by members (sect. 23); (2) defaults of officers (sect. 48); (3) decision of disputes (sect. 49); (4) enforcement of awards on disputes (sect. 49); (5) to setting aside deeds of dissolution of societies (sect. 61).

Practice.]—The Act does not specify the court where the proceedings should be commenced, except under sect. 23; in other cases proceed therefore in the court within the district of which the head office of the society was situate, or the defendant dwells. The practice is identical with that under the Building Societies Acts, 1874 and 1894 (see pp. 1781–1785), and is governed by Order XLI., p. 1781.

In what Name sued.]—Registration renders the society a body corporate by the name mentioned in the acknowledgment of registry, and it should be sued in that name (sect. 21).

Debentures.]—Debentures issued by a society duly registered charging the society's personal chattels by way of security for money are not exempted by sect. 17 of the Bills of Sale Act (1878) Amendment Act, 1882, from the statutory requirements in respect of bills of sale (*Great Northern Rail. Co.* v. *Coal Co-operative Society*, (1896) 1 Ch. 187; 65 L. J. Ch. 214).

56 & 57 Vict. c. 39.

Section 1.

Short title of Act.

1. This Act may be cited as The Industrial and Provident Societies Act, 1893.

Extent of Act.

2. This Act shall come into operation on the first day of January next after the passing thereof, and shall extend to Great Britain and Ireland and the Channel Islands.

Existing societies.

3. Every incorporated society now existing which has been registered or certified under any Act relating to industrial and provident societies, shall be deemed to be a society registered under this Act, and its rules shall, so far as the same are not contrary to any express provision of this Act, continue in force until altered or rescinded.

Societies which may be registered.

4. A society which may be registered under this Act (herein called an industrial and provident society) is a society for carrying on any industries, businesses, or trades specified in or authorised by its rules, whether wholesale or retail, and including dealings of any description with land. Provided that—

(*a*) No member other than a registered society shall have or claim any interest in the shares of the society exceeding two hundred pounds, and

(*b*) In regard to the business of banking, the society shall be subject to the provisions hereinafter contained.

* * * * *

The acknowledgment of registry.

6. The registrar, on being satisfied that a society has complied with the provisions as to registry in force under this Act, shall issue to such society an acknowledgment of registry.

* * * * *

Effect of acknowledgment of registry.

8. The acknowledgment of registry shall be conclusive evidence that the society therein mentioned is duly registered, unless it be proved that the registry of the society has been suspended or cancelled.

* * * * *

Registered office.

11. Every registered society shall have a registered office to which all communications and notices shall be addressed, and shall send to the registrar notice of the situation of such office, and of every change therein.

* * * * *

Incorporation of society with limited liability.

21. The registration of a society shall render it a body corporate by the name described in the acknowledgment of registry by which it may sue and be sued, with perpetual succession and a common seal, and with limited liability; and shall vest in the society all property for the time being vested in any person in trust for the society; and all legal proceedings pending by or against the trustees of any such society may be prosecuted by or against the society in its registered name without abatement.

Rules to bind the members.

22. The rules of a registered society shall bind the society and all members thereof and all persons claiming through them respectively to the same extent as if each member had subscribed

Section 22.

his name and affixed his seal thereto, and there were contained in such rules a covenant on the part of such member, his heirs, executors, administrators, and assigns, to conform thereto, subject to the provisions of this Act: Provided that a society registered at the time when this Act comes into operation, or the members thereof, may respectively exercise any power given by this Act, and not made to depend on the provisions of its rules, notwithstanding any provision contained in any rule thereof registered before this Act was passed.

Remedy for debts from members.

23.—(1) All moneys payable by a member to a registered society shall be a debt due from such member to the society and shall be recoverable as such either in the county court of the district in which the registered office of the society is situate, or in that of the district in which such member resides, at the option of the society.

This jurisdiction is exerciseable, although the defendant has ceased to be a member of the society before the action is brought (*Gwendolen Land Society* v. *Wicks*, (1904) 2 K. B. 622; 73 L. J. K. B. 815).

(2) A registered society shall have a lien on the shares of any member for any debt due to it by him, and may set off any sum credited to the member thereon in or towards the payment of such debt.

The exercise of this lien in good faith is not a withdrawal of capital nor an undue preference of a shareholder (*In re Gwawr-y-Gweithyr, etc., Society*, (1901) 2 K. B. 477; 70 L. J. K. B. 614).

* * * * *

Power of nomination for sums not exceeding 100*l.*

25.—(1) *A member of a registered society not being under the age of sixteen years, may, by a writing under his hand, delivered at or sent to the registered office of the society during the lifetime of such member, or made in any book kept thereat, nominate any person or persons other than an officer or servant of the society (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator) to or among whom his property in the society, whether in shares, loans, or deposits, or so much thereof as is specified in such nomination if the nomination does not comprise the whole, shall be transferred at his decease, provided the amount credited to him in the books of the society does not then exceed one hundred pounds sterling.*

"Then" means at date of nomination, not at death of member (*Griffiths* v. *Eccles Provident Society*, (1912) A. C. 483; 81 L. J. K. B. 614).

(2) *A nomination so made may be revoked or varied by any similar document under the hand of the nominator, delivered, sent, or made as aforesaid, but shall not be revocable or variable by the will of the nominator or any codicil thereto.*

A nomination under this section, though invalid as purporting to dispose of more than 100*l.*, may be a good testamentary document and entitled to probate, if the terms of the Wills Act have been complied with (*In the Goods of Baxter*, (1903) P. 12; 72 L. J. P. 2).

N.B.—By 3 & 4 Geo. V. c. 31, s. 5 (see p. 2073), sect. 25 is repealed except as respects nominations made before 1st January, 1914, but re-enacted with some alterations. See *post*, p. 2073.

Section 27.

Provision for intestacy.

27.—(1) If any member of a registered society entitled to property therein in respect of shares, loans, or deposits, not exceeding in the whole, at his death, one hundred pounds, dies intestate, without having made any nomination thereof then subsisting, the committee may, without letters of administration, distribute the same among such persons as appear to them, on such evidence as they deem satisfactory, to be entitled by law to receive the same. [*Residue of section repealed*, 3 & 4 *Geo. V. c.* 31.]

The power of the committee of a society under sect. 27 to distribute property on an intestacy is entirely discretionary, and they cannot be compelled by action to exercise it (*Escritt* v. *Todmorden Co-operative Society*, (1896) 1 Q. B. 461; 65 L. J. Q. B. 358).

(2) If any such member is illegitimate and leaves no widow, widower, or issue, the committee shall deal with his property in the society as the Treasury shall direct.

* * * * *

Payments to persons apparently entitled valid.

30. All payments or transfers made by the committee of a registered society, under the provisions of this Act with respect to payments or transfers to or on behalf of deceased or insane members, to any person who at the time appears to the committee to be entitled thereunder, shall be valid and effectual against any demand made upon the committee or society by any other person.

* * * * *

Membership of minors.

32. A person under the age of twenty-one but above the age of sixteen may be a member of a registered society, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the society, enjoy all the rights of a member (except as by this Act provided), and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee, trustee, manager, or treasurer of the society.

Promissory notes and bills of exchange.

33. A promissory note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of any society if made, accepted, or endorsed in the name of the society, or by or on behalf or account of the society, by any person acting under the authority of the society.

Register of members or shares.

34. Any register or list of members or shares kept by any society shall be *primâ facie* evidence of any of the following particulars entered therein :

(*a*) The names, addresses, and occupations of the members, the number of shares held by them respectively, the numbers of such shares, if they are distinguished by numbers, and the amount paid or agreed to be considered as paid on any such shares :

(*b*) The date at which the name of any person, company, or society was entered in such register or list as a member :

(*c*) The date at which any such person, company, or society ceased to be a member.

* * * * *

Security by officers.

47. Every officer of a registered society having receipt or charge of money, if the rules of the society require, shall, before taking upon himself the execution of his office, become bound, either with or without a surety as the committee may require,

Section 47.

in a bond according to one of the forms set forth in the third schedule to this Act, or such other form as the committee of the society approve, or give the security of a guarantee society, in such sum as the committee directs, conditioned for his rendering a just and true account of all moneys received and paid by him on account of the society at such times as its rules appoint, or as the society or the committee thereof require him to do, and for the payment by him of all sums due from him to the society.

Accounts of officers.

48.—(1) Every officer of a registered society having receipt or charge of money, or his executors or administrators, shall, at such times as by the rules of the society he should render account, or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the society, or by the committee thereof, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all moneys and deliver all property for the time being in his hands or custody to such person as the society or the committee appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys or to deliver such property in manner aforesaid, the society may sue upon the bond or security before mentioned, or may apply to the county court (which may proceed in a summary way), or to a court of summary jurisdiction, and the order of either such court shall be final and conclusive.

(2) This section shall apply to every servant of a registered society in receipt or charge of money in every case where he is not engaged under a special agreement to account.

Decision of disputes.

49.—(1) Every dispute between a member of a registered society, or any person aggrieved who has for not more than six months ceased to be a member of a registered society, or any person claiming through such member or person aggrieved, or claiming under the rules of a registered society, and the society or an officer thereof, shall be decided in manner directed by the rules of the society, if they contain any such direction, and the decision so made shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the county court.

(4) Where the rules of a society direct that disputes shall be referred to justices, the disputes shall be determined by a court of summary jurisdiction;

Provided that in every case of dispute cognisable under the rules of a society by a court of summary jurisdiction, it shall be lawful for the parties thereto to enter into a consent referring such dispute to the county court, which may hear and determine the matter in dispute.

(5) Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society for a reference under its rules, the member or person aggrieved may apply either to the county court, or to a court of summary jurisdiction, which may hear and determine the matter in dispute.

(6) Notwithstanding anything contained in the Arbitration Act, 1889, or in any other Act, the court and the chief or other

registrar shall not be compelled to state a special case on any question of law arising in the case, but the court . . . may, at the request of either party, state a case for the opinion in England of the Supreme Court of Judicature, . . . on any question of law, and may also grant to either party such discovery as to documents and otherwise, or such inspection of documents, . . . as might be granted by any court of law or equity, such discovery to be made on behalf of the society by such officer of the same as such court . . . may determine. Section 49.

* * * * *

58. A registered society may be dissolved— Provision as to dissolution of societies.

(*a*) By an order to wind up the society, or a resolution for the winding up thereof, made as is directed in regard to companies by the Companies Acts, 1862 to 1890, the provisions whereof shall apply to any such order or resolution, except that the term "registrar" shall for the purpose of such winding up have the meaning given to it by this Act.

(*b*) By the consent of three-fourths of the members, testified by their signatures to an instrument of dissolution.

As to winding-up, see Companies (Consolidation) Act, 1908, s. 131, p. 1836; the county court by that Act will have jurisdiction where capital does not exceed 10,000*l*.

N.B.—See 3 & 4 Geo. V. c. 31, s. 8.

59. Any proceedings in the winding up of a registered society which at the passing of this Act are pending in any county court may, on application made by or on behalf of the registrar, with the consent of the Treasury, be transferred to the High Court, and thereupon the Companies (Winding-up) Act, 1890, shall, so far as applicable, apply thereto accordingly. Transfer of winding-up from county court.

60. Where a registered society is wound up in pursuance of an order or resolution, the liability of a present or past member of the society to contribute for payment of the debts and liabilities of the society, the expenses of winding up, and the adjustment of the rights of contributories amongst themselves, shall be qualified as follows: Liability of members in winding-up.

(*a*) No individual, society, or company who or which has ceased to be a member for one year or upwards prior to the commencement of the winding up shall be liable to contribute:

(*b*) No individual, society, or company shall be liable to contribute in respect of any debt or liability contracted after he or it ceased to be a member:

(*c*) No individual, society, or company not a member shall be liable to contribute, unless it appears to the court that the contributions of the existing members are insufficient to satisfy the just demands on the society:

(*d*) No contribution shall be required from any individual, society, or company exceeding the amount, if any, unpaid on the shares in respect of which he or it is liable as a past or present member:

(*e*) An individual, society, or company shall be taken to have ceased to be a member, in respect of any withdrawable share withdrawn, from the date of the notice or application for withdrawal.

Section 61. — Provisions as to instrument of dissolution.

61. Where a society is terminated by an instrument of dissolution the following provisions shall apply :

(*a*) The instrument of dissolution shall set forth the liabilities and assets of the society in detail, the number of members and the nature of their interests in the society respectively, the claims of creditors (if any), and the provisions to be made for their payment, and the intended appropriation or division of the funds and property of the society unless the same be stated in the instrument of dissolution to be left to the award of the chief registrar :

(*b*) Alterations in the instrument of dissolution may be made with the like consents as hereinbefore provided, and testified in the same manner ;

(*c*) A statutory declaration shall be made by three members and the secretary of the society that the provisions of this Act have been complied with, and shall be sent to the registrar with the instrument of dissolution ; and any person knowingly making a false or fraudulent declaration in the matter shall be guilty of a misdemeanor :

(*d*) The instrument of dissolution and all alterations therein shall be registered in manner herein provided for the registry of rules, and shall be binding upon all the members of the society :

(*e*) The registrar shall cause a notice of the dissolution to be advertised at the expense of the society in the *Gazette* and in some newspaper circulating in or about the locality in which the registered office of the society is situated ; and *unless* within three months from the date of the *Gazette* in which such advertisement appears, *a member or other person interested in or having any claim on the funds of the society commences proceedings to set aside the dissolution of the society in the county court of the district where the registered office of the society is situate*, and such dissolution is set aside accordingly, the society shall be legally dissolved from the date of such advertisement, and the requisite consents to the instrument of dissolution shall be considered to have been duly obtained without proof of the signatures thereto :

(*f*) Notice shall be sent to the central office of any proceeding to set aside the dissolution of a society, not less than seven days before it is commenced, by the person by whom it is taken, or of any order setting it aside, within seven days after it is made by the society.

* * * * *

Evidence of documents.

75. Every copy of rules or instrument or document, copy or extract of an instrument or document, bearing the seal or stamp of the central office, shall be received in evidence without further proof ; and every document purporting to be signed by the chief or any assistant registrar, or any inspector or public auditor under this Act, shall, in the absence of any evidence to the contrary, be received in evidence without proof of the signature.

* * * * *

Repeal.

80. The enactments specified in the first schedule hereto are hereby repealed to the extent appearing in the third column of that schedule.

(The repeal is of the whole of the Industrial and Provident Societies Act, 1876 (39 & 40 Vict. c. 45); sect. 8 of the Customs and Inland Revenue Act, 1880 (43 Vict. c. 14); and so much of the Provident Nominations and Small Intestacies Act, 1883 (46 & 47 Vict. c. 47), as relates to Industrial and Provident Societies.) Section 80. ——

3 & 4 GEO. V. c. 31.

5.—(1) The principal Act shall as respects nominations made after the commencement of this Act have effect as if the following provisions were substituted for section twenty-five of the principal Act:— Amendment of principal Act as to nominations.

"(1) A member of a registered society not being under the age of sixteen years may, by writing under his hand delivered at or sent to the registered office of the society during the lifetime of such member or made in any book kept thereat, nominate any person or persons to or among whom there shall be transferred at his decease such property in the society as may be his at the time of his decease (whether in shares, loans, or deposits, or otherwise), or so much thereof as is specified in such nomination, if the nomination does not comprise the whole. If on the death of the nominator the amount of his property in the society comprised in the nomination exceeds one hundred pounds the nomination shall be valid to the extent of the sum of one hundred pounds, but not further or otherwise:

Provided that a person so nominated shall not be an officer or servant of the society unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator.

"(2) A nomination so made may be revoked or varied by a subsequent nomination signed and delivered or sent or made as aforesaid or by any similar document in the nature of a revocation or variation under the hand of the nominator so delivered sent or made as aforesaid, but shall not be revocable or variable by the will of the nominator or by any codicil thereto.

"(3) The society shall keep a book wherein the names of all persons so nominated and all revocations or variations (if any) of such nominations shall be recorded, and the property comprised in any such nomination to an amount not exceeding one hundred pounds shall be payable or transferable to the nominee although the rules of the society declare the shares not to be transferable.

"(4) The marriage of a member of a society shall operate as a revocation of any nomination made by him before such marriage, provided that, in the event of an officer of a society having transferred any property of a member to a nominee, in ignorance of a marriage contracted subsequent to the date of the nomination, the receipt of the nominee shall be a valid discharge to the society, and the society shall be under no liability to any other person claiming such property."

(2) The principal Act shall, as respects nominators dying after the commencement of this Act, have effect as if the following

Section 5.

provisions were substituted for sub-section (1) of section twenty-six of the principal Act :—

"(1) On receiving satisfactory proof of the death of a nominator, the committee of the society shall, subject to the limitation on amount herein-before provided, either transfer the property comprised in the nomination in manner directed by the nomination, or pay to every person entitled thereunder the full value of the property given to him, unless the shares comprised in the nomination, if transferred as directed by the nominator, would raise the share capital of any nominee to a sum exceeding two hundred pounds, in which case they shall pay him the value of such excess.

"(2) Where a nominee who is nominated under the provisions of this Act is under sixteen years of age, the society may pay the sum nominated to either parent, or to a guardian of the nominee, or to any other person of full age who will undertake to hold the same on trust for the nominee or to apply the same for his benefit and whom the society may think a fit and proper person for the purpose, and the receipt of such parent, guardian, or other person shall be a sufficient discharge to the society for all moneys so paid."

See *ante*, p. 2068.

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Dissolution and transfer of engagements.

8. On dissolution or transfer of engagements, as provided for in sections fifty-eight and fifty-three of the principal Act, the society shall not be dissolved and registration of the society shall not be cancelled until a certificate signed by the liquidator or by the secretary or some other officer of the society approved by the registrar has been lodged with the registrar that all property vested in the society has been duly conveyed or transferred by the society to the persons entitled.

INEBRIATES ACTS, 1879, 1888 AND 1898.

[42 & 43 Vict. c. 19 ; 51 & 52 Vict. c. 19 ; 61 & 62 Vict. c. 60.]

By the Act of 1879 the local authority were permitted to license "retreats" for the reception, control, and curative treatment of habitual drunkards. Persons were admitted to such retreats on their own application. The application was to be accompanied by a statutory declaration of two persons to the effect that the applicant was an habitual drunkard as defined by the Act, and the signature of the applicant attested (see 1898 Act, sect. 16) by one justice.

The 1898 Act allows habitual drunkards convicted on indictment to be detained in a State inebriate reformatory or a certified inebriate reformatory, the managers of which are willing to receive him, and also allows habitual drunkards, four times convicted of drunkenness, to be detained in any certified inebriate reformatory, the managers of which are willing to receive them.

The 1888 Act only amends the 1879 Act in matters having no relation to county courts.

Jurisdiction.]—The 1879 Act, s. 18, allows County Court judges for the districts in which retreats are situate to authorise persons to visit and report on *patients detained under that Act*, and on their report to order, should they see fit, the detained person's discharge.

Under the 1898 Act, s. 12, a judge of county courts, if satisfied that any person detained in a State or certified inebriate reformatory has property more than sufficient to maintain his family, may make an order for the payment of the expenses incurred in relation to his detention, and the order may be enforced as a judgment of the county court; sect. 27 of the same Act defines what expenses means.

Practice is provided by Order L. rr. 12, 13, *post*, p. 2076.

42 & 43 VICT. C. 19.

Persons may be admitted to retreats on their own application.

10. Any habitual drunkard desirous of being admitted into a retreat may make application in writing to the licensee of a retreat for admission into such retreat, and such application shall be in the Form No. 3 in the second schedule hereto, and shall state the time during which such applicant undertakes to remain in such retreat. Such application shall be accompanied by the statutory declaration of two persons to the effect that the applicant is an habitual drunkard within the meaning of this Act.

The signature of the applicant to such application shall be attested by two justices of the peace, and such justices shall not attest the signature unless they have satisfied themselves that the applicant is an habitual drunkard within the meaning of this Act, and have explained to him the effect of his application for admission into a retreat and his reception therein, and such justices shall state in writing, and as a part of such attestation, that the applicant understood the effect of his application for admission and his reception into the retreat.

Such applicant, after his admission and reception into such retreat, unless discharged or authorised by licence as herein-after provided, shall not be entitled to leave such retreat till the expiration of the term mentioned in his application, and such applicant may be detained therein till the expiration of such term; provided that such term shall not exceed the period of twelve calendar months.

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Judge of High Court of Justice, etc., may make orders to inspect.

18. A judge of the High Court of Justice, on an application *ex parte* at chambers, or a county court judge, within whose district the retreat is situated, may at any time, by order under his hand, authorise and direct any person or persons to visit and examine a person detained in a retreat under this Act, and to inquire into and report on any matters which such judge may think fit in relation to the person so detained. The judge, on receiving such report, may, if he shall think fit, order the discharge of any person so detained from any such retreat.

51 & 52 VICT. C. 19.

Attestation of application for admission to a retreat.

4. So much of section three and of section ten of the Habitual Drunkards Act, 1879, as provides that the signature of an habitual drunkard applying to be admitted to a retreat shall be attested by two justices of the peace having jurisdiction under the Summary Jurisdiction Act, in the place where the matter requiring the cognizance of a justice arises, is hereby repealed, and such attestation may be that of any two justices of the peace.

Construction of Act.

5. The Habitual Drunkards Act, 1879, and this Act shall be read and construed together as one Act, and may be cited together as the Inebriates Acts, 1879 and 1888.

Section 12. 61 & 62 VICT. C. 60.

Power to recover expenses against inebriate's estate.

12.—(1) If it is made to appear to a judge of county courts that any person detained in a State or certified inebriate reformatory has any real or personal property more than sufficient to maintain his family, if any, the judge may make an order for the payment of the expenses incurred in relation to the detention of that person, and the order may be enforced against any property of that person in the same way as a judgment of the county court.

(2) The order may be made on application—

(*a*) in the case of a person detained in a State inebriate reformatory, of such person as may be authorised by the Secretary of State in that behalf; and

(*b*) in the case of a person detained in a certified inebriate reformatory, of the managers of the reformatory, or any two of them, or of any authority contributing to the maintenance of such person.

* * * * *

Definitions.

27. In this Act, unless the context otherwise requires,—

The expression "managers," in relation to a certified inebriate reformatory shall mean any persons having the management or control of the reformatory:

The expression "expenses" in relation to the detention of a person in a certified inebriate reformatory shall include the expenses of his custody and maintenance whether in the reformatory or when absent therefrom under licence and any other expenses directed by this Act or by any order made thereunder to be defrayed by the managers, and also any expenses incurred by the managers in assisting him in returning to his home or place of settlement on the expiration of his term of detention.

COUNTY COURT RULES—ORDER L.

12. An application to the judge under sect. 18 of the Inebriates Act, 1879, shall be intituled in the matter of the Act and of the person detained, and shall be made in accordance with the rules for the time being in force as to interlocutory applications, and supported by affidavit.

13. An application under sect. 12 of the Inebriates Act, 1898, shall be made by petition, and the same procedure shall be followed and the same costs allowed as on a petition under Order XXXVIII.

For practice on interlocutory applications, see Order XII. r. 11, *ante*, p. 460; for Order XXXVIII., see p. 620.

INTESTATES' WIDOWS AND CHILDREN ACT, 1873.

INTESTATES' WIDOWS AND CHILDREN EXTENSION ACT, 1875.

[36 & 37 VICT. C. 52; 38 & 39 VICT. C. 27.]

The 1873 Act provided that where the whole estate of an intestate did not exceed 100*l*., his widow and any one, or more, of his children, if residing more than three miles from the registry having jurisdiction in the matter, might apply to the registrar of the county court of the district within which

the intestate lived to fill up the usual papers required, and to swear the applicant and attest the execution of the administration bond, and transmit the same to the registrar of the Court of Probate; for which the registrar was entitled to no fee except as provided by the Act (see *post*). By the 1875 Act, the above provision was extended to the children of intestate widows.

36 & 37 VICT. c. 52.

For purposes of Act application may be made to a registrar of a county court.

1. Where the whole estate and effects of an intestate shall not exceed in value the sum of 100*l.*, his widow or any one or more of his children, provided such widow or children respectively shall reside at a distance exceeding three miles from the registry of the court of probate having jurisdiction in the matter, may apply to the registrar of the county court within the district of which the intestate had his fixed place of abode at the time of his death, and the said registrar shall fill up the usual papers required by the Court of Probate to lead to a grant of letters of administration of the estate and effects of the said intestate, and shall swear the applicant and attest the execution of the administration bond according to the practice of the Court of Probate, and shall then transmit the same papers by post to the registrar of the Court of Probate having jurisdiction in the matter, who shall in due course make out and seal the letters of administration of the estate and effects of the said intestate, and transmit them by post to the said registrar of the county court, to be by him delivered to the party so applying for the same, without the payment of any fee for the same save as is provided by this Act.

Identity of person may be required.

2. The registrar of the county court may require such proof as he may think sufficient to establish the identity and relationship of the applicant.

Registrar may refuse to take affidavit.

3. If the registrar of the county court has reason to believe that the whole estate and effects of which the intestate died possessed exceed in value 100*l.*, he shall refuse to proceed with the application until he is satisfied as to the real value thereof.

Registrars may exercise powers of commissioners of Court of Probate.

4. All registrars of county courts shall for the purposes of this Act have power and are hereby authorized to administer oaths, and to take declarations and affirmations, and to exercise any other powers which can be exercised by commissioners of the Court of Probate. In the necessary absence of the registrar of the county court, applicants may be sworn and execute any necessary documents at the office of the said registrar before any commissioner of the Court of Probate.

Power to frame rules, orders, etc.

5. Any rules and orders and tables of fees requisite for carrying this Act into operation shall be framed and may from time to time be altered by the judge of the Court of Probate, subject as regards the tables of fees to the approval of the commissioners of Her Majesty's Treasury; and such proportions of the said fees as the said judge, with such approval as aforesaid shall think proper, may be made payable to the registrars of the county courts acting in the said matters, but the total amount to be charged to applicants shall not in any one case exceed the sums mentioned in the schedule of this Act.

SCHEDULE.

Schedule.

Where the whole estate and effects of the intestate shall not exceed in value 20*l.*, the sum of five shillings; and where the whole estate and effects

shall exceed in value 20*l.*, the sum of five shillings, and the further sum of one shilling for every ten pounds or fraction of ten pounds by which the value shall exceed 20*l.*

38 & 39 VICT. c. 27.

WHEREAS it is desirable that the provisions of the Act of thirty-six and thirty-seven Victoria, chapter fifty-two, intituled "An Act for the relief of Widows and Children of Intestates where the personal estate is of small value," should be made applicable to the surviving children of a poor widow who dies intestate:

Be it therefore enacted, &c.:

Extension of Act of 36 & 37 Vict. c. 52, to children of poor intestate widows.

1. Where the whole estate and effects of an intestate widow shall not exceed in value the sum of one hundred pounds, any one or more of her children, if they shall reside at a distance exceeding three miles from the registry of the court of probate having jurisdiction in the matter, may apply to the registrar of the county court within the district in which the intestate had her fixed place of abode at the time of her death, and on compliance with the regulations prescribed in the said Act of thirty-six and thirty-seven Victoria shall be entitled to the benefits in that case made and provided by the said Act, and the schedule thereunto annexed.

Construction of the Act.

2. This Act shall be read and construed along with and as part of the recited Act.

JUDICIAL TRUSTEES ACT, 1896.

[59 & 60 VICT. c. 35.]

Jurisdiction.]—By this Act and the rules made under it (see Rule 31, *post*, p. 2088), power is given to certain county courts, viz., metropolitan courts and courts having bankruptcy jurisdiction (for list of such courts, see p. 1996) to appoint a judicial trustee where the trust property does not exceed 500*l.* in value (see sect. 2, and Rule 31).

A person interested in an estate is not entitled as of right to the appointment of a judicial trustee, the appointment is a matter entirely within the discretion of the court (*In re Ratcliffe*, (1898) 2 Ch. 352; 67 L. J. Ch. 562).

Who may be appointed.]—Any fit and proper person nominated in the application may be appointed; in the absence of any such nomination, or if the court is not satisfied as to the fitness of the nominated person, an official of the court may, but need not be appointed (*Douglas* v. *Bolam*, (1900) 2 Ch. 749; 70 L. J. Ch. 1).

Practice.]—The proceedings in the county court must be by petition, which by Rule 31 in the county court is substituted for an originating summons in the High Court, but it is expedient in the petition, or otherwise, to give the particulars required by Rule 4, to be given in the said summons.

Power of court on application to appoint judicial trustee.

1.—(1) Where application is made to the court by or on behalf of the person creating or intending to create a trust, or by or on behalf of a trustee or beneficiary, the court may, in its discretion, appoint a person (in this Act called a judicial trustee) to be a trustee of that trust, either jointly with any other person or as sole trustee, and, if sufficient cause is shown, in place of all or any existing trustees.

Section 1.

(2) The administration of the property of a deceased person, whether a testator or intestate, shall be a trust, and the executor or administrator a trustee, within the meaning of this Act.

(3) Any fit and proper person nominated for the purpose in the application may be appointed a judicial trustee, and, in the absence of such nomination, or if the court is not satisfied of the fitness of a person so nominated, an official of the court may be appointed, and in any case a judicial trustee shall be subject to the control and supervision of the court as an officer thereof.

(4) The court may, either on request or without request, give to a judicial trustee any general or special directions in regard to the trust or the administration thereof.

(5) There may be paid to a judicial trustee out of the trust property such remuneration, not exceeding the prescribed limits, as the court may assign in each case, subject to any rules under this Act respecting the application of such remuneration where the judicial trustee is an official of the court, and the remuneration so assigned to any judicial trustee shall, save as the court may for special reasons otherwise order, cover all his work and personal outlay.

(6) Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited, and a report thereon made to the court by the prescribed persons, and, in any case where the court shall so direct, an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee, shall be made in the prescribed manner.

Court to exercise jurisdiction.

2. The jurisdiction of the court under this Act may be exercised by the High Court, and as respects trusts within its jurisdiction by a palatine court, and (subject to the prescribed definition of the jurisdiction) by any county court judge to whom such jurisdiction may be assigned under this Act.

Jurisdiction of court in cases of breach of trust.

3.—(1) If it appears to the court that a trustee, whether appointed under this Act or not, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve the trustee either wholly or partly from personal liability for the same.

(2) This section shall come into operation at the passing of this Act.

To claim relief under this section a trustee must act both honestly *and* reasonably (*In re Grindey* (C. A.), (1898) 2 Ch. 593; 67 L. J. Ch. 624; *Perrins* v. *Bellamy* (C. A.), (1899) 1 Ch. 797; 68 L. J. Ch. 397; *In re Mackay*, (1911) 1 Ch. 300; 80 L. J. Ch. 237; *Palmer* v. *Emerson*, (1911) 2 Ch. 758; 80 L. J. Ch. 418). Provided the trustee acts reasonably and honestly, relief is not confined to executive or administrative blunders but extends to payments to a person not entitled (*In re Allsop*, (1914) 1 Ch. 1; 83 L. J. Ch. 42). The Act applies to actions for an account as well as to breaches of trust (*In re Kay*, (1897) 2 Ch. 518; 66 L. J. Ch. 759).

A claim for relief under this section need not be pleaded (*In re Pawson' Settlements Trusts*, (1917) 86 L. J. Ch. 380).

Section 4.

Rules.

4.—(1) Rules may be made for carrying into effect this Act, and especially—

(1) for requiring judicial trustees, who are not officials of the court, to give security for the due application of any trust property under their control:

(2) respecting the safety of the trust property, and the custody thereof:

(3) respecting the remuneration of judicial trustees and for fixing and regulating the fees to be taken under this Act so as to cover the expenses of the administration of this Act, and respecting the payment of such remuneration and fees out of the trust property, and, where the judicial trustee is an official of the court, respecting the application of the remuneration and fees payable to him:

(4) for dispensing with formal proof of facts in proper cases:

(5) for facilitating the discharge by the court of administrative duties under this Act without judicial proceedings and otherwise regulating procedure under this Act and making it simple and inexpensive:

(6) for assigning jurisdiction under this Act to county court judges and defining such jurisdiction:

(7) respecting the suspension or removal of any judicial trustee, and the succession of another person to the office of any judicial trustee who may cease to hold office, and the vesting in such person of any trust property:

(8) respecting the classes of trusts in which officials of the court are not to be judicial trustees, or are to be so temporarily or conditionally:

(9) respecting the procedure to be followed where the judicial trustee is executor or administrator:

(10) for preventing the employment by judicial trustees of other persons at the expense of the trust, except in cases of strict necessity:

(11) for the filing and auditing of the accounts of any trust of which a judicial trustee has been appointed.

(2) The rules under this Act may be made by the Lord Chancellor, subject to the consent of the Treasury in matters relating to fees and to salaries and numbers of officers, and to the consent of the authority for making orders under the Solicitors Remuneration Act, 1881, in matters relating to the remuneration of solicitors. The rules shall be laid before Parliament and have the same force as if enacted in this Act, provided that if, within thirty days after such rules have been laid before either House of Parliament during which that House has sat, the House presents to Her Majesty an address against such rules or any of them, such rules or the rule specified in the address shall thenceforward be of no effect.

44 & 45 Vict. c. 44.

Definitions.

5. In this Act—

The expression "official of the court" means the holder of such paid office in or connected with the court as may be prescribed.

The expression "prescribed" means prescribed by rules under this Act.

Short title, extent and commencement of Act.

6.—(1) This may be cited as the Judicial Trustees Act, 1896.

(2) This Act shall not extend to any charity, whether subject to or exempted from the Charitable Trusts Acts, 1853 to 1894.

(3) This Act shall not extend to Scotland or Ireland. Section 6.

(4) This Act, except as by this Act otherwise provided, shall come into operation on the first day of May, one thousand eight hundred and ninety-seven.

RULES UNDER THE JUDICIAL TRUSTEES ACT, 1896.

[59 & 60 Vict. c. 35.]

1. The following rules may be cited as the Judicial Trustee Rules, 1897, and shall apply as far as practicable to all matters and proceedings under the Judicial Trustees Act, 1896 (in these rules called the Act). Short title.

Appointment of Judicial Trustee.

2. An application to the court to appoint a judicial trustee shall be in the Chancery Division, and Mode of making application.

(*a*) if not made in a pending cause or matter, shall be made by originating summons; and

(*b*) if made in a pending cause or matter, shall be made as part of the relief claimed, or by summons in the cause or matter.

3.—(1) The summons shall be served,— Service of summons.

(*a*) where the application is made by or on behalf of a trustee, on the other trustee (if any); and

(*b*) where the application is made by or on behalf of a beneficiary, on the trustees (if any),

and in either case on such (if any) of the beneficiaries as the court directs.

(2) Where the application is made by or on behalf of a person creating or intending to create a trust, the summons, subject to any direction of the court, need not be served on any person.

(3) The court may give any directions it thinks fit, either dispensing with the service of the summons on any person on whom it is required to be served under this rule, or requiring the service of the summons on any person on whom it is not required to be served under this rule.

4.—(1) Where an application is made for the appointment of a judicial trustee by originating summons, the applicant must, when he takes out the summons, supply for the use of the court a written statement signed by him containing the following particulars so far as he can gain information with regard to them:— Statement to be supplied on application.

(*a*) A short description of the trust and the instrument by which it is, or is to be, created, and of the relation which the applicant bears to the trust;

(*b*) If a person is nominated as judicial trustee the name and address of the person nominated, and short particulars of the reasons which lead to his nomination:

(*c*) If a person is nominated as judicial trustee, a statement whether it is proposed that the person nominated should be remunerated or not;

(*d*) Short particulars of the trust property, with an approximate estimate of its income, and capital value;

Rule 4.

(*e*) Short particulars of the incumbrances (if any) affecting the trust property;

(*f*) A statement whether it is proposed that the judicial trustee should be a sole trustee or should act jointly with other trustees;

(*g*) Particulars as to the persons who are in possession of the documents relating to the trust;

(*h*) The names and addresses of the beneficiaries and short particulars of their respective interests;

(*i*) Any exceptional circumstances specially affecting the administration of the trust.

(2) An affidavit by the applicant verifying the statement shall be sufficient *primâ facie* evidence of the particulars contained in the statement.

(3) Where the applicant cannot gain the information necessary or making the required statement on any point, he must mention the fact in his statement.

Removal of restriction as to appointment of certain persons to be trustees.

5.—(1) The court shall not be precluded by any existing practice as to the appointment of trustees from appointing any person to be a judicial trustee by reason of that person being a beneficiary, or a relation or husband or wife of a beneficiary, or a solicitor to the trust or to the trustee or to any beneficiary, or a married woman, or standing in any special position with regard to the trust.

(2) A person may be appointed to be a judicial trustee of a trust although he is already a trustee of the trust.

Vesting orders.

6. On the appointment of any person to be judicial trustee the court shall make such vesting or other orders and exercise such other powers as may be necessary for vesting the trust property in the judicial trustee either as sole trustee or jointly with other trustees as the case requires.

APPOINTMENT OF OFFICIAL OF COURT TO BE JUDICIAL TRUSTEE.

Official judicial trustee.

7.—(1) Where an official of the court is appointed judicial trustee, the official solicitor of the court shall (subject to the provisions hereinafter contained in rules twenty-nine, thirty, and thirty-one) be so appointed, unless, for special reasons, the court directs that some other official of the court should be so appointed.

(2) Any official of the court appointed to be a judicial trustee shall, on his ceasing to hold office, cease to be such a trustee without any formal resignation.

(3) Where an official of the court is judicial trustee, any trust property vested in or held by him, shall be vested in and held by him under his official title and not in his own name.

(4) Where an official of the court appointed to be a judicial trustee of a trust dies, or ceases to hold office, his successor in office shall, unless the court otherwise directs, become judicial trustee of the trust without any order of the court or formal appointment, and the trust property shall, without any conveyance, assignment, or transfer, in such a case become vested in the successor as it was vested in his predecessor in office.

(5) For the purpose of the definition of "official of the court," in section five of the Act, any paid office in or connected with the court shall be a prescribed office.

ADMINISTRATION OF THE TRUST. Rule 8.

Statement of trust property.

8.—(1) A judicial trustee must unless in any case the court considers that it is unnecessary, as soon as may be after his appointment, furnish the court with a complete statement of the trust property, accompanied with an approximate estimate of the income and capital value of each item.

(2) It shall be the duty of the judicial trustee to give such information to the court as may be necessary for the purpose of keeping the statement of the trust property correct for the time being.

Security.

9.—(1) A judicial trustee, if not an official of the court, must give security to the court for the due application of the trust property, unless the court dispenses with security under this rule.

(2) The court may, on the appointment of a judcial trustee, or at any time during his continuance in office as judicial trustee, dispense with security on the application either of the person who is to be appointed or is judicial trustee, or of any person appearing to the court to be interested in the trust, and shall do so where a judicial trustee is appointed on the application of a person creating or intending to create a trust, and that person desires that security should be dispensed with, unless for special reasons the court consider that security is in such a case necessary or desirable.

(3) The security must be given, either by recognizance, bond, or otherwise, as the court directs, and with such sureties as the court approves.

(4) If the court is satisfied that sufficient provision is made for the safety of the capital of the trust property, the amount of the security shall, in ordinary cases, be an amount exceeding by twenty per centum the income of the trust property as estimated by the court.

(5) The court may at any time require that the amount or nature of the security given by a judicial trustee under this rule be varied, or that security be given where it has previously been dispensed with, and a judicial trustee shall comply with any such requirement.

(6) It shall be a condition of every recognizance, bond, or other form of security given under this rule that the judicial trustee shall give immediate notice to the court of the death or insolvency of any of his sureties.

(7) Any recognizance, bond, or other form of security given for the purpose of this rule may be vacated in such manner and subject to such conditions as the court may direct.

(8) Where security is not dispensed with, the appointment of a person to be judicial trustee shall not take effect until he has given the security required by the court under this rule.

(9) Any premium payable by a judicial trustee to any guarantee company on account of his security may, if the court so directs, be paid out of the trust property.

Trust account at bank and custody of document.

10.—(1) When a judicial trustee is appointed, a separate account for receipts and payments on behalf of the trust must be kept in the name of the trustees at some bank approved by the court.

Rule 10.

(2) All title deeds and all certificates and other documents which are evidence of the title of the trustee to any of the trust property shall be deposited either with that bank or in such other custody as the court directs.

(3) The deeds or documents must be deposited in the names of the trustees, and the judicial trustee must give notice to the body or person with whom the deeds or documents are so deposited not to deliver any of them over to any person except on a request signed by the judicial trustee and countersigned by the officer of the court, and also to allow any person authorised by the officer of the court in writing to inspect them during business hours.

(4) The judicial trustee must deposit with the court a list of all deeds or documents deposited in any custody in pursuance of this rule, and must give information to the court from time to time of any variation to be made in the list.

(5) The judicial trustee must, if at any time directed by the court, give an order to the bank at which the trust account is kept, not to pay at any one time any sum over a specified amount out of the trust account except on an order countersigned by the officer of the court.

(6) Any payments on account of the income of the trust property may be provided for by means of a standing order to the bank at which the trust account is kept.

(7) The court may give such directions to the judicial trustee as may, in the opinion of the court, be necessary or expedient for carrying this rule into effect, and for securing the safety of the trust property.

(8) Where an official of the court is judicial trustee, the court may direct that, instead of a separate account of the receipts and payments on behalf of the trust being kept at some bank approved by the court, all receipts on behalf of the trust may be dealt with, and all payments on behalf of the trust may be made, in such manner, and subject to such regulations as to the accounts to be kept of the receipts and payments and the procedure to be followed in dealing therewith, as the Treasury direct.

Judicial trustee not to keep money in his hands.

11. A judicial trustee must pay all money coming into his hands on account of his trust without delay to the trust account at the bank, and if he keeps any such money in his hands for a longer time than the court considers necessary, shall be liable to pay interest upon it at such rate not exceeding five per centum as the court may fix for the time during which the money remains in his hands.

Directions to judicial trustees.

12.—(1) A judicial trustee may at any time request the court to give him directions as to the trust or its administration.

(2) The request must be accompanied by a statement of the facts with regard to which directions are required, and by the fee required under these rules in respect of a communication from the court with regard to the administration of the trust.

(3) The court may require the trustee or any other person to attend at chambers if it appears that such an attendance is necessary or convenient for the purpose of obtaining any information or explanation required for properly giving directions, or for the purpose of explaining the nature of the directions.

Rule 13.

Power to dispense with formal evidence.

13. The court, if satisfied that there is no reasonable doubt of any fact which affects the administration of a trust by a judicial trustee, may give directions to the judicial trustee to act without formal proof of the fact.

Accounts and Audit.

Accounts and audit.

14.—(1) The court shall give directions to a judicial trustee as to the date to which the accounts of the trust are to be made up in each year, and shall fix in each year the time after that date within which the accounts are to be delivered to it for audit.

(2) The accounts shall in ordinary cases be audited by the officer of the court, but the court, if it considers that the accounts are likely to involve questions of difficulty, may refer them to a professional accountant for report, and order the payment to him of such amount in respect of his report as the court may fix.

Filing and inspection of accounts.

15.—(1) The accounts of any trust of which there is a judicial trustee, with a note of any corrections made upon the audit, shall be filed as the court directs.

(2) The judicial trustee shall send a copy of the accounts or, if the court thinks fit, of a summary of the accounts, of the trust to such beneficiaries or other persons as the court thinks proper.

(3) The court may, if it thinks fit, having regard to the nature of the relation of the applicant to the trust, allow any person applying to inspect the filed accounts so to inspect them on giving reasonable notice to the officer of the court.

Deductions allowed.

16. A judicial trustee shall, unless the court otherwise directs, be allowed on the audit of his accounts deductions made on account of his remuneration and allowances under these rules and also on account of the fees paid by him under these rules, but shall not be allowed any deduction on account of the expenses of professional assistance, or his own work or personal outlay, unless the deduction has been authorised by the court in pursuance of the Act or the court is satisfied that the deduction is justified by the strict necessity of the case.

Remuneration and Allowances.

Remuneration of judicial trustee.

17.—(1) Where a judicial trustee is to be remunerated the remuneration to be paid to him shall be fixed by the court, and may be altered by the court from time to time.

(2) In fixing the remuneration, regard shall be had to the duties entailed upon the judicial trustee by the trust.

(3) The court may make, if it thinks fit, special allowances to judicial trustees for the following matters, to be paid out of the trust property—

(*a*) for the statement of trust property prepared by a judicial trustee on his appointment, an allowance not exceeding ten guineas;

(*b*) for realising and reinvesting trust property, where the property is realised for the purpose of reinvestment, an allowance not exceeding one and half per centum on the amount realised and reinvested;

Rule 17.

(c) for realising or investing trust property in any other case, an allowance not exceeding one per centum on the amount realised or invested.

(4) The court may also in any year make a special allowance to a judicial trustee, if satisfied that in that year more trouble has been thrown upon the trustee by reason of exceptional circumstances than would ordinarily be involved in the administration of the trust.

(5) Where a trustee is remunerated, any allowance under this rule may be paid in addition to his remuneration.

(6) Any remuneration or allowance payable to a judicial trustee shall be paid or allowed to him at such times and in such manner as the court directs.

Application of remuneration of official of the court.

18. Where an official of the court is appointed to be a judicial trustee, any remuneration, allowances, or other payments payable to him on account of his services as trustee shall be paid, accounted for, and applied in such manner as the Treasury direct.

Forfeiture of remuneration.

19.—(1) If the court is satisfied that a judicial trustee has failed to comply with the Act, or with these rules, or with any direction of the court or officer of the court made in accordance with the Act or these rules, or has otherwise misconducted himself in relation to the trust, the court may order that the whole or any part of the remuneration of the trustee be forfeited.

(2) This rule shall not affect any liability of the judicial trustee for breach of trust or to be removed or suspended.

(3) A judicial trustee shall have an opportunity of being heard by the court, before any order is made for the forfeiture of his remuneration or any part of it.

Removal and Suspension of Judicial Trustee.

Suspension of judicial trustee.

20.—(1) The court may at any time, either without any application or on the application of any person appearing to the court to be interested in the trust, suspend a judicial trustee, if the court considers that it is expedient to do so in the interests of the trust, and a judicial trustee while suspended shall not have power to act as trustee.

(2) When a judicial trustee is suspended the court shall cause notice to be given to such of the persons appearing to the court to be interested in the trust as the court directs, and also to the persons having the custody of the trust property, and shall give any other directions which appear necessary for securing the safety of the trust property.

Removal of judicial trustee.

21.—(1) The court may, either without any application or on the application of any person appearing to the court to be interested in the trust, remove a judicial trustee if the court considers that it is expedient to do so in the interests of the trust.

(2) Any application to remove a judicial trustee must be made by summons.

(3) A judicial trustee shall not be removed by the court without an application for the purpose, except after notice has been given to him by the court of the grounds on which it is proposed to

remove him, and of the time and place at which the matter will be heard. Rule 21.

(4) The court shall cause a copy of the notice to the trustee to be sent to such of the persons appearing to the court to be interested in the trust as the court directs, and the same procedure shall be followed in the matter as far as possible as on a summons to remove a judicial trustee.

22. Where an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee is ordered, the inquiry shall, unless the court otherwise directs, be conducted by the officer of the court, and he shall have the same powers in relation thereto as he has in relation to any other inquiry directed by the court. Inquiry into conduct of judicial trustee.

RESIGNATION AND DISCONTINUANCE OF JUDICIAL TRUSTEE.

23.—(1) If a judicial trustee desires to be discharged from his trust he must give notice to the court, stating at the same time what arrangements it is proposed to make with regard to the appointment of a successor. Resignation of judicial trustee.

(2) The court shall give facilities for the appointment on a proper application of an official of the court to be judicial trustee in place of a judicial trustee who desires to be discharged, in cases where no fit and proper person appears available for the office, or where the court considers that such an appointment is convenient or expedient in the interests of the trust.

24.—(1) Where there is a judicial trustee of a trust, the court may at any time, on the application made by summons of any person appearing to the court to be interested in the trust, order that there shall cease to be a judicial trustee of the trust, whether the person who is judicial trustee continues as trustee or not. Discontinuance of judicial trustee.

(2) If the court is satisfied that all the persons appearing to the court to be interested in the trust concur in an application under this rule, the court shall accede to the application, and in any case shall ascertain as far as may be the wishes of those appearing to the court to be interested in the trust with regard to the application.

(3) Where an order is made under this rule, the court shall make all such orders as may be necessary for carrying it into effect, and where in pursuance of any such order a new trustee is appointed in the place of an official of the court, shall make all such vesting or other orders and exercise all such other powers as may be necessary for vesting the trust property in the new trustee either as sole trustee or jointly with other trustees as the case requires.

SPECIAL TRUSTS.

25.—(1) Any person who is an executor or administrator may be appointed a judicial trustee for the purpose of the collection and distribution of the estate of a deceased person in the same manner and subject to the same provisions as in the case of an ordinary trust. Executors and administrators.

(2) Where an administrator has given an administration bond, he need not give security as a judicial trustee under these rules unless the court directs that he is to do so.

Rule 26.

Special trusts.

26.—(1) An official of the court shall not be appointed or act as judicial trustee for any persons in their capacity as members or debenture holders of, or being in any other relation to, any incorporated or unincorporated company, or any club.

(2) Where the circumstances of any trust of which an official of the court is a judicial trustee, or of which it is proposed to appoint an official of the court to be a judicial trustee, involve the carrying on of any trade or business, special intimation of the fact shall be given to the court either by the judicial trustee or by the person making the application for the appointment of the judicial trustee, as the case may be, and the court shall specially consider the facts of the case with a view to determining whether the official of the court should continue or be appointed as judicial trustee, and whether any special conditions should be made or directions given with a view to ensuring the proper supervision of the trade or business.

Exercise of the Powers of the Court.

Exercise of powers of court.

27. For the purpose of the Act or these rules the officer of the court may exercise any power which may be exercised by the court (including the power of making an order for the appointment of a judicial trustee or making any vesting order), and may perform any duty to be performed by the court, and may hear and investigate any matter which may be heard or investigated by the court, subject in any case to the right of any party to bring any particular point before the judge.

Communication between judicial trustee and court.

28.—(1) It shall not be necessary to take out a summons for any purpose under the Act or these rules, except in cases where a summons is required by these rules, or where the court directs a summons to be taken out.

(2) Where a judicial trustee desires to make any application or request to the court, or to communicate with the court as to the administration of his trust, he may do so by letter addressed to the officer of the court without any further formality.

(3) The court may give any direction to a judicial trustee with regard to the administration of his trust by letter signed by the officer of the court, and addressed to the trustee without drawing up any order or formal document.

(4) For the purpose of the attendance at chambers of the judicial trustee or any other person connected with the trust for purposes relating to the administration of the trust, the officer of the court may make such appointments as he thinks fit by letter without the service of formal notices.

(5) Any document may be supplied for the use of the court by leaving it with, or sending it by post to, the officer of the court.

[Rule 29 refers to High Court district registries, Rule 30 to palatine courts.]

County Courts.

County court

31.—(1) For the purpose of the Act and these rules the jurisdiction of the county court judge shall extend to any trust in which

the trust property does not exceed in value five hundred pounds, as if that jurisdiction had been given under section sixty-seven of the County Courts Act, 1888, but that jurisdiction shall be exercised only in a metropolitan county court, or in a county court for the time being having bankruptcy jurisdiction. Rule 31. Jurisdiction. (51 & 52 Vict. c. 43; 46 & 47 Vict. c. 52).

(2) Where the district of any county court (other than a metropolitan county court) or any part of such a district, is attached for the purpose of bankruptcy jurisdiction to some court other than the county court of the district, that district or part shall be attached to the same court for the purpose of jurisdiction under the Act and these rules.

(3) Where proceedings under the Act or these rules are taken in the county court, the official of the court to be appointed judicial trustee, where an official of the court is to be so appointed, shall not be the official solicitor, unless the court for special reasons otherwise directs.

(4) In the application of these rules to the county court a petition shall be substituted for a summons, whether an ordinary or an originating summons.

(5) For the purposes of this rule the expression "metropolitan county court" means any of the county courts mentioned in the third schedule of the Bankruptcy Act, 1883 [now Bankruptcy Act, 1914, Sched. III.].

Fees.

32.—(1) The fees mentioned in the schedule to these rules shall be paid in respect of the matters therein mentioned. Fees.

(2) The fees paid by a judicial trustee may be deducted out of the income of the trust property unless the court otherwise directs.

(3) Any fees payable under these rules may be remitted by post, and may be so remitted in any manner except by means of postage stamps or coin.

(4) All fees payable under these rules in the High Court, palatine court, or county court shall, except as provided by these rules, be subject to similar provisions as to payment, account, and application as other fees payable in those courts respectively.

Officer of the Court.

33.—In these rules the expression "officer of the court" means— Meaning of "officer of court."

(*a*) as regards proceedings in the High Court other than proceedings in a district registry the chancery master, that is to say, the master attached to the chambers of the judge of the Chancery Division to whom the matter is assigned; and

(*b*) as regards proceedings in a district registry, any registrar of that registry; and

(*c*) as regards proceedings in a palatine court, any registrar of that court;

(*d*) as regards proceedings in the county court, the registrar of the county court.

Supplemental.

34. These rules shall be construed, as far as they relate to the High Court, as one with the Rules of the Supreme Court, 1883, Rules to be construed as

Rule 34. part of the general rules of court.

and any rules amending those rules, so far as they relate to a palatine court, as one with the rules of that court, and so far as they relate to the county court, as one with the County Court Rules, 1889, and any rules amending those rules.

Application of Interpretation Act, 52 & 53 Vict. c. 63.

35. The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these rules as it applies for the purpose of the interpretation of an Act of Parliament.

August 31, 1897. (Signed) HALSBURY, C.

JUDICIAL TRUSTEES ACT, 1896.

Dated April 27th, 1899.

The following rule under the Judicial Trustees Act, 1896, is hereby published pursuant to the Rules Publication Act, and declared to be urgent.

Where an official of the court is judicial trustee it shall be lawful for the Bank of England and Bank of Ireland, and for any other corporation, company, or public body (all of which other bodies are hereinafter included in the term "company"), to open and keep accounts of stocks, shares, annuities, and securities (all of which are hereinafter included in the term "stock") in the name of such official under his official title without naming him, and the dividends on such stock may from time to time be received, and such stock, or any part thereof, may from time to time be transferred by the person for the time being holding such office without any order or direction of the court as if the same stood in his own name. And without any order or direction of the court such official may, by letter of attorney, authorize the Bank of England or the Bank of Ireland, or all or any of their proper officers, to sell and transfer all or any part of the stock from time to time standing in the books of the said banks on such account, and to receive the dividends due and to become due thereon. And where, according to the practice of any company (other than the said banks), such stock is accustomed to be sold and transferred, or the dividends to be received by letter of attorney, such official may authorize such company, or the proper officer or officers thereof, or any other person to sell and transfer all or any part of the stock from time to time standing in the books of such company on such account, and to receive the dividends due and to become due thereon. And notwithstanding section 20 of 29 & 30 Vict. c. 39, no request of the Treasury shall be necessary to authorize any such account of Government stocks and annuities to be opened, and no order in writing of the Treasury shall be necessary for the sale or transfer of any such Government stocks or annuities.

This rule shall be read with the Judicial Trustees Rules, 1897.

JUDICIAL TRUSTEE RULE (APRIL), 1900.

Notwithstanding anything in these rules contained, where an official of the court is sole judicial trustee, the trust funds and the title deeds certificates and other documents which are evidence of the title of the trustee to any of the trust property, and all

receipts on behalf of the trust, shall be dealt with, and all payments on behalf of the trust shall be made, and accounts shall be kept, in such manner and subject to such regulations as the Treasury may direct.

This rule shall be construed as one with the Judicial Trustee Rules, 1897.

Dated the 21st May, 1900.

SCHEDULE.

FEES.

The following fees shall be payable under these rules—	£	s.	d.
1. In respect of any thing or matter for which a fee is provided under the orders in force for the time being with regard to Supreme Court, palatine court, or county court fees, as the case may be	The fee so provided.		
In respect of any communication from the court with regard to the administration of the trust	0	2	6
For filing the statement of the trust property	0	10	0
For filing any alteration in the statement	0	5	0
For filing the accounts of the trust	0	5	0
For filing any other document relating to the trust . . .	0	2	6
For auditing the accounts of the trust when audited by the officer of the court, for every 100*l.* or fraction of 100*l.* of the gross amount received as income of the trust without deducting any payments	0	2	6
On the audit of the accounts of the trust where they are referred to a professional accountant for report .	A fee equal to the amount paid to the accountant.		
On the inspection of filed accounts for each hour or part of an hour occupied	0	2	0
not exceeding on one day	0	10	6

LAND TRANSFER ACTS, 1875 AND 1897.

[38 & 39 VICT. c. 87; 60 & 61 VICT. c. 65.]

By sect. 114 of the 1875 Act, both Acts are to be construed as one; "court" means the High Court, Chancery Division, or county court as may be prescribed by general rules. Appeal is given to the Chancery Division by sect. 116. By general rules dated August 2nd, 1898, all former rules were rescinded; these do not, nor did the former rules, prescribe what jurisdiction, if any, the county court is to exercise; until that is done it is useless to set out the sections of the Act.

LICENSING (CONSOLIDATION) ACT, 1910.

[10 EDW. VII. & 1 GEO. V. c. 24.]

Jurisdiction.]—The county court under this Act and the Licensing Rules, 1910, made by virtue of sect. 47, can be called upon to exercise jurisdiction in two ways: (1) the compensation authority may refer to the county court any question arising on the division of the amount to be paid as compensation, which such authority considers can be more conveniently determined

by the county court (sect. 20, sub-s. 3); (2) where the compensation authority makes default for one month in paying 50*l.* or more, due in respect of any loan raised under the Act, the persons entitled or any of them may apply to the county court for the appointment of a receiver.

Practice.]—A *reference* by the compensation authority is governed by Order L. rr. 37—57 (*post*, p. 2095). By Rule 38, the court in the district of which the premises are situated shall be the court having jurisdiction; the form of the reference is settled by Rule 39; of the petition and affidavit, by Rule 41; who are to be respondents, by Rule 42; the fixing of the day for hearing, by Rules 44, 45; notice to parties and service, by Rules 46—50; by Rule 53 the procedure shall be the same as on any other petition; by Rule 56 the costs are regulated. By Rule 52 of Order L. the county court, though it can make no order inconsistent with the order of the compensating authority, if it appears to the county court that any person who has not made a claim before the compensating authority is interested, may send the order of reference back to the compensating authority with a report to that effect, in order that the said authority may take such action as it may think fit.

Practice as to the appointment of a Receiver.]—Under Licensing Rule 71 the county court having jurisdiction is the court of the district in which the office of the treasurer is situated. By Order L. r. 58 (*post*) an application for the appointment of a receiver shall be by petition, and the procedure shall be the same as on any other petition as to any matter amounting to 50*l.* or over (see O. XXXVIII.).

Compensation in respect of Non-renewal of old On-Licences.

Payment of compensation.

20.—(1) Where the compensation authority refuse the renewal of an old on-licence, a sum equal to the difference between the value of the licensed premises (calculated as if the licence were subject to the same conditions of renewal as were applicable immediately before the passing of the Licensing Act, 1904, and including in that value the amount of any depreciation of trade fixtures arising by reason of the refusal to renew the licence), and the value which those premises would bear if they were not licensed premises, shall be paid as compensation to the persons interested in the licensed premises.

4 Edw. VII. c. 23.

(2) The amount to be so paid shall, if an amount is agreed upon by the persons appearing to the compensation authority to be interested in the licensed premises and is approved by that authority, be that amount, and, in default of such agreement and approval, shall be determined by the Commissioners of Inland Revenue in the same manner and subject to the like appeal, under section ten of the Finance Act, 1894, to the High Court, as on the valuation of an estate for the purpose of estate duty, and in any event the amount shall be divided amongst the persons interested in the licensed premises (including the holder of the licence) in such shares as may be determined by the compensation authority:

57 & 58 Vict. c. 30.

Provided that, in the case of the holder of the licence, regard shall be had not only to his legal interest in the premises or trade fixtures, but also to his conduct and to the length of time during which he has been the holder of the licence; and the holder of a licence, if a tenant, shall (notwithstanding any agreement to the contrary) in no case receive a less amount than he would be entitled to as tenant from year to year of the licensed premises.

(3) If on the division of the amount to be paid as compensation any question arises which the compensation authority consider can be more conveniently determined by the county court, they may refer that question to the county court in accordance with rules of court to be made for the purpose. Section 20.

If there is delay on the part of the persons interested in the compensation (or it is presumed on the part of the court) the justices must grant a further provisional renewal of the licence though one has already been granted (*Rex* v. *Newington Licensing Justices*, [1914] 2 K. B. 710; 83 L. J. K. B. 1367).

(4) Any costs incurred by the Commissioners of Inland Revenue on an appeal from their decision to the High Court under this section shall, unless the High Court order those costs to be paid by some party to the appeal other than the Commissioners, be paid out of the amount to be paid as compensation.

Under s. 2 of the 1904 Act it was held that the valuation of the respective interests was a question of fact for the judge and that his finding could not be questioned. *Query* whether there was any appeal from him (*Liverpool Corporation* v. *Peter Walker & Son*, [C. A.] [1908] 2 K. B. 33; 77 L. J. K. B. 700).

21.—(1) The compensation authority shall, in each year, unless they certify to the Secretary of State that it is unnecessary to do so in any year, for the purpose of their powers and duties under this Act as compensation authority, impose in respect of all old on-licences renewed in respect of premises within their area, charges at rates not exceeding, and graduated in the same proportion as, the rates shown in the scale of maximum charges set out in the first part of the third schedule to this Act. Compensation fund.

(2) Charges payable under this section in respect of any licence shall be levied and paid together with, and as part of the duties on, the corresponding excise licence, but a separate account shall be kept by the Commissioners of Customs and Excise of the amount produced by those charges in the area of any compensation authority, and that amount shall in each year be paid over to that authority in accordance with rules made by the Treasury for the purpose.

(3) Such deductions from rent as are set out in the second part of the third schedule to this Act may, notwithstanding any agreement to the contrary, be made by any holder of a licence who pays a charge under this section, and also by any person from whose rent a deduction is made in respect of the payment of such a charge.

(4) Any sums paid to a compensation authority in respect of the charges under this section, or received by the compensation authority from any other source for the payment of compensation under this Act, shall be paid by them to a separate account under their management, and the moneys standing to the credit of that account shall constitute the compensation fund.

(5) Any expenses incurred by the compensation authority in the payment of compensation under this Act, or otherwise in the exercise of their powers or the performance of their duties as compensation authority, and such expenses of the licensing justices incurred with respect to the matter of the reference to the com-

Section 21.

pensation authority of the question of the renewal of old on-licences, or the grant of new on-licences, as the compensation authority may allow, shall be paid out of the compensation fund, and the compensation authority, in the exercise of their powers, shall have regard to the funds available for the purpose.

(6) The compensation authority may, with the consent of a Secretary of State, borrow in accordance with rules made under this Act, on the security of the compensation fund, for the purpose of paying any compensation payable under this Act.

* * * * *

Rules.

47. A Secretary of State may make rules for carrying into effect the provisions of this Act as to the renewal of old on-licences, the payment of compensation, and as to the attachment of conditions to new justices' on-licences, and may by those rules amongst other things—

* * * * *

(*b*) provide for the enforcement of any security given for money borrowed by the compensation authority, and for the time, not exceeding fifteen years, within which money borrowed is to be replaced; and

(*c*) regulate the management and application of the compensation fund and the audit of the accounts of the compensation authority;

* * * * *

LICENSING RULES, 1910.

71.—(1) Where a compensation authority makes default for a period of one month in paying an amount of not less than fifty pounds (whether in one sum or separate sums) for the time being due in respect of any loan raised under the Act, the persons entitled to the said amount, or any of those persons, may, without prejudice to any other remedy, apply to the county court of the district in which the office of the treasurer of the compensation authority is situated for the appointment of a receiver; and any receiver so appointed (subject to any direction which may be given by the court) shall, as occasion requires, pay out of the compensation fund any sum the payment of which is so in default, together with all sums due while he is receiver on or in respect of any such loan, and all costs, charges, and expenses incurred in or about the appointment of such receiver, and the execution of his duties under this rule, including a proper remuneration for his trouble, and for that purpose may raise such sums as are necessary by means of charges under section 21 of the Act.

(2) The receiver shall have the same power (to be exercised subject to and in accordance with the provisions of these rules).

(3) All sums paid into the sinking fund shall, as soon as may be, be invested by the compensation authority in securities in which trustees are, for the time being, by law authorised to invest, and any investments made in pursuance of this provision may from time to time be varied or transposed; and all dividends and other annual sums received in respect of any investments shall, as soon as may be after they are received, be paid into the sinking fund and invested by the compensation authority in like manner.

COUNTY COURT RULES, ORDER L.

THE LICENSING (CONSOLIDATION) ACT, 1910. THE LICENSING RULES, 1910.

Procedure where Questions referred to County Court under the Licensing (Consolidation) Act, 1910 (10 Edw. VII. & 1 Geo. V. c. 24), *sect.* 20, *sub-section* (3).

Rule 37.

Settlement of question referred under 10 Edw. VII. & 1 Geo. V. c. 24, s. 20 (3).

37. Where any question is referred to the county court under sub-section (3) of section 20 of the Licensing (Consolidation) Act, 1910, the following provisions shall apply.

Court having jurisdiction.

38. The court having jurisdiction in the matter shall be the court in the district of which the licensed premises are situate.

Form of reference.

39. The reference shall be in the form of an order of the compensation authority, which shall state concisely the question referred and the circumstances in which the question arises, and any facts found by that authority in relation thereto, and shall be authenticated in accordance with the Licensing Rules, 1910.

Court may send back reference for further information, etc.

40. In any case in which it seems necessary or expedient the judge may at any time send the order of reference back to the compensation authority for further information touching the facts or circumstances in which the question arises, or for further explanation of the nature of the question intended to be referred.

Petition and affidavit.

41. Any person who has been determined by the compensation authority to be interested in the determination of the question referred, or where the compensation authority has not determined who are the persons so interested, any person claiming to be interested in the determination of the question, may on filing a copy of the order of reference authenticated in accordance with the Licensing Rules, 1910, file a petition intituled in the matter of the Licensing (Consolidation) Act, 1910, and of the licensed premises, and stating concisely the circumstances in which his claim arises, and the relief or order which the petitioner claims, and praying for the order and direction of the court with reference to the question, and the rights of all persons interested in the determination thereof. The petition shall be supported by an affidavit setting forth the circumstances in which and the grounds on which the application is made. The petitioner may in his petition or affidavit refer to and adopt any facts or circumstances stated in the order of reference without setting them forth anew, but he shall not state or depose to any facts or circumstances inconsistent with those appearing in the order of reference; but he may state or depose to any material facts omitted therefrom and not inconsistent therewith.

Respondents.

42. All persons who have been determined by the compensation authority to be interested in the determination of the question referred, or where the compensation authority has not determined who are the persons so interested, all persons known to the petitioner as persons claiming to be interested in the determination of the question, shall be named as respondents to the petition.

Rule 43.

Copies of petition and affidavit.

43. The petitioner shall deliver to the registrar with the petition and affidavit copies thereof for the use of the judge, and copies for each respondent to be served.

Fixing day of hearing by registrar.

44. On the filing of the petition the registrar shall fix the hearing thereof before the judge for any court appointed to be held within twenty-eight days from the date of the filing of the petition, but the date of hearing shall be so fixed as to allow the copies of the petition and affidavit to be served on the respondents at least ten clear days before the date so fixed.

Fixing day and place for hearing by judge.

45. If there is no such court available, the registrar shall send notice of the petition to the judge, who shall, as soon as conveniently may be, appoint a day and place for the hearing. The day shall be so fixed as to allow the copies of the petition and affidavit to be served on the respondents at least ten clear days before the date so fixed. The place of hearing shall be the place at which the court is held, or, if the judge so orders, any other convenient court of which he is judge.

Notice to parties.
Form 341.

46. On the day for the hearing being fixed, the registrar shall give, or send by post, notice in writing to the petitioner, stating the place at which and the day and hour on and at which the petition will be heard, and shall issue the copies of the petition and affidavit, under the seal of the court, for service on the respondents, together with notices signed by the registrar himself and under the seal of the court, stating the place at which and the day and hour on and at which the petition will be heard, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

Service on respondents.

47. The copies and notices mentioned in the last preceding rule shall be served on each respondent ten clear days at least before the day fixed for the hearing.

By whom service may be effected.

48. Such copies and notices may be served :—

(*a*) By a bailiff of a court ;

or, at the request of the petitioner,

(*b*) By the petitioner, or some clerk or servant in his permanent and exclusive employ ; or

(*c*) By the petitioner's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve the copy and notices who might be so employed to serve a writ in an action in the High Court.

Mode of service.

49. Service may be effected either in accordance with the rules as to service of default summonses, or by sending the copy and notice to be served on any respondent by registered post addressed to such respondent at his last-known residence or place of business ; and Order LIV. Rule 2, shall apply to service by registered post under this rule.

Where service effected

50. Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and place and mode of service indorsed thereon, and an affidavit of service, according to

the form in the Appendix, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to the registrar by the petitioner. **Rule 50.** otherwise than by bailiff.

51. Any person not named as a respondent who claims to be interested in the determination of the question referred may, unless the compensation authority has determined that he is not so interested, apply to the court, before or at the hearing, to be added as a respondent, on filing an affidavit showing how he claims to be interested ; and the court may, if it thinks fit, order such person to be added as a respondent accordingly, on such terms as to adjournment, notice to the other parties, costs, and otherwise, as may be just. Form 37. Adding respondents.

52. The court shall not have power to make any order inconsistent with any determination or order of the compensation authority ; but if in any case in which the compensation authority has determined who are the persons interested it appears to the court that any other person who has not made a claim before the compensation authority is interested in the determination of the question referred, the court may send the order of reference back to the compensation authority with a report to that effect, in order that that authority may take such further action in the matter as it may think fit. Where person who has not made claim before compensation authority appears to court to be interested.

53. Subject to the special provisions of these rules, the procedure on a petition shall be the same as the procedure on any other petition to the court. Procedure on petition.

54. A copy of the order of the judge on any petition, signed by the registrar and sealed with the seal of the court, shall be forwarded by the registrar by post to the clerk of the compensation authority. Order to be sent to compensation authority.

55. Where the hearing is to take place at another court, the registrar of the court in which the petition is pending shall forthwith send notice to the registrar of such other court that the judge has ordered the hearing to take place there; and he shall, in sufficient time before the hearing, transmit the papers to the registrar of the court at which the hearing is to take place, who shall act at the hearing for such first-mentioned registrar, and shall, after the hearing, return the papers to him, with a minute of the order made ; and such order shall be drawn up, sealed, filed, and proceeded on in the court in which the petition is pending, in like manner as if the hearing had taken place there. Where hearing is to take place in another court.

56.—(1) The costs of and incident to a petition and the proceedings connected therewith shall be in the discretion of the judge, who may order any such costs to be paid out of the compensation money, or, where the question referred relates only to a share of the compensation money, out of that share, or to be paid by any party to the proceedings to any other party. Any costs allowed by the judge shall be taxed according to such one of the scales of costs applicable to actions in the county court as the judge shall direct ; and in default of such direction shall be taxed according Costs.

Rule 56.

to the scale which would be applicable if the proceeding had been a petition relating to a fund in court.

(2) Proceedings on a petition shall be within Order LIII., Rules 7, 8, and 9.

For Order LIII., Rules 7, 8, and 9, see pp. 637—645.

(3) Where any costs are ordered to be paid out of the compensation money or any share thereof, such costs shall be taxed, and a certificate of taxation shall be signed by the registrar and forwarded by him by post to the clerk of the compensation authority.

Interpretation.

57. In these rules the expressions "compensation authority" and "compensation money" have the same meaning as in the Licensing Rules, 1910.

Appointment of Receiver under the Licensing Rules, 1910, *Rule* 71.

Application for appointment of receiver under Licensing Rules, 1910, Rule 71.

58. An application to the court for the appointment of a receiver under Rule 71 of the Licensing Rules, 1910, shall be made by petition; and the same procedure shall be followed and the same costs allowed as on any other petition to the court in which the subject-matter of the petition amounts to or (as the case may be) exceeds fifty pounds.

THE LIMITED PARTNERSHIP (WINDING-UP) RULES, 1909. SEE p. 1996 (*now repealed*).

THE LITERARY AND SCIENTIFIC INSTITUTIONS ACT, 1854.

[17 & 18 Vict. c. 112.]

Jurisdiction.]—By this Act, jurisdiction is given to the county court (1) to adjust the affairs of a literary or scientific institution, where a dispute has arisen in its winding-up; (2) to distribute, if the members cannot agree, any surplus which may arise on such winding-up. Penalties for breach of byelaws may also be recovered in the county court, s. 24.

Practice.]—Proceedings in case of disputes under this Act are commenced by plaint and summons. The practice is the same as explained for disputes in building societies (Order XLI.; see p. 1781).

Fees.]—Poundage is estimated on the amount in dispute, and if no amount is in dispute, or if the amount is unascertained, then as on a claim for 20*l.*

Provisions for the dissolution of institutions and adjustment of their affairs.

29. Any number not less than three-fifths of the members of any institution may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the institution, its claims and liabilities, according to the rules of the said institution applicable thereto, if any, and if not, then as the governing body shall find expedient; provided, that in the event of any dispute arising

among the said governing body or the members of the institution the adjustment of its affairs shall be referred to the judge of the county court of the district in which the principal building of the institution shall be situated, and he shall make such order or orders in the matter as he shall deem requisite, or, if he find it necessary, shall direct that proceedings shall be taken in the Court of Chancery for the adjustment of the affairs of the institution. Section 29.

30. If upon the dissolution of any institution there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said institution or any of them, but shall be given to some other institution, to be determined by the members at the time of the dissolution, or in default thereof by the judge of the county court aforesaid; provided, however, that this clause shall not apply to any institution which shall have been founded or established by the contributions of share-holders in the nature of a joint stock company. Upon a dissolution, no member to receive profit. Proviso for joint stock companies.

Even if the rules provide for the distribution of any surplus amongst the members, the Act overrides them, and the surplus must be disposed of as above (*Re Bristol Athenæum*, (1889) 43 Ch. D. 236; 59 L. J. Ch. 116).

LOCAL LOANS ACT, 1875.

[38 & 39 Vict. c. 83.]

Jurisdiction is given under sect. 12, where the local authority has for twenty-one days made default in paying an amount of not less than 500*l.* (whether in one or separate sums), in respect of any security issued under the Act. The persons entitled to the amount or any of such persons may, as an additional remedy, apply to the county court to appoint a receiver, and the court may appoint and may make such orders and give such directions as to the powers and duties of the receiver as may be thought fit.

Further, under sect. 25, if the name of any person is without sufficient cause entered in or omitted from the register of securities issued under the Act (sect. 23), where the value of such securities does not exceed 50*l.*, proceedings for rectification of the register may be taken in the county court.

Practice.]—The application under either section shall be by petition presented to the court of the district in which the local authority exercises its authority; the procedure is governed by Order L. rr. 6—8, *post*, p. 2101.

12. Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or in respect of any security issued under this Act, the persons entitled to the said amount, or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the county court for the appointment of a receiver, and any receiver so appointed (subject to any direction which may be given by the court) shall from time to time raise as hereinafter mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is so in default, and all sums due while he is receiver on or in respect of any such Remedy by appointment of receiver for non-payment of money.

Section 12.

security, together with all costs, charges, and expenses incurred in or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the balance, if any, remaining in his hands after making the said payments.

Where the amount so due or authorised to be raised is charged on the local rate, the receiver may raise the money he is authorised to raise under this section by means of the local rate, and for that purpose shall have the same power as the defaulting authority of levying the local rate, and the receiver shall have such access to and use of the documents of the defaulting authority relative to the local rate as he may require.

Where the amount so due or authorised to be raised is charged on any property, other than the local rate, the receiver may raise the sum which he is authorised to raise under this section by receipt of the rents and profits of the property, and if the security involves a power of sale, as in this Act mentioned, by sale of the property in such manner and subject to such conditions of sale and otherwise as the court may direct.

A county court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within the jurisdiction of such court, and may remove such receiver and appoint another in his stead, and so from time to time; and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect.

As to Register of Nominal Securities.

Register of nominal securities.

23. A local authority issuing nominal debentures, nominal debenture stock, or nominal annuity certificates under this Act, shall cause a register of such securities to be kept in one or more book or books, and there shall be entered in such register—

(1) The names and addresses and the descriptions of the owners for the time being of every such security, with a statement of the securities held by each person registered, and

(2) The date at which the name of any person was entered in the register in respect of any such security.

The register under this section shall be evidence of any matters by this Act directed or authorised to be inserted therein.

Inspection of register.

24. Any person may inspect the register at any reasonable time upon payment of such fee not exceeding one shilling as may be fixed by the local authority, and shall be entitled to obtain from the registrar, copies or extracts certified by him to be true copies or extracts of such register, upon payment of such fee not exceeding two shillings and sixpence, and two pence for every folio of seventy-two words, as the local authority may from time to time fix, and any copy or extract so certified shall be admissible in evidence.

Section 25. Rectification of register.

25. If the name of any person is without sufficient cause entered in or omitted from the register, or if default is made or unnecessary delay takes place in making any entry in such register, the person aggrieved or the local authority may apply to the court for an order that the register may be rectified.

The court may either refuse the application with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, whether there has or has not been any default on the part of the registrar, make an order for the rectification of the register, and make such order as to the payment of the costs of the application or of damages to the person aggrieved as to the court may seem just.

The court may, in any proceeding under this section, decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, and generally any question which it may be necessary or expedient to decide for the rectification of the register.

The court for the purposes of this section means any of Her Majesty's superior courts of law or equity, or any court to which the jurisdiction of such courts may be transferred, and where the value of any security or securities to which the application relates does not exceed fifty pounds shall include a county court, and the jurisdiction by this Act given to a superior court may be exercised in a summary manner by any judge or judges of such court sitting in chambers or otherwise.

COUNTY COURT RULES, ORDER L.

Application for a receiver to be by petition.

6. An application to the court for the appointment of a receiver under the provisions of sect. 12 of the Local Loans Act, 1875, shall be made by petition, and the same procedure shall be followed and the same fees paid and costs allowed as on any other petition to the court in which the subject-matter of the petition exceeds 100*l*.

Application for rectification of register to be by petition.

7. An application to the judge for the rectification of a register of nominal securities under the provisions of sect. 25 of the Local Loans Act, 1875, shall be made by petition, and the same procedure shall be followed, and the same fees paid and costs allowed, as on any other petition to the court in which the subject-matter of the petition exceeds 20*l*. and does not exceed 100*l*.

To what court.

8. The court to which petitions shall be presented under the two preceding rules of this Order shall be the court of the district in which the local authority exercises its authority.

LOAN SOCIETIES ACT, 1840.

[3 & 4 Vict. c. 110.]

Jurisdiction.]—By sect. 17 loans may be recovered in the county court to the extent of its jurisdiction, notwithstanding that sect. 16 provides for recovery by summons before a justice of the peace, also that the treasurer or clerk may be plaintiff.

Practice.]—Proceedings will be by plaint and summons, and the ordinary practice of the court applies.

Recovery of loans in courts of request.

17. And be it declared and enacted, that notwithstanding the provisions hereinbefore contained, the treasurer or clerk of such society for the time being may proceed for the recovery of the sum due on such note against the party or parties liable to pay the same, in any county court, or court of conscience or request, having jurisdiction to the amount so due, according to the course and practice of such courts; and in such case the Act or Acts, and all provisions therein relating to such court and the powers thereof, shall be applicable to the recovery of the sum so due on such note.

HIGHWAYS AND LOCOMOTIVES AMENDMENT ACT, 1878.

LOCOMOTIVES ACT, 1898.

[41 & 42 VICT. c. 77; 61 & 62 VICT. c. 29.]

Jurisdiction.]—By the Highways and Locomotives Amendment Act 1878, s. 23, the authority liable for the repair of any highway might recover in a *summary manner* extraordinary expenses, shown by the certificate of their surveyor to have been incurred in repairing any highway by reason of damage caused by excessive weight passing along the same, or extraordinary traffic thereon from the person by whose orders the same had been conducted. Under that Act the county court had no jurisdiction, but by sect. 12, sub-s. 1 (a), of the Locomotives Act, 1898, expenses were made to be no longer recoverable in a summary manner, but when not exceeding 250*l.* might be sued for in the county court; if exceeding that amount, in the High Court. By sect. 12, sub-s. 1 (c), of the last mentioned Act, the words "by or in consequence of whose order" were substituted for "by whose order," an amendment no doubt made with the object of imposing liability on the originator of any work requiring the carriage of heavy materials, and avoiding the effect given to the words "by whose orders" in *Kent County Council* v. *Gerard* (*Lord*), (1897) A. C. 633; 66 L. J. Q. B. 677. "In consequence of whose order" has been held to mean "as a necessary consequence of whose order" (*Egham Rural District Council* v. *Gordon*, (1902) 2 K. B. 120; 71 L.J. K. B. 523).

The expenses of extraordinary traffic not exceeding 250*l.* caused by light locomotives within sect. 1 of the Locomotives on Highways Act, 1896, as extended by the Heavy Motor Car Order, 1904 (see 1898 Act, sect. 17, sub-s. 2), can be recovered in the county court (*Rex* v. *Judge James*, (1908) 1 K. B. 958; 77 L. J. K. B. 402).

Practice.]—Proceedings must be commenced within twelve months of the damage done, or, when the damage is in consequence of any particular building contract or work extending over a long period, must be commenced not later than six months after the completion of the contract or work; as to what is "work extending over a long period," and when the six months' limit begins to run, see *Bromley Rural District Council* v. *Croydon Corporation* (C. A.), (1908) 1 K. B. 353; 77 L. J. K. B. 335, and *Lancaster Rural District Council* v. *Fisher*, (1907) 2 K. B. 516; 76 L. J. K. B. 1070. The proceeding will be by plaint and summons in the ordinary way.

Appeal as in an ordinary case under sect. 120 of the County Courts Act, 1888 (see Part I. p. 123).

Costs.]—Allowances of special items, and of fees to counsel may be made (Order LIII. r. 8 (2), *ante*, p. 637).

41 & 42 Vict. c. 77.

Extraordinary Traffic.

Power of road authority to recover expenses of extra-ordinary traffic.

23. Where by a certificate of their surveyor it appears to the authority which is liable or has undertaken to repair any highway, whether a main road or not, that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the court having cognizance of the case to have been incurred by such authority by reason of the damage arising from such weight or traffic as aforesaid.

Provided that any person against whom expenses are or may be recoverable under this section may enter into an agreement with such authority as is mentioned in this section for the payment to them of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section.

Extraordinary traffic. What is? If the road was adapted to the traffic and the traffic was such as might be expected on the road in the ordinary course, such traffic was in its character not extraordinary (*Ledbury Rural District Council* v. *Somerset*, (1914) W. N. 16th May, 1914, p. 222), and traffic caused by a recognized local industry could not be called extraordinary (*Wallington* v. *Hoskins*, (1880) 6 Q. B. D. 206; 50 L. J. M. C. 19); though the same traffic might be extraordinary if the road was not adapted to or generally used for such traffic (*Geirionydd Rural District Council* v. *Green*, (1909) 2 K. B. 845; 78 L. J. K. B. 1039).

On the other hand the fact that a class of traffic has grown up to meet the demands of a district, such as motor omnibuses, will not prevent such traffic being "extraordinary traffic" if in view of other circumstances the traffic is in fact extraordinary (*Abingdon Rural District Council* v. *City of Oxford Electric Tramways, Ltd.*, (1917) 86 L. J. K. B. 286; C. A. (1917) 2 K. B. 318.

Whether traffic is "extraordinary traffic" or not is a question of fact. Traffic due to a normal increase of traffic in consequence of the development of the district is not "extraordinary traffic." Continued user of a road for traffic, which at the time of its first user is extraordinary traffic, may in time convert such traffic into ordinary traffic. No rule can be laid down as to what such length of time must be. Ordinary traffic on a particular road if diverted, though by the action of the local authority, to another road may be "extraordinary traffic" upon such other road (*Barnsley British Co-operative Society* v. *Worsborough Urban Council*, (1916) 85 L. J. K. B. (H. L.) 103).

The local authority must prove that the expenses of repair were extraordinary, and to do so regard must be had to the average expense of repairing similar highways in that neighbourhood (*Billericay Rural District Council* v. *Poplar Guardians* (C. A.), (1911) 2 K. B. 801; 80 L. J. K. B. 124; *Colchester Corporation* v. *Gepp* (C. A.), (1912) 1 K. B. 477; 81 L. J. K. B. 356).

Section 12. 61 & 62 Vict. c. 29.

Amendments as to proceedings for extraordinary traffic damage.

12.—(1) Section twenty-three of the Highways and Locomotives (Amendment) Act, 1878 (which relates to the recovery of expenses of extraordinary traffic), shall be amended as follows:—

(*a*) Expenses under that section shall cease to be recoverable in a summary manner, but may be recovered if not exceeding two hundred and fifty pounds in the county court, and if exceeding that sum in the High Court.

(*b*) Proceedings for the recovery of any expenses incurred after the passing of this Act shall be commenced within twelve months of the time at which the damage has been done, or where the damage is the consequence of any particular building contract, or work extending over a long period, shall be commenced not later than six months after the completion of the contract or work.

(*c*) There shall be substituted for the words "by whose order" the words "by or in consequence of whose order."

(2) Nothing in this section shall affect the prosecution and determination of any proceedings which have been commenced before this Act shall come into operation.

Interpretation and saving.

17.—(1) In this Act, unless the context otherwise requires,—

The expression "locomotive" means a locomotive propelled by steam or other than animal power;

The expression "waggon" includes any truck, cart, carriage, or other vehicle;

59 & 60 Vict. c. 36.

(2) Nothing in this Act shall affect light locomotives within the meaning of the Locomotives on Highways Act, 1896.

Proceedings under the above section are in the nature of an action for personal tort, so cannot be taken against an executor (*Story* v. *Sheard*, (1892) 2 Q. B. 515; 65 L. J. M. C. 178); as to when the six months' limit begins to run, see *Bromley Rural District Council* v. *Croydon Corporation* (C. A.), (1908) 1 K. B. 353; 77 L. J. K. B. 335, and *Lancaster Rural District Council* v. *Fisher*, (1907) 2 K. B. 516; 76 L. J. K. B. 1070. "Completion of the work" means completion so far as the constructional work is concerned, and if that consists of several parts so closely connected that each would be useless without the others, the six months' period runs from the completion of the whole work (*Carlisle Rural District Council* v. *Carlisle Corporation*, (1909) 1 K. B. 471; 78 L. J. K. B. 307; see also *Reigate Rural District Council* v. *Sutton District Water Co.*, 78 L. J. K. B. 315).

Sect. 17, sub-s. 2, does not relieve a light locomotive which causes extraordinary expenses from liability (*Rex* v. *Judge James*, (1908) 1 K. B. 958; 77 L. J. K. B. 402).

THE LONDON BUILDING ACTS, 1894 AND 1905.

[57 & 58 Vict. c. ccxiii.; 5 Edw. VII. c. ccix.—Private Acts.]

Jurisdiction is given to the county court by sect. 91 to hear appeals against an award made by surveyor or surveyors as to differences between building owners and adjoining owners within the limits of the administrative county of London; by sect. 94 to settle any difference as to security between a building owner and an adjoining owner; by sect. 168 to settle the time and manner of executing any work, or of doing any other thing, and to put the parties upon terms as to the execution of the work. By sect. 196, where any consent has to be given to, any notice served on, or any thing done by or to any owner, and there is no owner, or the

owner cannot be found, the judge of the county court may give such consent and do or cause such thing to be done on such terms as he may think fit, or may dispense with the service of any notice. By sect. 200, sub-s. 11 (d) (e), the failure to comply with any order of the county court made in pursuance of the Act, or the refusal to admit at a reasonable time any builder to any building or in any way to prevent a builder from complying with any order of the county court, causes a person so offending to be liable upon summary conviction to penalties. By sect. 20 of the Act of 1905 (*supra*) the owner of any building who has paid or incurred the expenses of executing any work in respect of such building which the owner of such building is required to execute under the provisions of this Act or has paid any other expenses which by any such provision as aforesaid are required to be borne or paid by the owner may, if he thinks fit, apply to the county court of the district in which such building is situate and such court may thereupon issue a summons requiring the several persons entitled to any estate or interest in the building to appear before the court and the court may make such order concerning such expenses or their apportionment among all the several persons entitled to any estate or interest in the building as appears to the court to be just and equitable in the circumstances of the case, regard being had to the terms of any lease, or contract affecting such building.

Removal to High Court.]—By sect. 91, sub-s. 5, if the appellant satisfies the judge that the matter involves a liability to pay a sum, exclusive of costs, exceeding 50*l.*, and gives security, proceedings in the county court are to be stayed, and the appellant may bring an action against the other party in the High Court, the costs incurred in the county court are to be deemed to be costs incurred in such action.

Practice is settled by Order L. rr. 30—32 (*post*, p. 2108). Rule 30 settles the practice of appeals from an award under sect. 91; Rule 31, the practice where security is demanded under sect. 94; and Rule 32, the practice on an application made under sect. 196. Poundage is estimated on the amount in dispute; if no amount is in dispute, or is unascertained, as on a claim for 20*l.*

Appeal from County Court.]—In any matter in which jurisdiction is given to a county court by the Act, any person has, by sect. 168, the same right of appeal as he would have under the County Courts Act, 1888, s. 120.

Settlement of difference between building and adjoining owners.

91.—(1) In all cases not specially provided for by this Act where a difference arises between a building owner and adjoining owner in respect of any matter arising with reference to any work to which any notice given under this part of this Act relates unless both parties concur in the appointment of one surveyor they shall each appoint a surveyor and the two surveyors so appointed shall select a third surveyor and such one surveyor or three surveyors or any two of them shall settle any matter from time to time during the continuance of any work to which the notice relates in dispute between such building and adjoining owner with power by his or their award to determine the right to do and the time and manner of doing any work and generally any other matter arising out of or incidental to such difference but any time so appointed for doing any work shall not unless otherwise agreed commence until after the expiration of the period by this part of this Act prescribed for the notice in the particular case.

(2) Any award given by such one surveyor or by such three surveyors or by any two of them shall be conclusive and shall not be questioned in any court with this exception that either

Section 91.

of the parties to the difference may appeal therefrom to the county court within fourteen days from the date of the delivery of the award and the county court may subject as hereinafter in this section mentioned rescind the award or modify it in such a manner as it thinks just.

(3) If either party to the difference make default in appointing a surveyor for ten days after notice has been served on him by the other party to make such appointment the party giving the notice may make the appointment in the place of the party so making default.

(4) The costs incurred in making or obtaining the award shall be paid by such party as the surveyor or surveyors determine.

(5) If the appellant from any such award on appearing before the county court declares his unwillingness to have the matter decided by that court and proves to the satisfaction of the judge of that court that in the event of the matter being decided against him he will be liable to pay a sum exclusive of costs exceeding fifty pounds and gives security to be approved by the judge duly to prosecute his appeal and to abide the event thereof all proceedings in the county court shall thereupon be stayed and the appellant may bring an action in the High Court against the other party to the difference.

(6) The plaintiff in such action shall deliver to the defendants an issue whereby the matters in difference between them may be tried and the form of such issue in case of dispute or in case of the non-appearance of the defendant shall be settled by the High Court and such action shall be prosecuted and issue tried in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of the High Court or as near thereto as circumstances admit.

(7) If the parties to any such action agree as to the facts a special case may be stated for the opinion of the High Court and any case so stated may be brought before the court in like manner and subject to the same incidents in and subject to which other special cases are brought before such court or as near thereto as circumstances admit and any costs that may have been incurred in the county court by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action and be payable accordingly.

(8) Where both parties to the difference have concurred in the appointment of one surveyor for the settlement of such difference then if such surveyor refuse or for seven days neglect to act or die or become incapable to act before he has made his award the matters in dispute shall be determined in the same manner as if such single surveyor had not been appointed.

(9) Where each party to the difference has appointed a surveyor for the settlement of the difference and a third surveyor has been selected then if such third surveyor refuse or for seven days neglect to act or before such difference is settled die or become incapable to act the two surveyors shall forthwith select another third surveyor in his place and every third surveyor so selected as last aforesaid shall have the same powers and authorities as were vested in his predecessor.

(10) Where each party to the difference has appointed a surveyor for the settlement of the difference then if the two surveyors so appointed refuse or for seven days after request of either party neglect to select a third surveyor or another third surveyor in the event of the refusal or neglect to act death or incapacity of the third surveyor for the time being a Secretary of State may on the application of either party select some fit person to act as third surveyor and every surveyor so selected shall have the same powers and authorities as if he had been selected by the two surveyors appointed by the parties.

(11) Where each party to the difference has appointed a surveyor for the settlement of the difference then if before such difference is settled either surveyor so appointed die or become incapable to act the party by whom such surveyor was appointed may appoint in writing some other surveyor to act in his place and if for the space of seven days after notice served on him by the other party for that purpose he fail to do so the other surveyor may proceed *ex parte* and the decision of such other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred and every surveyor so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former surveyor at the time of his death or disability as aforesaid.

(12) Where each party to the difference has appointed a surveyor for the settlement of the difference then if either of the surveyors refuse or for seven days neglect to act the other surveyor may proceed *ex parte* and the decision of such other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred.

* * * * * *

Security to be given by building owner and adjoining owner.

94. An adjoining owner may if he think fit by notice in writing require the building owner (before commencing any work which he may be authorised by this part of this Act to execute) to give such security as may be agreed upon or in case of difference may be settled by the judge of the county court for the payment of all such expenses costs and compensation in respect of the work as may be payable by the building owner.

The building owner may if he think fit at any time after service on him of a party wall or party structure requisition by the adjoining owner and before beginning a work to which the requisition relates but not afterwards serve a counter requisition on the adjoining owner requiring him to give such security for payment of the expenses costs and compensation for which he is or will be liable as may be agreed upon or in case of difference may be settled as aforesaid.

If the adjoining owner do not within one month after service of that counter requisition give security accordingly he shall at the end of that month be deemed to have ceased to be entitled to compliance with his party wall or party structure requisition and the building owner may proceed as if no party wall or party structure requisition had been served on him by the adjoining owner.

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Powers of and appeal from county court.

168. Where jurisdiction is by this Act given to a county court that court may settle the time and manner of executing any work or of doing any other thing and may put the parties to the case upon such terms as respects the execution of the work as the court thinks fit:

Provided that any person shall have the same right of appeal from any decision of a county court in any matter in which jurisdiction is given to such court by this Act as he would have under the County Courts Act, 1888, from any decision of such court in any matter.

* * * * *

Consent how given on behalf of owners not to be found.

Appeals under 57 & 58 Vict. c. ccxiii. s. 91.

196. Where any consent is required to be given any notice to be served or any other thing to be done by on or to any owner in pursuance of this Act if there is no owner or if any such owner cannot be found the judge of the county court may give such consent or do or cause to be done such thing on such terms and conditions as he may think fit and may dispense with the service of any notice which would otherwise be required to be served.

* * * * *

[*Conf.* Form 446.]

COUNTY COURT RULES, ORDER L.

30.—(1.) A party desirous of appealing from an award under sect. 91 of the London Building Act, 1894, shall, within fourteen days from the date of the delivery of the award, file with the registrar two copies of the award, together with a written statement in duplicate of the grounds of appeal.

(2.) The registrar shall forthwith upon the filing of the said copies and statement enter a plaint and issue a summons calling upon the other party to show cause why the award should not be rescinded or modified, and shall annex to the summons for service a copy of the award and one of the statements of the grounds of appeal, which copy and statement shall be deemed to be part of the summons.

(3.) The practice, procedure, and costs in an action shall be applicable to an appeal under the said section.

Applications under 57 & 58 Vict. c. ccxiii. s. 94.

31. An application to the court under sect. 94 of the London Building Act, 1894, to settle the security to be given in any case mentioned in the said section shall be made by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed with every such application, stating precisely the relief or order which the plaintiff claims.

Applications under 57 & 58 Vict. c. ccxiii. s. 196.

32. An application to the court under sect. 196 of the London Building Act, 1894, shall be made by petition; and the same practice, procedure, and costs shall be applicable as on any other petition to the court.

LUNACY ACT, 1890.

[53 & 54 Vict. c. 5.]

As amended by Lunacy Act, 1891 (54 & 55 Vict. c. 65).

MENTAL DEFICIENCY ACT, 1913.

[3 & 4 Geo. V. c. 28.]

Jurisdiction.]—By sect. 132 of the Act of 1890, where a reception order has been made in the case of a lunatic, the value of whose real and personal estate is under 200*l.*, and no relative or friend is willing to undertake the management of such property, any judge of county courts having jurisdiction in the place from which the lunatic is sent, upon application of a clerk to the guardians or relieving officer, may authorise such persons to take possession of and realise the property of the lunatic, and exercise the powers of a legal personal representative as if the lunatic were dead. Also, by sect. 300, upon application by the guardians of a union, a county court judge may make an order to be enforced against any property of the lunatic for payment of expenses incurred in relation to a lunatic.

Since the passing of this statute, patients, not being paupers or lunatics so found by inquisition, can be received only under an order made by a "judicial authority"; by sect. 9, a county court judge may exercise the powers of a "judicial authority," but is not required to exercise such powers so as to interfere with or delay the exercise of his ordinary jurisdiction. In such case he must sign and send the certificate as provided.

The judge of county courts by sect. 19 of the Mental Deficiency Act, 1913, is made a judicial authority under that Act. In sects. 9—5 of that Act and th eRegulations (*post*, pp. 2118, 2128 the requirements as to making orders by the judicial authority are enacted. The judicial authority is entitled to be assisted by the same officers as if he was acting in the exercise of his ordinary jurisdiction.

Practice.]—An application under sects. 132 and 300 of the Act of 1890 shall be made by petition and same procedure followed, and costs allowed as on a petition under Order XXXVIII. (see Order L. r. 17, p. 2118). The practice when the judge is acting as a judicial authority is provided by sects. 4—7 of the Act of 1890, and is initiated by a petition accompanied by particulars and two medical certificates on separate sheets of paper. The petition shall be considered in private, and, except by leave of the judicial authority, no one except the petitioner, the alleged lunatic, one person appointed by the lunatic, and the persons signing the medical certificates shall be present. In petitions under the Act of 1913 follow the enactments of sects. 5—9 and Order XXXVIII. and Order L. r. 17. See also Regulations dated 2nd April, 1914, *post*, p. 2122.

Privilege.]—On such an application, the judicial authority is acting judicially, and statements made during the proceedings are not actionable (*Hodson* v. *Pare*, (1899) 1 Q. B. 455; 68 L. J. Q. B. 309).

53 & 54 Vict. c. 5.

Private patients not found lunatic

4.—(1) Subject to the exceptions in this Act mentioned, a person, not being a pauper or a lunatic so found by inquisition, shall not be received and detained as a lunatic in an institution for lunatics, or

Section 4.

by inquisition to be received only under order of judicial authority.

as a single patient, unless under a reception order made by the judicial authority hereinafter mentioned. A relative of the person applying for an order under this section or of the lunatic, or of the husband or wife of the lunatic, shall not be capable of making such order.

(2) The order shall be obtained upon a private application by petition accompanied by a statement of particulars and by two medical certificates on separate sheets of paper.

Forms 1, 2, 8.

Petition for reception order.

Form 1.

5.—(1) The petition shall be presented, if possible, by the husband or wife or by a relative of the alleged lunatic. If not so presented it shall contain a statement of the reasons why the petition is not so presented and of the connexion of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition.

(2) No person shall present a petition unless he is at least twenty-one years of age and has within fourteen days before the presentation of the petition personally seen the alleged lunatic.

(3) The petitioner shall in the petition undertake that he will personally, or by someone specially appointed by him, visit the patient once at least in every six months; and the undertaking shall be recited in the order.

Form 2.

(4) The petition shall be signed by the petitioner and the statement of particulars by the person making the statement.

Procedure upon petition for a reception order.

Form 3.

6.—(1) Upon the presentation of the petition the judicial authority shall consider the allegations in the petition and statement of particulars and the evidence of lunacy appearing by the medical certificates, and whether it is necessary for him personally to see and examine the alleged lunatic; and, if he is satisfied that an order may properly be made forthwith, he may make the same accordingly; or, if not so satisfied, he shall appoint as early a time as practicable, not being more than seven days after the presentation of the petition, for the consideration thereof; and he may make such further or other inquiries of or concerning the alleged lunatic as he may think fit. Notice of the time and place appointed for the consideration of the petition (unless personally given to the petitioner) shall be sent to the petitioner by post in a prepaid registered letter addressed to him at his address as given in the petition.

(2) The judicial authority, if not satisfied with the evidence of lunacy appearing by the medical certificates, may, if he thinks it necessary so to do, visit the alleged lunatic at the place where he may happen to be.

(3) The petition shall be considered in private, and no one except the petitioner, the alleged lunatic (unless the judicial authority shall in his discretion otherwise order), any one person appointed by the alleged lunatic for that purpose, and the persons signing the medical certificates accompanying the petition, shall, without the leave of the judicial authority, be present at the consideration thereof.

(4) At the time appointed for consideration of the petition the judicial authority may make an order thereon or dismiss the same, or, if he thinks fit, may adjourn the same for any period not exceeding fourteen days for further evidence or information, and

he may give notice to such persons as he thinks fit of the adjourned consideration, and summon any persons to attend before him. Section 6.

(5) Every judicial authority and all persons admitted to be present at the consideration of any petition for a reception order, or otherwise having official cognisance of the fact that a petition has been presented, except the alleged lunatic and the person appointed by the alleged lunatic as aforesaid, shall be bound to keep secret all matters and documents which may come to his or their knowledge by reason thereof, except when required to divulge the same by lawful authority.

Dismissal of petition.

7.—(1) If the petition is dismissed, the judicial authority shall deliver to the petitioner a statement in writing under his hand of his reasons for dismissing the same, and shall send a copy of such statement to the Commissioners and shall also, where the alleged lunatic is detained under an urgency order, send notice by post or otherwise to the person in whose charge the alleged lunatic is, that the petition has been dismissed.

(2) Any judicial authority making or refusing a reception order, shall, if so required by the Commissioners, give to them all such information as they may require as to the circumstances under which the order was made or refused.

(3) The Commissioners may communicate such information as they think proper, on the dismissal of the petition or the release of the alleged lunatic, to him or to any person who may satisfy them that he is a proper person to receive the information.

(4) If after a petition has been dismissed another petition is presented as to the same alleged lunatic, the person presenting such other petition, so far as he has any knowledge or information with regard to the previous petition and its dismissal, shall state the facts relating thereto in his petition, and shall obtain from the Commissioners at his own expense, and present with his petition, a copy of the statement sent to them of the reasons for dismissing the previous petition, and, if he wilfully omits to comply with this sub-section, he shall be guilty of a misdemeanour.

Right of lunatic to be examined by judicial authority.

8.—(1) When a lunatic has been received as a private patient under an order of a judicial authority, without a statement in the order that the patient has been personally seen by such judicial authority, the patient shall have the right to be taken before or visited by a judicial authority, other than the judicial authority who made the order, unless the medical officer of the institution, or, in the case of a single patient, his medical attendant, within twenty-four hours after reception, in a certificate signed and sent to the Commissioners, states that the exercise of such right would be prejudicial to the patient. Form 5.

(2) Where no such certificate has been signed and sent, the manager of the institution in which the patient is, or the person having charge of him as a single patient, shall, within twenty-four hours after reception, give to the patient a notice in writing of his right under this section, and shall ascertain whether he desires to exercise the right, and if he, within seven days after his reception, expresses his desire to exercise the right, such manager or person shall procure him to sign a notice of such desire, and shall forthwith transmit it by post in a prepaid registered letter to the Form 6. Form 7.

Section 8.

judicial authority who is to exercise the jurisdiction under this section, or to the justices' clerk of the petty sessional division or borough where the lunatic is, to be by him transmitted to such judicial authority, and the judicial authority shall thereupon arrange, as soon as conveniently may be, either to visit the patient or to have the patient brought before him by the manager or person as the judicial authority may think fit.

(3) The judicial authority shall be entitled, if he desires so to do, to see the medical certificates and any other documents, upon the consideration of which the reception order was made, and shall after personally seeing the patient send to the Commissioners a report, and the Commissioners shall take such steps as may be necessary to give effect to the report.

(4) For the purposes of this section the jurisdiction shall be exercised by any judicial authority having authority to act in the place where the person received is, and not being the judicial authority who made the reception order; and arrangements shall for that purpose from time to time be made amongst themselves by the persons having such authority as aforesaid.

Judicial authority defined.

9.—(1) The powers of the judicial authority under this Act shall be exercised by a justice of the peace specially appointed as hereinafter provided, or a judge of county courts, or magistrate.

Residue of sub-s. rep., 54 & 55 Vict. c. 65, s. 29.

(2) Every judicial authority shall, in the exercise of the jurisdiction conferred by this Act, have the same jurisdiction and power as regards the summoning and examination of witnesses, the administration of oaths, and otherwise, as if he were acting in the exercise of his ordinary jurisdiction, and shall be assisted, if he so requires, by the same officers as if he were so acting, and their assistance under this Act shall be considered in fixing their remuneration.

A judicial authority may, if he considers it expedient, transfer the petition to any judicial authority willing to receive it (54 & 55 Vict. c. 65, s. 24).

(3) A judge of county courts and magistrate shall not be required to exercise any powers under this Act so as to interfere with or delay the exercise of his ordinary jurisdiction.

Urgency order.

11.—(1) In cases of urgency where it is expedient, either for the welfare of a person (not a pauper) alleged to be a lunatic, or for the public safety, that the alleged lunatic should be forthwith placed under care and treatment, he may be received and detained in an institution for lunatics, or as a single patient upon an urgency order, made (if possible) by the husband or wife or by a relative of the alleged lunatic, accompanied by one medical certificate.

Forms 8, 9.

(5) . . . . An urgency order, if made before a petition has been presented, shall be referred to in the petition, and if made after the petition has been presented, a copy thereof shall forthwith be sent by the petitioner to the judicial authority to whom the petition has been presented.

Section 28.

28.—(1) Every medical certificate under this Act shall be made and signed by a medical practitioner.

Medical certificates.

(2) Every medical certificate upon which a reception order is founded shall state the facts upon which the certifying medical practitioner has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and a reception order shall not be made upon a certificate founded only upon facts communicated by others.

Time and manner of medical examination of lunatic.

29.—(1) A reception order shall not be made unless the medical practitioner who signs the medical certificate, or where two certificates are required, each medical practitioner who signs a certificate, has personally examined the alleged lunatic in the case of an order upon petition not more than seven clear days before the date of the presentation of the petition, and in all other cases not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each medical practitioner signing a certificate has examined the alleged lunatic separately from the other.

Persons disqualified for signing certificates.

30. A medical certificate accompanying a petition for a reception order or accompanying an urgency order shall not be signed by the petitioner or person signing the urgency order, or by the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner or assistant of such petitioner or person.

Usual medical attendant to sign medical certificate in case of private patient, if possible.

31. One of the medical certificates accompanying a petition for a reception order shall, whenever practicable, be under the hand of the usual medical attendant, if any, of the alleged lunatic. If for any reason it is not practicable to obtain a certificate from such usual medical attendant, the reason shall be stated in writing by the petitioner to the judicial authority to whom the petition is presented, and such statement shall be deemed to be part of the petition.

Patients not to be received under certificates by interested persons.

32.—(2) Neither of the persons signing the medical certificates in support of a petition for a reception order shall be the father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, or the partner or assistant, of the other of them.

Amendment of orders and certificates.

34.—(1) If an order or certificate for the reception of a lunatic is, after such reception, found to be in any respect incorrect or defective, such order or certificate may, within fourteen days next after such reception, be amended by the person who signed the same. No amendment shall be allowed unless the same receives the sanction of the Commissioners, or of some one of them, and (in the case of a private patient) the consent of the judicial authority by whom the order for the reception of the lunatic may have been signed.

(2) If the Commissioners deem any such certificate to be incorrect or defective, they may, by a direction in writing, addressed to the manager of the institution for lunatics, or to the person

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having the charge of a single patient, require the same to be amended by the person who signed the same, and if the same be not duly amended to their satisfaction within fourteen days next after the reception of the patient, the Commissioners, or any two of them, may, if they think fit, make an order for the patient's discharge.

(3) Every order and certificate amended under this section shall take effect as if the amendment had been contained therein when it was signed.

Power to deal with property of small amount.

132.—(1) Where a reception order is made in the case of a lunatic the value of whose real and personal property is under two hundred pounds, and no relative or friend of the lunatic is willing to undertake the management of such property, any judge of county courts having jurisdiction in the place from which the lunatic is sent, may, upon the application of the clerk of the guardians, or a relieving officer of the union from which the lunatic is sent, authorise the clerk or relieving officer, or such other person as the judge by his order appoints, to take possession of and sell and realise the real and personal property of the lunatic, and to exercise all the powers which could be exercised by the legal personal representative of the lunatic if he were dead; and the receipt of the person so authorised shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

(2) The judge, by whom such order is made, may by the same or any subsequent orders give such directions as he thinks fit as to the application of the property of the lunatic for his benefit or in reimbursement of such sums as may have been or may be expended by the guardians of the union for his care or relief, or of the costs or expenses incurred in relation to the lunatic by such guardians, or by the person acting under any such order as aforesaid, or the judge may, if he thinks fit, order that the whole or any part of the proceeds of the lunatic's property be paid into the county court to the credit of an account intituled in the matter of such lunatic, and any sum so paid into court may either be invested in the manner provided by the county court rules in force for the time being, or be paid out of court from time to time to such person as the judge directs, to be held and applied for the benefit of such lunatic, or in or towards such reimbursement as aforesaid, in such manner as the judge directs.

(3) The person acting under any such order shall render an account of his dealings with the lunatic's property to the judge by whom such order was made in such manner as the judge appoints.

County court judge has no jurisdiction to order transfer of stock standing in the name of a lunatic (*Re Noyce* (C. A.), (1892) 1 Q. B. 642; 61 L. J. Q. B. 628).

Order by county court judge.

300. An order may be made by a judge of county courts upon an application by the guardians of any union for payment of the expenses incurred by them under this Act in relation to a lunatic, and such order may be enforced against any property of the lunatic in the same way as a judgment of the county court.

Power to make rules.

338.—(4) The Lord Chancellor and a Secretary of State respectively may by rules provide for preventing interference or delay

in the exercise of the ordinary jurisdiction of the judges of county courts and magistrates respectively by the transfer of petitions and notices or otherwise as such rules may direct. Section 338.

(6) All rules made under the provisions of this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and, if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

339. Subject to rules made under this Act, the forms in the second schedule may be used, wherever applicable, with such modifications as circumstances may require, and if used, shall be deemed to be sufficient. Forms.

THE SECOND SCHEDULE. Sect. 339.

Form 1.

Petition for an Order for reception of a Private Patient.

In the matter of A. B., a person alleged to be of unsound mind. Sects. 4, 5.

To a justice of the peace for
[*or*
To His Honour the judge of the county court of *or* To stipendiary magistrate for .]

The petition of C. D. of [*full postal address and rank, profession, or occupation*] in the county of .

1. I am [*at least twenty-one*] years of age.

2. I desire to obtain an order for the reception of A. B. as a lunatic [*or an idiot or person of unsound mind*] in the asylum [*or* hospital *or* house *as the case may be*] of situate at [*insert a full description of the name and locality of the asylum, hospital, or licensed house, or the full name, address, and description of the person who is to take charge of the patient as a single patient*].

3. I last saw the said A. B. at on the [*some day within* 14 *days before the date of the presentation of the petition*] day of

4. I am the [*here state the connection or relationship with the patient*] of the said A. B. [*or if the petitioner is not connected with or related to the patient state as follows :*]

I am not related to or connected with the said A. B. The reasons why this petition is not presented by a relation or connection are as follows : [*State them.*]

The circumstances under which this petition is presented by me are as follows : [*State them.*]

5. I am not related to or connected with either of the persons signing the certificates which accompany this petition as (*where the petitioner is a man*) husband, father, father-in-law, son, son-in-law, brother, brother-in-law, partner or assistant, (*or where the petitioner is a woman*) wife, mother, mother-in-law, daughter, daughter-in-law, sister, sister-in-law, partner or assistant.

6. I undertake to visit the said A. B. personally or by some one specially appointed by me at least once in every six months while under care and treatment under the order to be made on this petition.

7. A statement of particulars relating to the said A. B. accompanies this petition.

If it is the fact add :

8. The said A. B. has been received in the asylum [*or* hospital *or* house *as the case may be*] under an urgency order dated the

The petitioner therefore prays that an order may be made in accordance with the foregoing statement.

[Signed]

Date of presentation of the petition (*a*). Full Christian and surname.

NOTE.—(*a*) Amended by 54 & 55 Vict. c. 65, s. 23.

FORM 2.

Sects. 4, 5, 11.

Statement of Particulars.

STATEMENT of particulars referred to in the annexed petition [or in the above or annexed order].

The following is a statement of particulars relating to the said A. B. [*if any particulars are not known, the fact is to be so stated.* (*Where the patient is in the petition or order described as an idiot omit the particulars marked*†)] :—

Name of patient, with Christian name at length.
Sex and age.
†Married, single, or widowed.
†Rank, profession, or previous occupation (if any).
†Religious persuasion.
Residence at or immediately previous to the date hereof.
†Whether first attack.
Age on first attack.
When and where previously under care and treatment as a lunatic, idiot, or person of unsound mind.
†Duration of existing attack.
Supposed cause.
Whether subject to epilepsy.
Whether suicidal.
Whether dangerous to others and in what way.
Whether any near relative has been afflicted with insanity.
Names, Christian names, and full postal addresses of one or more relatives of the patient.
Name of the person to whom notice of death to be sent, and full postal address if not already given.
Name and full postal address of the usual medical attendant of the patient.

(Signed)

When the petitioner or person signing an urgency order is not the person who signs the statement, add the following particulars concerning the person who signs the statement.

- Name with Christian name at length.
- Rank, profession, or occupation (if any).
- How related to or otherwise connected with the patient.

FORM 3.

Order for reception of a Private Patient to be made by a Justice appointed under the Lunacy Act, 1890, Judge of County Courts, or Stipendiary Magistrate. Sect. 6.

I, the undersigned E. F., being a justice for specially appointed under the Lunacy Act, 1890 [*or* the judge of the county court of *or* the stipendiary magistrate for] upon the petition of C. D. of [*address and description*] in the matter of A. B. a lunatic, [*or an idiot or person of unsound mind*] accompanied by the medical certificates of G. H. and I. J. hereto annexed, and upon the undertaking of the said C. D. to visit the said A. B. personally or by some one specially appointed by the said C. D. once at least in every six months while under care and treatment under this order, hereby authorise you to receive the said A. B. as a patient into your asylum [*or hospital or house or as a single patient*]. And I declare that I have [*or* have not] personally seen the said A. B. before making this order.

Dated

(Signed) E. F.
A justice for appointed under the above-mentioned act, [*or* The judge of the county court of *or* a stipendiary magistrate.]

To [*to be addressed to the medical superintendent of the asylum or hospital or to the resident licensee of the house in which the patient is to be placed*].

RULES UNDER SECT. 338, SUB-S. 4, OF LUNACY ACT, 1890.

1. If on the presentation to a judge of county courts of a petition for a reception order, or the transmission to a judge of a notice that a lunatic desires to exercise the right of being taken before or being visited by him, such judge is unable to proceed upon such petition or notice without interfering with or delaying the exercise of his ordinary jurisdiction, it shall be lawful for him by writing under his hand, to certify such inability, together with the grounds upon which the certificate is founded, and thereupon to send the petition or notice, and the documents accompanying the same, together with the certificate, by registered post, to the justices' clerk of the petty sessional division or borough where the lunatic is, to be transmitted by the clerk to some other of the judicial authorities mentioned in section 9, sub-section 1, of the Lunacy Act, 1890; and such other judicial authority shall thereupon proceed in the matter as if the petition had been presented or the notice had been transmitted to him in the first instance.

2. A judge of county courts signing a certificate under these rules shall also send a copy thereof to the Lord Chancellor.

3. Certificates under these rules shall be according to the form in the schedule.

Rules.

THE SCHEDULE.

Form of Certificate.

Whereas a petition for a reception order under the Lunacy Act, 1890, in the matter of A. B., a person alleged to be of unsound mind, has been presented to me: [*or* Whereas a notice of the desire of A. B., a person under care and treatment as a lunatic, to be taken, under the Lunacy Act, 1890, before or visited by a judge of county courts, magistrate, or justice of the peace has been transmitted to me:]

Now I, the undersigned, certify that I am unable to proceed upon the said petition [*or* the said notice] without interfering with or delaying the exercise of my ordinary jurisdiction as a judge of county courts. The grounds upon which this certificate is founded are as follows: (*here state them*).

(Signed)
Judge of the county court of .

Dated

(Signed) Halsbury, C.
March 29th, 1890.

COUNTY COURT RULES.—ORDER L., RULE 17.

An application to the judge under sect. 132 or sect. 300 of the Lunacy Act, 1890, shall be made by petition; and the same procedure shall be followed and the same costs allowed as on a petition under Order XXXVIII.

MENTAL DEFICIENCY ACT, 1913.

[3 & 4 Geo. V. c. 28.]

Requirements as to the Making of Orders.

(See Regulations of 2nd April, 1914, *post*, p. 2122.)

Presentation of petitions.

5.—(1) An order of a judicial authority under this Act shall be obtainable upon a private application by petition made by any relative or friend of the alleged defective, or by any officer of the local authority under this Act authorised in that behalf (*a*).

(2) Every petition shall be accompanied by two medical certificates, one of which shall be signed by a medical practitioner approved for the purpose by the local authority or the Board, or a certificate that a medical examination was impracticable, and by a statutory declaration made by the petitioner and by at least one other person (who may be one of the persons who gave a medical certificate) stating—

(*a*) that the person to whom the petition relates is a defective within the meaning of this Act, and the class of defectives to which he is alleged to belong; and

(*b*) that that person is subject to be dealt with under this Act, and the circumstances which render him so subject; and

(*c*) whether or not a petition under this Act, or a petition for a reception order under the Lunacy Acts, 1890 to 1911, has previously been presented concerning that person,

(*a*) See *Rex* v. *Judge Radcliffe*, (1915) 84 L. J. K. B. 2196.

and, if such a petition has been presented, the date thereof and the result of the proceedings thereon; and

(*d*) if the petition is accompanied by a certificate that a medical examination was impracticable, the circumstances which rendered it impracticable.

(3) If a petition is not presented by a relative or by an officer of the local authority, it shall contain a statement of the reasons why the petition is not presented by a relative, and of the connection of the petitioner with the person to whom the petition relates and the circumstances under which he presents the petition.

(4) Where the Board are satisfied that a petition under this section ought to be presented concerning any person, and that the local authority have refused or neglected to cause a petition to be presented, they may direct an inspector or other officer to present a petition, and this section shall apply accordingly.

Procedure on hearing petitions.

6.—(1) Upon the presentation of the petition and such documents as aforesaid, the judicial authority shall either visit the person to whom the petition relates or summon him to appear before him.

(2) Proceedings before the judicial authority may, in any case if the judicial authority thinks fit, and shall, if so desired by the person to whom the petition relates, be conducted in private, and in that case no one except the petitioner, the person to whom the petition relates, his parents or guardian and any two persons appointed for the purpose by the person to whom the petition relates, or by his parents or guardian, and the persons signing the medical certificates and the statutory declaration accompanying the petition shall, without leave of the judicial authority, be allowed to be present.

(3) If the judicial authority is satisfied that the person to whom the petition relates is a defective and is also satisfied that he is subject to be dealt with under this Act, the judicial authority may, if he thinks it desirable to do so in the interests of such person, make an order either ordering him to be sent to an institution the managers of which are willing to receive him, or appointing a suitable person to be his guardian, and the order shall state the class of defectives to which he belongs, and the circumstances which render him subject to be dealt with under this Act:

Provided that—

(*a*) where the petition is not presented by the parent or guardian, the order shall not be made without the consent in writing of the parent or guardian, unless it is proved to the satisfaction of the judicial authority that such consent is unreasonably withheld, or that the parent or guardian cannot be found, but consent shall not be deemed to be unreasonably withheld if withheld with the *bonâ fide* intention of benefiting the defective; and

(*b*) nothing in this section shall prevent an order being made, notwithstanding that the person to whom the petition relates does not appear to the judicial authority to belong to the class of defectives to which he is in the petition

Section 6.

alleged to belong, if the judicial authority is satisfied that he is a defective.

(4) If the judicial authority is not satisfied that the person to whom the petition relates is a defective, and subject to be dealt with under this Act, or that it is desirable in the interests of such person that an order should be made, the judicial authority may, if he thinks fit, adjourn the case for a period not exceeding fourteen days for further evidence or information, and may order that the person to whom the petition relates shall submit himself to medical examination, or may dismiss the petition:

Provided that, unless the petition is dismissed, the judicial authority shall order a medical examination in any case where the petition was accompanied by a certificate that a medical examination was impracticable.

Variation of orders.

7.—(1) Where an order has been made that a defective be placed under guardianship the judicial authority which made the order, or any other judicial authority, or, where the original order was not made by a judicial authority, any judicial authority may, on application being made for the purpose by the guardian or by the Board or by the local authority, and on being satisfied that the case is or has become one unsuitable for guardianship, order that the defective be sent to an institution.

(2) A person appointed to be guardian of a defective may, on the application of the local authority or of the Board or of any other person who appears to be interested, be removed from his office by any such judicial authority as aforesaid, and, where a person appointed to be guardian of a defective dies, or resigns his office, or is removed from his office, such judicial authority as aforesaid may, on the like application, appoint a suitable person to act in his stead.

(3) An order under this section shall not be made without giving to the local authority and, where practicable, to the relative or other person who presented the original petition and to the parent or guardian of the defective, an opportunity of being heard.

Procedure in cases of persons guilty of offences, etc. 8 Edw. VII. c. 57.

8.—(1) On the conviction by a court of competent jurisdiction of any person of any criminal offence punishable in the case of an adult with penal servitude or imprisonment, or on a child brought before a court under section fifty-eight of the Children Act, 1908, being found liable to be sent to an industrial school, the court, if satisfied on medical evidence that he is a defective within the meaning of this Act, may either—

(*a*) postpone passing sentence or making an order for committal to an industrial school, and direct that a petition be presented to a judicial authority under this Act with a view to obtaining an order that he be sent to an institution or placed under guardianship; or

(*b*) in lieu of passing sentence or making an order for committal to an industrial school, itself make any order which if a petition had been duly presented under this Act the judicial authority might have made, which order shall have the like effect as if it had been made by a judicial authority on a petition under this Act:

Section 8.

Provided that, if the court is a court of summary jurisdiction and the case is one which the court has power to deal with summarily, the court, if it finds that the charge is proved, may give such directions or make such order as aforesaid without proceeding to a conviction, and such a person shall for the purposes of this Act be deemed to be a person found guilty of an offence.

(2) The court may act either on the evidence given during the trial or other proceedings, or may call for further medical or other evidence.

(3) Where the court so directs a petition to be presented against a person, it may order him to be detained in an institution for defectives or in a place of safety for such time as is required for the presentation of the petition and the adjudication thereof.

(4) Where it appears to any court of summary jurisdiction by which a person charged with an offence is remanded or committed for trial that such person is a defective, the court may order that pending the further hearing or trial he shall be detained in an institution for defectives, or be placed under the guardianship of any person on that person entering into a recognisance for his appearance.

(5) Where it appears to the police authority that any person charged with an offence is a defective, they shall communicate with the local authority, and it shall be the duty of the police authority to bring before the court such evidence as to his mental condition as may be available:

Provided that, where it is intended to bring such evidence before the court, the police authority shall give notice of the intention to the person charged, and to his parent or guardian, if known.

Procedure in case of defectives undergoing imprisonment, etc.

9. Where the Secretary of State is satisfied from the certificate of two duly qualified medical practitioners that any person who is undergoing imprisonment (except imprisonment under civil process) or penal servitude, or is undergoing detention in a place of detention by order of a court, or in a reformatory or industrial school or in an inebriate reformatory, or who is detained in a criminal lunatic asylum, is a defective, the Secretary of State may order that he be transferred therefrom and sent to an institution for defectives, the managers of which are willing to receive him, or that he be placed under guardianship, and any order so made shall have the like effect as if it had been made by a judicial authority on petition under this Act.

Judicial authorities.

19.—(1) Any judge of county courts, police or stipendiary magistrate, or specially appointed justice who is a judicial authority for the purposes of the Lunacy Acts, 1890 to 1911, shall be a judicial authority for the purposes of this Act, and the number of justices specially appointed to be judicial authorities under those Acts shall be such as may be considered necessary to exercise the powers conferred by this Act as well as by those Acts on a judicial authority (*a*).

NOTE.—(*a*) Justices sitting as a judicial authority under this Act have no power to state a case, as their functions are ooly administrative (*Newman* v. *Foster*, (1917) 86 L. J. K. B. 360. By analogy with this case a county court judge exercising such jurisdiction is only acting in an administrative capacity).

Section 19. (2) Every judicial authority shall, in the exercise of the jurisdiction conferred by this Act, have the same jurisdiction and power as regards the summoning and examination of witnesses, the administration of oaths, costs, and otherwise, as if he were acting in the exercise of his ordinary jurisdiction, and shall be assisted, if he so requires, by the same officers as if he were so acting, and their assistance under this Act shall be considered in fixing their remuneration

PROVISIONAL REGULATIONS MADE BY THE SECRETARY OF STATE UNDER THE MENTAL DEFICIENCY ACT, 1913.

(In so far as they Affect the Duties of a County Court Judge, as a "Judicial Authority" under the Act.)

I hereby certify in pursuance of Section 2 of the Rules Publication Act, 1893, that on account of urgency the following Regulations shall come into immediate operation, and in pursuance of the powers conferred on me by the Mental Deficiency Act, 1913, I hereby make the following Regulations to come into operation forthwith as Provisional Regulations :—

1. These Regulations may be cited as the Mental Deficiency Act Provisional Regulations, 1914.

2. In these Regulations, unless the context otherwise requires,
"The Act" means the Mental Deficiency Act, 1913.
"The Board" means the Board of Control.
"A Commissioner" or "Commissioners" means a Commissioner or Commissioners of the Board of Control.
"Guardian," except when used in the phrase "parent or guardian," means a guardian appointed under the Act.
Other words have the same meaning as in the Act.

3. The penalty for a breach of any of these Regulations shall, where no other penalty is prescribed, be a penalty not exceeding a fine of £20.

25. Where proceedings are taken for the placing of a defective under guardianship, the local authority which may become responsible for his maintenance shall lay before the judicial authority the names of such persons, including relatives of the defective, as are in their opinion suitable persons to undertake the duties of guardianship under this Act.

26. No person who already has charge of a defective or a person certified under the Lunacy Acts shall be recommended to the judicial authority as a suitable person to undertake the duties of guardianship without the consent of the Board.

27. The local authority, on becoming aware that a defective for whose maintenance they are responsible is or has become unsuitable for guardianship or that a guardian is unfit for the office of guardian or has died or resigned or abandoned his office, shall take all necessary steps for the care and protection of the defective.

PROCEDURE ON PETITIONS. Reg. 30.

30. No person shall present a petition unless he is at least 21 years of age, and has, within 14 days before the presentation of the petition, personally seen the alleged defective.

31. No petition shall be presented unless signed by the petitioner and accompanied by the certificate or certificates and the statutory declaration required by the Act and a statement of particulars.

32. If the petition is presented by a relative or friend, the petitioner shall in the petition undertake that he will personally, or by someone specially appointed by him, visit the defective once at least in every six months, and the undertaking shall be recited in the order.

33.—(*a*) The judicial authority shall visit the defective or summon him to appear before him as soon as practicable after receiving the petition.

(*b*) After seeing the alleged defective, the judicial authority shall either forthwith consider the petition and make an order thereon or dismiss the same, or shall appoint as early a time as practicable, not being more than seven days from the presentation of the petition for considering the same, and notice of the time appointed shall be given to the petitioner, the alleged defective, the parent or guardian, and the local authority (if any) concerned.

(*c*) If the proceedings are to be conducted in private, the notice shall so state, and shall also state what persons will be allowed to be present.

34. If a petition is dismissed, the judicial authority shall deliver to the petitioner a statement in writing under his hand of his reasons for dismissing the same, and shall send a copy of such statement to the Board.

35. If, after a petition has been dismissed, another petition is presented as to the same alleged defective, the person presenting such other petition shall obtain from the Board, and present with his petition, a copy of the statement referred to in paragraph 34.

36. Any judicial authority making or refusing to make an order, shall, if so required by the Board, give to them all such information as they may require as to the circumstances in which the order was made or refused.

37.—(*a*) One of the medical certificates accompanying the petition shall whenever practicable be under the hand of the usual medical attendant, if any, of the alleged defective. If, for any reason, it is not practicable to obtain a certificate from such usual medical attendant, the reason shall be stated in the petition.

(*b*) Every medical certificate accompanying a petition shall state the facts upon which the certifier has formed his opinion that the alleged defective is a defective, distinguishing facts observed by himself from facts communicated by others, and an order shall not be made upon a certificate which is not founded wholly or in part upon facts observed by the certifier.

(*c*) An order shall not be made unless each medical practitioner who signs a certificate has, separately from the other medical practitioner, personally examined the alleged defective not more

Reg. 37.

than seven clear days before the date of the presentation of the petition.

(*d*) A medical certificate accompanying a petition shall not be signed by the petitioner, or by the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner, or assistant of the petitioner.

(*e*) Neither of the persons signing the medical certificates accompanying the petition shall be the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner, or assistant of the other of them.

(*f*) A medical certificate shall not be signed by a visitor unless he is ordered by the judicial authority to examine the alleged defective.

(*g*) An order shall not be made sending any defective to an institution or certified house or placing him under guardianship where any certificate accompanying the petition has been signed by any of the following persons :—

(i.) A manager or owner of the institution or certified house, or the person appointed guardian of the defective.

(ii.) Any person interested in the payments on account of the defective.

(iii.) Any regular medical attendant of the institution or certified house.

(iv.) The husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner, or assistant of any of the foregoing persons.

(*h*) Where the person who joins with the petitioner in making the statutory declaration is not one of the persons who gave a medical certificate the following provisions shall apply to him :—

(i.) He or she shall not be the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner or assistant of the petitioner or of either of the persons who gave the medical certificates.

(ii.) The preceding sub-section (*g*) shall apply as if he or she had signed one of the medical certificates.

38. The documents upon which an order is founded shall be attached to the order, and the order and documents shall be delivered or sent by post to the petitioner, and shall be delivered by him or his agent to the superintendent of the institution or certified house into which the defective is to be received or to the person appointed to be his guardian.

39. An order made upon a petition, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner, or any person authorised by him, to take the defective and convey him to the place mentioned in such order, and for the defective's reception and detention therein, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order.

40. At any time before an order has been executed, the judicial authority who made it, or, if he is not available, any other judicial authority, may, on being satisfied that it is necessary or

expedient so to do, revoke the order, or may vary the same by substituting another institution or certified house for the institution or certified house, or another guardian for the guardian named in the order; and an order so varied shall take effect as if the substituted institution, certified house, or guardian had been originally named therein.

41.—(1) When a patient has been received under an order into an institution or certified house or under guardianship—

(*a*) If the order or any document upon which the same is founded be found to be in any respect incorrect or imperfect it may, with the sanction of a Commissioner, be amended or supplemented within fourteen days from the reception of the patient.

(*b*) If the Board or any two Commissioners deem the order or any document upon which the same is founded to be incorrect or defective they may authorise such order or document to be amended or supplemented as they shall, by notice to the superintendent of the institution or certified house or to the guardian, direct. If the order or document is not amended or supplemented in accordance with the direction so given within fourteen days or such longer period as may be allowed for the purpose, the Board or any two Commissioners may, if they think fit, make an order for the patient's discharge.

(2) Every order and document amended or supplemented under this section shall take effect as if the amendment or supplementary matter had been contained therein when it was signed.

42. No proceedings on a petition shall be conducted in a police court or other court or room used for the hearing of criminal charges.

43. The forms P1 to P9 in the Schedule hereto or forms to the like effect may be used wherever applicable with such modifications as circumstances require.

TRANSFER OF PATIENT UNDER GUARDIANSHIP TO AN INSTITUTION OR CERTIFIED HOUSE OR TO ANOTHER GUARDIAN.

235. When a patient ordered to be placed under guardianship is or becomes unsuitable for guardianship, the local authority, in default of application by the person appointed guardian, shall, unless the Board otherwise direct, apply to a judicial authority for an order that the patient be sent to an institution or certified house.

236. The local authority, in default of application by any person who appears to be interested, shall, unless the Board otherwise direct, apply to a judical authority for an order

(*a*) for the removal of any person appointed guardian who is or becomes unsuitable, or abandons his charge;

(*b*) for the appointment of a suitable person in the place of a person appointed guardian who has been removed, has died, or has resigned, or is about to resign his office.

Reg. 237.

237. "The local authority" for the purpose of these regulations shall mean the local authority (if any) paying or contributing to the expenses of the patient's guardianship, or, if there be none such, the local authority within whose area the patient is detained under guardianship.

Dated the 2nd day of April, 1914.

(Sd.) R. McKENNA,
One of His Majesty's Principal
Secretaries of State.

SCHEDULE.

[Form P1.]

PETITION FOR AN ORDER SENDING A DEFECTIVE TO AN INSTITUTION OR CERTIFIED HOUSE OR PLACING HIM UNDER GUARDIANSHIP, PRESENTED BY A RELATIVE OR FRIEND.

In the matter of A. B. , of , in the county [1] of , an alleged defective.

To S. T. a judicial authority [2] under the Mental Deficiency Act, 1913.

The petition of C. D. , of , in the county [1] of , sheweth as follows:—

1. The petitioner is over 21 years of age.

2. The petitioner is [3] to the said A. B.

[*or* 2. The petitioner is a friend but not a relative of the said A. B.

The reasons why this petition is not presented by a relative are as follows:—

The petitioner's connection with the said A. B. is that:—

and he [*or* she] presents the petition in the following circumstances:—

] [4]

3. The petitioner last saw the said A. B. at on the day of [5]

4. The said A. B. is a defective within the meaning of the said Act, being [6] and is subject to be dealt with under the said Act.

5. The petitioner undertakes to visit, personally or by someone specially appointed by him [*or* her], once at least in every six months, the said A. B. while detained [*or* kept under guardianship] under the order made on this petition.

6. A statement of particulars concerning the said A. B. accompanies this petition.

7. [The reason why the usual medical attendant of the said A. B. has not signed one of the medical certificates accompanying this petition is:—] [7]

The petitioner therefore prays that an order may be made for sending the said A. B. to [8] [*or* for placing the said A. B. under the guardianship of [8]].

Dated .

Signed .

Date of presentation

[1] *Or* county borough.

[2] *I.e.*, judge of county courts, a police or stipendiary magistrate, or a justice specially appointed under the Lunacy Act, 1890.

[3] If a relative, state the relationship, see footnote.*

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* Relative, for the purposes of this Act means—husband or wife, or a lineal ancestor or lineal descendant, or lineal descendant of an ancestor, not more remote than great-grandfather or great-grandmother.

[4] Erase the bracketed part if the petitioner is a relative.
[5] The petitioner must have seen the alleged defective within fourteen days before presenting the petition.
[6] State whether an idiot, an imbecile, a feeble minded person, or a moral imbecile.
[7] Erase this paragraph if one of the medical certificates is signed by the usual medical attendant.
[8] The name of the institution, certified house, or guardian proposed may be inserted at any time before an order is made.

[Form P2.]

PETITION FOR AN ORDER SENDING A DEFECTIVE TO AN INSTITUTION OR CERTIFIED HOUSE OR PLACING HIM UNDER GUARDIANSHIP, PRESENTED BY AN OFFICER OF THE LOCAL AUTHORITY.

In the matter of A. B. , of , in the county [1] of , and alleged defective.

To S. T. a judicial authority [2] under the Mental Deficiency Act, 1913.

The petition of E. F. , of , in the county [1] of , sheweth as follows :—

1. The petitioner is over 21 years of age and is an officer of the local authority of the county [1] of , authorised to present petitions under Section 5 of the said Act.

2. The petitioner last saw the said A. B. at on the day of [3].

3. The said A. B. is a defective within the meaning of the said Act, being [4] and is subject to be dealt with under the said Act.

4. A statement of particulars concerning the said A. B. accompanies this petition.

5. [The reason why neither of the certificates accompanying this petition has been signed by the usual medical attendant of the said A. B. is .] [5]

The petitioner therefore prays that an order may be made for sending the said A. B. to ,[6] [*or* for placing the said A. B. under the guardianship of [6]].

The petitioner further prays that an order may be made requiring the said A. B., or M. N. being a person liable to maintain him, to contribute.

Dated .

Signed .

Date of presentation .

[1] Or county borough.
[2] *I.e.*, a judge of county courts a police or stipendiary magistrate, or a justice specially appointed under the Lunacy Act, 1890.
[3] The petitioner must have seen the alleged defective within fourteen days before presenting the petition.
[4] State whether an idiot, an imbecile, a feeble minded person, or a moral imbecile.
[5] Erase this paragraph if one of the medical certificates is signed by the usual medical attendant.
[6] The name of the institution, certified house, or guardian proposed may be inserted at any time before an order is made.

[Form P3.]

STATEMENT OF PARTICULARS TO ACCOMPANY PETITION.

The following are the particulars concerning A. B. referred to in the annexed petition :—

Names in full of defective

Sex and age and date of birth if known

Married, single, or widowed

Age when mental deficiency first observed

In case of a female married or widowed, maiden name and name under any previous marriage

Rank, profession, or previous occupation (if any)

Religious persuasion

Residence

Supposed cause of mental deficiency

If previously detained under the Lunacy Acts, Idiots Act, or Mental Deficiency Act, or placed in an Approved Home, or under guardianship, or under care as a defective, or in a special school or class for mental defectives, when and where

Whether subject to epilepsy

Whether suicidal

Whether of violent or dangerous propensities, and in what way these are shown.

Whether any near relative has been insane or mentally defective

Names in full and postal addresses of one or more relatives of the defective

Name in full and postal address (if not already given) of the person to whom notice of death is to be sent

Name and postal address of the usual medical attendant of the defective

Dated .

Signed .

[Form P4.]

MEDICAL CERTIFICATE.

In the matter of A. B. , of , in the county[1] of ; an alleged defective.

I, the undersigned, K. L. , do hereby certify as follows :—

1. I am a person registered under the Medical Acts and I am in the actual practice of the medical profession [and approved by the Local Authority for the county[1] of *or* by the Board of Control, for the purpose of giving medical certificates under the above Act] [and the usual medical attendant of the said A. B.].

2. On the day of ,[2] at , in the county[1] of , separately from any other practitioner, I personally examined the said A. B. and satisfied myself that he was .[3]

3. I formed this conclusion on the following grounds, viz. :—

(*a*) Facts observed by myself—

(i.) at the time of examination ;

(ii.) previously to examination.[4]

(*b*) Facts communicated by others.

4. The said A. B. appeared to me to be [*or* not to be] in a fit condition of bodily health to be removed.

Dated .

Signed .
[5]

[1] *Or* county borough.
[2] The examination must have taken place not more than seven clear days before the date of the presentation of the petition.
[3] State whether an idiot, an imbecile, a feeble-minded person, or a moral imbecile.
[4] Give date when observed.
[5] Insert postal address.

[Form P5.]

CERTIFICATE AS TO THE IMPRACTICABILITY OF A MEDICAL EXAMINATION.

In the matter of A. B. , of , in the county [1] of , an alleged defective.
I, the undersigned, O. P. , of , in the county [1] of , hereby certify that a medical examination of the above-named A. B. is impracticable.

Dated .

Signed .

[1] *Or* county borough.

[Form P6.]

STATUTORY DECLARATION TO ACCOMPANY PETITION.

In the matter of A. B. , of , in the county [1] of , an alleged defective.
We, the undersigned, C. D. , of , in the county [1] of , and I. J. , of , in the county [1] of , solemnly and sincerely declare as follows :—

1. I, the said C. D. , am the person who presents the accompanying petition.

2. A. B. named in the accompanying petition, is a defective within the meaning of the Mental Deficiency Act, 1913, being .[2]

3. The said A. B. is subject to be dealt with under the said Act by reason of the following circumstances :—[3]

4. A petition under the said Act [*or* a petition for a reception order under the Lunacy Acts, 1890–1911] was presented on the day of with the following result :—[4]

5. A medical examination of the said A. B. is impracticable by reason of the following circumstances :—[5]

And we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.
Declared by the said , at , on the day of .
Before me

Signed .

Circumstances which render a Defective liable to be dealt with, upon Petition, under the Mental Deficiency Act, 1913.

He is found	(*a*) neglected ;
	(*b*) abandoned ;
	(*c*) without visible means of support ;
	(*d*) cruelly treated ;
He has been	(*e*) found guilty of a criminal offence, viz. :—
	(*f*) ordered ..... to be sent to a certified
	(*g*) found liable to be ordered ..... Industrial School ;
He is	(*h*) undergoing detention in an Institution for Lunatics ;
	(*i*) an habitual drunkard within the meaning of the Inebriates Acts, 1879–1900 ;
He is	(*j*) over the age of seven, and notice has been given by the Local Education Authority of ..... to the Local Authority of ..... that—
She	(*k*) has recently given birth to an illegitimate child, and was at the time of such birth in receipt of poor relief ;
She	(*l*) is pregnant of an illegitimate child and is in receipt of poor relief.

[1] *Or* county borough.

[2] State whether an idiot, an imbecile, a feeble-minded person, or a moral imbecile.

[3] Insert here such of the circumstances stated on the back of this form as are applicable to this case.

[4] If the previous petition was dismissed a copy of the statement of reasons for the dismissal must be obtained from the Board and appended hereto.

[5] Erase this paragraph if a medical examination has been made.

[Form P7.]

ORDER SENDING A DEFECTIVE TO AN INSTITUTION OR CERTIFIED HOUSE OR PLACING HIM UNDER GUARDIANSHIP.

I, the undersigned, S. T. ....., being a Justice for ....., specially appointed under the Lunacy Act, 1890,[1] having considered the documents hereto annexed, namely :—

The petition of C. D. ..... in the matter of A. B. ..... :

The medical certificates of K. L. ..... and M. N. ..... :

[*or* the certificate of O. P. ..... that a medical examination of the said A. B. ..... is impracticable :]

The statutory declaration made by the said C. D. ..... and by I. J. ..... :

[The consent in writing of Q. R. ..... the [2] of the said A. B. [3] :]

[The undertaking of the said C. D. ..... to visit the said A. B. personally or by someone specially appointed by the said C. D. ..... once at least in every six months while the said A. B. ..... is detained [*or* kept under guardianship] under this order [4] :]

Having personally seen the said A. B. ..... [and having caused him to be medically examined by U. V. ....., of .....,.....] [5].

Hereby find—

That the said A. B. ..... is a defective within the meaning of the Mental Deficiency Act, 1913, being [6] :

Is subject to be dealt with under the same Act by reason of the following circumstances :

[That the consent of Q. R. ..... the [2] of the said A. B. ..... has been unreasonably withheld ;

or that no parent or guardian of, or person who undertakes or performs the duty of a parent or guardian towards, the said A. B. can be found] :[3]

And I hereby order the said A. B. who is a [7] to be sent to [8]

[*or* And I appoint M. N. of to be the guardian of the said A. B.]

Dated .

Signed .

NOTE.—Where the council of a county or county borough is to be responsible for the expenses of a defective ordered to be sent to a certified institution or placed under guardianship, the order must recite that the council has been given the opportunity of being heard, and must find that the defective resides within the area of the council; and if the institution to which such defective is ordered to be sent is not provided by the council, the order must either find that there is no room in an institution suitable for him provided by the council, or must be expressed to be made with the consent of the council.

[1] *Or* the judge of the county court of , *or* the stipendiary magistrate for, *or* a metropolitan police magistrate.

[2] Father, mother, guardian, *or* person who undertakes or performs the duty of a parent or guardian.

[3] One of these paragraphs to be filled up if the petition is not presented by the parent or guardian.

[4] Erase this paragraph if the petition is presented by the officer of the local authority.

[5] Erase words in brackets if the petition is accompanied by medical certificates.

[6] State whether an idiot, an imbecile, a feeble-minded person, *or* a moral imbecile.

[7] State religious persuasion, if any.

[8] Insert name of the institution or certified house, or guardian.

[Form P8.]

STATEMENT OF PARTICULARS CONCERNING DEFECTIVE PLACED BY PARENT OR GUARDIAN IN A CERTIFIED INSTITUTION OR HOUSE.

The following are the particulars concerning A. B. of ,[1] placed by me in [2] [*or* under the guardianship of [3]] :—

Names in full of defective

Sex, age and date of birth, if known

Married, single, or widowed

Age when mental deficiency first observed

In case of a female, married or widowed, maiden name and name under any previous marriage

Rank, profession, or previous occupation (if any)

Religious persuasion

Residence

Supposed cause of mental deficiency

If previously detained under the Lunacy Acts, Idiots Act, or Mental Deficiency Act, or placed in an Approved Home, or under guardianship, or under care as a defective or in a special school or class for mental defectives, when and where

Whether subject to epilepsy

Whether suicidal

Whether dangerous to others and in what way

Whether any near relative has been insane, or mentally defective

Names in full and postal addresses of one or more relatives of the defective
Name in full and postal address (if not already given) of the person to whom notice of death is to be sent
Name and postal address of usual medical attendant of the defective

Dated .
Signed , of ,[4] [5] of the said A. B. .

[1] State whether an idiot, an imbecile, a feeble-minded person under the age of twenty-one, or a moral imbecile under the age of twenty-one.
[2] Insert name of certified institution or house.
[3] Insert name of guardian.
[4] Insert postal address.
[5] If a feeble-minded person, or a moral imbecile, the statement must be signed by the father or mother. If an idiot or imbecile the statement must be signed by father, mother or guardian, or the person who undertakes or performs towards the defective the duty of a parent or guardian.

[Form P9.]

CERTIFICATE BY A JUDICIAL AUTHORITY IN THE CASE OF A FEEBLE-MINDED PERSON OR A MORAL IMBECILE UNDER THE AGE OF TWENTY-ONE PLACED BY HIS PARENT IN AN INSTITUTION OR CERTIFIED HOUSE.

To be appended to each Medical Certificate if the Defective is not an Idiot or Imbecile.

I, the undersigned , being a Justice for specially appointed under the Lunacy Act, 1890,[1] do hereby certify that, having enquired into the case of A. B. , of , in the county [2] of , I am satisfied that the said A. B. is a [3] within the meaning of the Mental Deficiency Act, 1913.

Dated .

Signed .

[1] *Or* the judge of the county court of , *or* the stipendiary magistrate for , *or* a metropolitan police magistrate.
[2] *Or* county borough.
[3] State whether a feeble-minded person or a moral imbecile.

MARRIED WOMEN'S PROPERTY ACT, 1882.

[45 & 46 Vict. c. 75.]

Jurisdiction.]—Besides such jurisdiction as the county court has under its ordinary legal and equitable jurisdiction, the judge of the county court of the district in which either party resides, irrespective of the value of the property in dispute, has, under sect. 17, upon application by summons in a summary way, power to make such order with respect to the title to or possession of property as to which there is any question between husband and wife as he shall think fit, subject in all proceedings in a county court in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed to being removed at the option of the defendant as of right into the High Court by *certiorari* or otherwise as may be prescribed.

The said judge has also under sect. 10, upon an application under sect. 17, power to order a fraudulent investment made by the wife with money of the husband, and the dividends thereof, to be transferred and paid to the husband.

By sect. 11, a policy of assurance effected by a man on his own life, but expressed to be for the benefit of his wife and/or his children, and by wife on her own life for the benefit of her husband and/or her children, shall create a trust in favour of the objects therein named. If at the time of the death of the insured, or at any time afterwards, there is no trustee, or it is expedient to appoint a new trustee, such appointment may be made by a county court having jurisdiction under the Trustee Acts, that is in any case where the amount does not exceed 500*l.*

Practice.]—This is determined by Order XLVI. (*post*, p. 2135). As to sect. 17, by Rule 2 of the said Order, particulars of the question to be submitted to the court must be filed, and thereupon a summons (Form 433) shall be issued, paying the same fee as upon the entry of a plaint; all subsequent proceedings as in an ordinary case; as to sect. 11, Rule 1 of the said Order determines the procedure.

Costs.]—The judge shall direct upon what scale they are to be taxed.

Appeal.]—Any order made by the judge under sect. 17 is subject to an appeal as in an equitable suit.

Fraudulent investments with money of husband.

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband, to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

Section 10.

Moneys payable under policy of assurance not to form part of estate of the insured.

11. A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly.

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the Trustee Act, 1850, or the Acts amending and extending the same. The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy or for the value thereof in whole or in part.

13 & 14 Vict. c. 60.

Questions between husband and wife as to property to be decided in a summary way.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think

fit (*a*): Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of *certiorari* or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

Section 17.

NOTE.—(*a*) A judge of the High Court cannot refer the whole subject matter of an originating summons under this section to an official referee for trial, and *quære* whether the Court has jurisdiction to refer a question of account arising in the dispute under sect. 14 of the Arbitration Act, 1889 (*In re Married Women's Property Act*, 1882, *between W. A. Humphery and H. A. Humphery*, (1917) 2 K. B. 72; 86 L. J. K. B. 775). *Note.*—By like reasoning a county court judge cannot refer a question under this section to arbitration, but must try it himself.

NOTE.—A married woman cannot sue her husband in tort (*Hulton* v. *Hulton*, (1916) 2 K. B. 642; (1917) 86 L. J. K. B. 51. On appeal (1917) 1 K. B. 813; 86 L. J. K. B. 633) though she may claim the rectification of a contract entered into by deed with her husband on the ground that she was induced to sign it by misrepresentation (*ib.*).

THE COUNTY COURT RULES, 1903.

ORDER XLVI.

THE MARRIED WOMEN'S PROPERTY ACT, 1882.

1. An application to the court for the appointment of a trustee or new trustee under section 11 of the Married Women's Property Act, 1882, shall be made by petition, and the same procedure shall be followed and costs allowed as on any other petition to the court, regard being had to the amount of the subject matter of the petition.

Applications under 45 & 46 Vict. c. 75, s. 11.

2. Where application is made under section 17 of the Married Women's Property Act, 1882, particulars of the question to be submitted to the decision of the court shall be filed, and thereupon a summons shall be issued according to the form in the Appendix, and the same fee shall be taken as upon the entry of a plaint. All subsequent proceedings shall be had as if the proceeding had

Summons and particulars on application under 45 & 46 Vict. c. 75, s. 17.

Form 433.

been commenced by the entry of a plaint, and the proceeding shall be deemed to be a plaint; and the judge shall direct upon what scale the costs of the proceedings shall be taxed.

Costs.

FORM 433.

Summons.

45 & 46 Vict. c. 75. Order XLVI. r. 2.

The Married Women's Property Act, 1882.

You are hereby summoned at the instance of of , to appear at a county court to be holden at , on the day of , at the hour of in the noon, when the court will proceed to consider the question hereunto annexed, and to make an order with respect to the property in dispute.

Dated this day of .

Registrar.

MATRIMONIAL CAUSES ACT, 1857.

[20 & 21 VICT. C. 85.]

By sect. 21, a wife deserted by her husband may apply to a police magistrate or justices in petty sessions for an order protecting her earnings and property acquired since such desertion from her husband and his creditors; if such order is made by a magistrate, it should within ten days be entered with the registrar of the county court within whose jurisdiction the wife is resident. These provisions as to time are, however, directory, not imperative (*In the Goods of Betty Farraday*, (1861) 31 L. J. P. & M. 7).

The registrar is entitled to a fee of 5*s*. for sealing and entering the order and transmitting a sealed copy to the registrar of county courts judgments.

It is not considered necessary to set out the section.

The order must state the time at which the desertion commenced (21 & 22 Vict. c. 108, s. 9).

[For MENTAL DEFICIENCY ACT, 1913, see LUNACY ACT, pp. 2109—2132.]

[For MERCHANT SHIPPING ACTS, 1894, 1897, and 1906, see Part III.]

THE MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.

[47 & 48 VICT. C. 70.]

Under this Act claims against any person for expenses incurred by or on behalf of a candidate at a municipal election must be sent in within fourteen days after the day of election, and must be paid within twenty-one days after such day (sect. 21, sub-s. 1).

Jurisdiction.]—The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in, and any expense to be paid after the times above named (sect. 21, sub-s. 6).

It is rather singular that provision is made by subsequent sub-sections as

to the terms on which the application may be granted by the High Court or an election court, but none as to county courts (sect. 21, sub-ss. 7, 8, 9). Doubtless, however, the provision may be taken as a guide in the county court.

1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. Short title.

* * * * *

21.—(1) Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor on account of or in respect of the conduct or management of such election shall be sent in within fourteen days after the day of election, and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election, and not otherwise, and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice, but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section. Sending in claims and making payments for election expenses.

(2) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all expenses incurred by such agent on account of or in respect of the conduct or management of such election, and if he fails so to do shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3) Within twenty-eight days after the day of election of a councillor every candidate at such election shall send to the town clerk a return of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompanied by a declaration by the candidate made before a justice in the form set forth in the fourth schedule to the Act, or to the like effect.

(4) After the expiration of the time for making such return and declaration the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses), or until the date of the allowance of such authorised excuse, as is mentioned in this Act, sit or vote in the council, and if he does so shall forfeit fifty pounds for every day on which he so sits or votes to any person who sues for the same.

(5) If the candidate without such authorised excuse as is mentioned in this Act fails to make the said return and declaration he shall be guilty of an illegal practice, and if he knowingly makes the said declaration falsely he shall be guilty of an offence . . . and such offence shall also be deemed to be a corrupt practice within the meaning of this Act. [Words repealed 1 & 2 Geo. V. c. 6.]

(6) The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section,

Section 21.

and a return of any sum so paid shall forthwith after payment be sent to the town clerk.

(7) If the candidate applies to the High Court or an election court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence, or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application and on production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as to the court seems fit, make such order for allowing the authorised excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration, as to the court seems just.

(8) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10) The return and declaration sent in pursuance of this Act to the town clerk shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

(11) After the expiration of the said twelve months the town clerk may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

* * * * *

Service of notices.

33. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough, whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at or sending the same by post by a registered letter to, his last known place of abode in the said borough, or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

Exemption from provisions as to maximum expenses.

37. The provisions of this Act which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct

or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the first schedule to this Act.

FIRST SCHEDULE.

ELECTIONS TO WHICH THIS ACT EXTENDS.

Member of local board, as defined by the Public Health Act, 1875; member of improvement commissioners, as defined by the Public Health Act, 1875; guardian elected under the Poor Law Amendment Act, 1834; member of school board.

Practice is governed by—

COUNTY COURT RULES.—ORDER L. RULE 16.

An application to the court under sub-sect. 6 of sect. 21 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, shall be intituled in the matter of the Act and of the election, and shall be made in accordance with the rules for the time being in force as to interlocutory applications, and supported by affidavit. The court may direct notice of such application to be given to any rival candidate at the election, or to the returning officer.

As to service of notices, see sect. 33; as to interlocutory applications, see Part I., Order XII. r. 11.

NATIONAL INSURANCE ACT, 1911.

[1 & 2 GEO. V. c. 55.]

NATIONAL INSURANCE ACT, 1913.

[3 & 4 GEO. V. c. 37.]

Jurisdiction is given under the 1911 Act by sect. 66 to the county court, and under sect. 68 to the registrar of the county court. By sect. 66, sub-s. 1 (a), when any question arises as to whether any employment or any class of employment is, or will be, employment within the meaning of that part of the Act, or as to whether a person is entitled to become a voluntary contributor, such question shall be determined by the Insurance Commissioners, but any person aggrieved by the decision of the Insurance Commissioners on any question arising under sub-s. 1 (a), may appeal to the county court. Also by sect. 27 (2) of the 1913 Act if any question arises as to the person who is the employer of an employed contributor such question shall be decided in like manner as a question under sect. 66, sub-s. 1 (*a*) of the 1911 Act.

Under the 1911 Act, sect. 68, sub-s. 1, certain protection against distress for rent, execution, and ejectment is given to an insured person where the medical practitioner attending such insured person certifies that the taking of any of the aforesaid proceedings would endanger his life, and such certificate has been recorded in manner provided by sub-s. 4 of the said section; but any person who disputes the accuracy of the certificate may apply to the registrar of the county court, who may make an order cancelling or modifying such certificate.

The protection given by the section shall not extend beyond three months from the date of the grant of the original certificate, nor beyond one month from the said date, if on demand being made by the person desirous of levying such distress or execution, or taking such proceedings, or enforcing such judgment, proper security is not given for payment of rent thereafter to become due from the insured person, or of the amount of the judgment debt, as the case may be, and any dispute as to the sufficiency of the security shall be determined by the registrar of the county court.

The decision of the registrar, both as to the certificate and as to the sufficiency of the security, shall be final and not subject to appeal.

Under sect. 70 of the 1911 Act civil proceedings may be taken against an employer by a person who has been deprived of any benefits by such employer neglecting to pay contributions, to the extent of the jurisdiction of the Court such proceedings can be taken in the county court.

Practice.] The appeal under sect. 66 (1) (a) of the Act of 1911 or sect. 27 (2) of the Act of 1913 from the Insurance Commissioners to the county court shall be by notice of appeal to the county court of the district in which the appellant resides. The petitioner must set forth specifically the facts and contentions of law upon which he relies. The procedure is fully set out in Order XLIIA. (see Rules dated April 11th, 1916, *post*, p. 2143).

The applications to the registrar under sect. 68 are governed by Order XLIIA rr. 24—26. Rule 24 deals with stay of proceedings; Rule 25 with an application to cancel or modify a certificate. Rule 26 relates to disputes as to security (see *post*, pp. 2143—2148; see also Forms 448A to 452, *post*, p. 2149).

Proceedings under sect. 70 of the 1911 Act are by plaint and summons according to the ordinary practice of the Court (see Order I., rr. 35, 36, *ante*, pp. 631—6 2).

Section 11 of the Act of 1911 contains provisions in the case of contributors entitled to compensation or damages under the Employers' Liability Act, 1880, or the Workmen's Compensation Act, 1906.

Appeal from the county court under sect. 66 is on questions of law alone, and is to such judge as may be selected by the Lord Chancellor. His decision is final, s. 66, proviso (1). There is no appeal from the registrar's decision.

Determination of questions by Insurance Commissioners.

66.—(1) If any question arises—

(*a*) as to whether any employment or any class of employment is or will be employment within the meaning of this part of this Act or as to whether a person is entitled to become a voluntary contributor; or

(*b*) as to the rate of contributions payable by or in respect of any insured person; or

(*c*) as to the rates of contributions payable in respect of an employed contributor by the employer and the contributor respectively;

the question shall be determined by the Insurance Commissioners, in accordance with regulations made by them for the purpose (*a*):

NOTE.—(*a*) Where an employer is summoned under sect. 69, the magistrate also has jurisdiction to decide the question whether the employment is employment within the meaning of this part of the Act (*Rex* v. *Wilberforce National Health Commissioners*, (1916) 85 L. J. K. B. 509).

Provided that—

(i.) if any person feels aggrieved by the decision of the Insurance Commissioners on any question arising under paragraph (*a*), he may appeal therefrom to the county court, with a further right of appeal upon any question of law

to such judge of the High Court as may be selected for the purpose by the Lord Chancellor, and the decision of that judge shall be final ; Section 66.

(ii.) the regulations of the Insurance Commissioners may provide for questions under paragraph (*b*) being determined, in the case of any person who is or is about to become a member of an approved society, by the society ;

Protection against distress and execution in certain cases.

68.—(1) Where the medical practitioner attending on any insured person in receipt of sickness benefit certifies that the levying of any distress or execution upon any goods or chattels belonging to such insured person and being on premises occupied by him, or the taking of any proceedings in ejectment or for the recovery of any rent or to enforce any judgment in ejectment against such person, would endanger his life, and such certificate has been sent to the insurance committee and has been recorded in manner hereinafter provided, it shall not be lawful during any period named in the certificate for any person to levy any such distress or execution or to take any such proceedings or to enforce any such judgment against the insured person :

Provided that, if any person desirous of levying such distress or execution or taking such proceedings or enforcing such judgment disputes the accuracy of the certificate, he may apply to the registrar of the county court, who, if he is of opinion that the certificate should be cancelled or modified, may make an order cancelling or modifying it, and no appeal shall lie against any such order or a refusal to make any such order.

(2) A certificate granted for the purpose of this section shall continue in force for one week or such less period as may be named in the certificate, but may be renewed from time to time for any period not exceeding one week, up to but not beyond the expiration of three months from the date of the grant of the original certificate, but no such renewal shall have effect unless sent to the insurance committee and recorded as aforesaid :

Provided that the protection conferred by this section shall not extend beyond the expiration of one month from such date if, on demand being made by the person desirous of levying such distress or execution, or taking such proceedings, or enforcing such judgment, proper security is not given for payment of rent thereafter to become due from the insured person or the amount of the judgment debt, as the case may be, and any dispute as to the sufficiency of the security shall be determined by the registrar of the county court whose decision shall be final and not subject to appeal.

(3) If any person knowingly levies or attempts to levy any such distress or execution or takes any such proceedings or enforces or attempts to enforce any such judgment in contravention of this section, he shall be liable on summary conviction to a fine not exceeding fifty pounds.

(4) A certificate or renewal thereof granted under this section shall forthwith be sent to the insurance committee, and the committee shall, unless it has reason to suspect its genuineness, record it in a special register without fee, and such register shall, at all reasonable times, be open to inspection ; and, where so recorded, its genuineness shall not be questioned in any proceedings

Section 68.

against a sheriff or other officer for failure to levy any distress or execute any warrant.

(5) Where the time within which a warrant may be executed is limited, any period during which the warrant cannot be executed by reason of the provisions of this section shall be disregarded in computing the time within which the warrant may be executed.

Civil proceedings against employer for neglecting to pay contributions.

70.—(1) Where an employer has failed or neglected to pay any contributions which under this Part of this Act he is liable to pay in respect of a person being a member of an approved society in his employment, and by reason thereof that person has been deprived in whole or in part of his right to any benefits which would otherwise have been payable to him, he shall be entitled to take proceedings against the employer for the value of the right of which he has been so deprived, and in any such proceedings the employer may be ordered to pay to the Insurance Commissioners a sum equal to the value so ascertained, which sum when paid shall be carried to the credit of the society of which such person is a member, and thereupon such person shall thenceforth be entitled to receive from the society benefits at the same rate as he would have been entitled to had the contributions been properly paid, together with the difference between the amount of the benefits (if any) he has actually received and the benefits he would have received had the contributions been properly paid.

(2) Proceedings may be taken under either this or the last preceding section notwithstanding that proceedings have also been taken under the other section in respect of the same failure or neglect to pay contributions.

3 & 4 GEO. V. c. 37.

27.—(2) If any question arises as to the person who is the employer of an employed contributor, the question shall be determined in like manner as a question in paragraph (*a*) of section sixty-six of the principal Act, and that section shall apply accordingly.

ORDER XLIIA.

NATIONAL INSURANCE ACT, 1911.

COUNTY COURT RULES DATED 11TH APRIL, 1916, AS TO APPEALS UNDER THE NATIONAL INSURANCE ACTS (1911, SECTION 66, AND 1913, SECTION 27).

EXPLANATORY MEMORANDUM.

These Rules replace Order XLIIA, Rules 1 to 5, as to appeals against decisions of the Insurance Commissioners on questions submitted to them under the National Insurance Act, 1911, section 66, and the National Insurance Act, 1913, section 27.

The rules now annulled were based on the County Court Rules, Order XLII. (which follow the Rules of the Supreme Court) as to the procedure on appeals from the decisions of referees under section 33 of the Finance (1909–1910) Act, 1910,

Rules.

But the cases of appeals under the Finance Act and appeals under the Insurance Acts do not seem to be analogous: the Commissioners of Inland Revenue are parties interested in the decisions of referees under the Finance Acts, and are necessary parties to appeals, either as appellants or respondents; but the Insurance Commissioners, in deciding questions submitted to them under the Insurance Acts, are acting in a quasi judicial character, and are, as a rule, deciding between contending parties. In such cases the parties to the disputes before them should be made parties to appeals, and the Commissioners ought not to be made parties and called upon to uphold their own decisions, at the risk of being ordered to pay costs if they are unsuccessful.

The new rules are framed in accordance with this view.

Rule 6 provides for the parties to the proceedings before the Commissioners being made parties to the appeal.

Rule 9 provides that notice of the appeal shall be served on the Commissioners, and that they may, if they think fit, appear on the hearing, and take such part therein as the judge may think fit.

Rule 10 provides for cases, which sometimes (but, it is stated, seldom) occur, in which there is no party to the proceedings before the Commissioners other than the appellant: and it provides that in such cases the Commissioners shall be made respondents.

Rule 11 provides for the addition of other parties as respondents, following R.S.C. Order LVIII., Rule 2, and the County Court Licensing Rules, 1910, Order LI., Rule 51.

Rule 12 provides for the furnishing by the Commissioners of a copy of their decision, and a statement of the facts on which it was based, for use on the appeal.

Rule 13 provides that the statement shall be *primâ facie* evidence, but that the parties may give further evidence, if so advised.

Rule 14 follows the County Court Rule, Order XLII., Rule 22 (which is taken from the Rules of the Supreme Court), as to evidence on appeals under the Finance Act.

Rule 20 provides that the costs of an appeal shall be in the discretion of the Court.

Rule 23 contains a saving for the rights of the Crown, following Order XLIIA, Rule 24, as to appeals under the Finance Act, 1910. This leaves open, so far as the rules are concerned, the question whether the Commissioners are entitled to the privilege of the Crown as regards costs.

April, 1916.

COUNTY COURT RULES, DATED APRIL 11, 1916, AS TO APPEALS UNDER THE NATIONAL INSURANCE ACT, 1911 (1 & 2 GEO. 5, C. 55), SECTION 66, AND THE NATIONAL INSURANCE ACT, 1913 (3 & 4 GEO. 5, C. 37), SECTION 27, SUB-SECTION 2.

ORDER XLIIA.

THE NATIONAL INSURANCE ACT, 1911 (1 & 2 GEO. 5, C. 55), SECTIONS 66, 68, AND THE ACTS AMENDING THE SAME.

Order XLIIA., Rules 1 to 5, are hereby annulled, and the following rules shall stand in lieu thereof.

Order XLIIA., Rules 6 to 8, shall be renumbered and may be cited as Rules 24 to 26.

Rule 1. *Appeals under s. 66, or under the National Insurance Act, 1913, section 27, sub-section 2.*

Interpretation.

1. In these Rules—
The expression "the Act" means the National Insurance Act, 1911.
The expression "the Commissioners" means the Insurance Commissioners, or the Welsh Insurance Commissioners, as the case may be.

Appeals under 1 & 2 Geo. 5, c. 55, s. 66 (1) (*a*) (i). 3 & 4 Geo. 5, c. 37, s. 27 (2).

2. Where any person aggrieved by the decision of the Commissioners on any question arising—
(i) under paragraph (*a*) of subsection 1 of section 66 of the Act (which empowers the Commissioners to decide any questions arising as to whether any employment or class of employment is or will be employment within the meaning of Part I. of the Act, or as to whether a person is entitled to become a voluntary contributor under the Act); or
(ii) under subsection 2 of section 27 of the National Insurance Act, 1913 (which empowers the Commissioners to decide any question arising as to the person who is the employer of an employed contributor under the Act)—
desires to appeal to the county court against the decision, the following provisions shall apply.

Notice of appeal.

Form 448A.

3. The appellant shall file in the county court of the district in which he resides or carries on business a notice of his intention to appeal (in these Rules referred to as a notice of appeal) according to the form in the Appendix.

Time for appealing.

4. Subject to the provisions of these Rules, a notice of appeal must be filed within one month from the date of the decision appealed against.

Title and contents of notice of appeal.

5. The notice of appeal shall be intituled—
"In the matter of the National Insurance Act, 1911, and the Acts amending the same
and
In the matter of an appeal by of under section 66 of the said Act":
and shall set forth the decision against which it is intended to appeal, and the grounds on which the appellant alleges that the decision was erroneous.

Respondents.

6. The notice of appeal shall be served on every party to or person served with notice of the proceedings before the Commissioners who is directly affected by the appeal, and the names and addresses of the parties to be served (in these Rules referred to as the respondents) shall be stated in the notice. For the purposes of this Rule the Commissioners shall at the request of the appellants furnish them with the name and address of every such party or person served.

Fixing date of hearing.

7. On the filing of a notice of appeal the registrar shall fix a day and hour on and at which the appeal will be heard, the day to be fixed at a date not less than twenty-one days from the filing of the notice.

Rule 8.

Service of notice of appeal on respondents.

Form 448B.

8. On the day of hearing being fixed the registrar shall seal as many copies of the notice of appeal as there are parties to be served as respondents, and shall deliver them to the appellant, with an equal number of notices according to the form in the Appendix, signed by the registrar and under the seal of the court; and a sealed copy of the notice of appeal, with one of such notices attached thereto, shall within seven days after the filing of the notice of appeal be served by the appellant on each respondent.

Service on Commissioners.

Appearance by Commissioners.

9. The registrar shall also seal a further copy of the notice of appeal and deliver the same to the appellant, and such copy shall within seven days after the filing of the notice of appeal be served by the appellant on the Commissioners at their central office; and in any such case the Commissioners may, if they think fit, appear on the hearing of the appeal, and may take such part therein as the judge may think fit.

Commissioners, when to be made respondents.

Form 448B.

10. If there is no party to or person served with notice of the proceedings before the Commissioners other than the appellant, the Commissioners shall be made respondents to the appeal; and in that case a copy of the notice of appeal, with a notice according to the form in the Appendix attached thereto, shall within seven days after the filing of the notice of appeal be served by the appellant on the Commissioners at their central office.

Adding respondents.

[Licensing Rules, 1910. Order L, Rule 51. R.S.C. Order LVIII., Rule 2.]

11. Any person not named as a respondent who claims to be interested in the determination of the questions raised on the appeal may apply to the judge, before or at the hearing, to be added as a respondent, on filing an affidavit showing how he claims to be interested: and the judge, if he thinks fit, may order such person to be added as a respondent accordingly, or may without such application order notice of the appeal to be served on any other person not a party to or served with notice of the proceedings before the Commissioners, and may in the meantime adjourn the hearing of the appeal on such terms as to notice to the other parties, costs, or otherwise, as may be just, and may on the hearing give such judgment or make such order as might have been given or made if the persons so added or served with such notice had been originally parties.

Application for copy of decision and statement of facts by Commissioners.

[R.S.C. Order LVIII., Rule 20 (*b*).]

12. It shall be the duty of the appellant to apply to the Commissioners for a duly authenticated copy of the decision appealed against, and a statement of the facts on which the decision was based, and to file such copy and statement for the use of the judge; and any party to the appeal may in like manner apply to the Commissioners for a like copy and statement for his own use on the appeal.

Evidence on appeal.

13. The statement mentioned in the last preceding Rule shall be received and used at the hearing of the appeal, and shall be *primâ facie* evidence of the facts stated therein; but any party to the appeal may give such additional evidence as he may be advised.

Admission of certain material as *primâ facie* evidence.

14. The judge may, at any stage of the proceedings, either upon or without the application of any party, order that any material, whether strictly admissible as evidence or not, which in the opinion of the judge ought, having regard to the question of costs or

Rule 14.

[C.C.R., Order XLII., Rule 22.]

otherwise, to be admitted as *primâ facie* evidence of any fact, shall be *primâ facie* evidence of that fact, so as to shift the burden of proving the contrary on the opposite party.

Extension of time for appealing. [Order XLII., Rule 23.]

15. The judge may extend the time for filing or serving a notice of appeal upon such terms (if any) as the justice of the case may require, and any such extension may be ordered although the application for the same is not made until after the expiration of the time allowed under these Rules.

Amendment of notice of appeal. [Order XLII., Rule 24. R.S.C., Order LIX., Rule 16.]

16. The judge may at any stage of the proceedings allow the amendment of the notice of appeal, or make any other order, on such terms as he shall think just, to ensure the determination on the merits of the real questions in controversy between the parties.

Power to draw inference of fact. [R.S.C., Order LIX., Rule 7.]

17. The judge shall have power to draw all inferences of fact which might have been drawn by the Commissioners, and to give any decision and make any order which ought to have been given or made.

Power of judge in relation to appeal.

18. Subject to the special provisions of these Rules the judge shall in relation to any appeal have all the powers attaching to the exercise of his ordinary jurisdiction.

Duty of judge as to making note. [C.C. Act, s. 120.]

19. The duty of the judge as to making a note on the hearing of an appeal shall be the same as on the hearing of an action in which there is a right of appeal.

Costs.

20. The costs of an appeal shall be in the discretion of the judge, and any costs allowed by him shall be taxed on such scale as he shall direct, and in default of such direction they shall be taxed under Column B of the higher scale of costs in use in the County Courts; and an order directing payment of any such costs shall be enforceable in the same manner as an order to the like effect made in an action.

Order on appeal.

21. Where the judge has given judgment on an appeal the registrar shall as soon as conveniently may be, draw up, seal, and file an order in accordance with the decision, and copies of the order shall be sent to each party to the appeal, and to the Commissioners.

Service of notices and documents.

22. Any notice or other document required or authorised to be served upon or sent to the appellant or any respondent or to the Commissioners under these Rules may be so served or sent in accordance with Order LIV., Rules 2 to 4 of the County Court Rules, and those Rules shall apply accordingly.

Saving for right of Crown.

23. Nothing in these Rules shall be construed to affect any right vested in the Crown by virtue of the Royal Prerogative.

Applications to the Registrar under Section 68.

Stay of proceedings, etc., where certificate granted

24.—(1) Where the medical practitioner attending on any person who is an insured person within the meaning of the National Insurance Act, 1911, and is in receipt of sickness benefit, certifies pursuant to section 68 of the said Act that the levying of any distress or execution upon any goods or chattels belonging to such insured

person, and being on premises occupied by him, or the taking of any proceedings in ejectment or for the recovery of any rent or to enforce any judgment in ejectment against such person, would endanger his life, and such certificate has been sent to the insurance committee and has been recorded in manner provided by the said section, the following provision shall apply. Rule 24. under 1 & 2 Geo. V. c. 55, s. 68.

(2) If notice of such certificate having been given or renewed is given by or on behalf of the insured person to the registrar of the county court in the district of which such insured person resides, no execution upon any goods or chattels belonging to such insured person, and being on premises occupied by him, and no proceeding for the recovery of rent or to enforce any judgment in ejectment against such insured person shall be issued, and any execution or other proceeding as aforesaid issued before notice of the certificate having been given or renewed is received by the registrar shall be stayed, during the currency of the certificate or renewed certificate.

(3) If no notice is given to the registrar, then if notice of such certificate having been given or renewed is given to the bailiff in charge of any such execution or proceeding as aforesaid, such execution or proceeding shall be stayed during the currency of the certificate or renewed certificate.

(4) On notice of a certificate having been given or renewed being given to the registrar or to the bailiff, the registrar or high bailiff shall forthwith send notice to any person at whose instance any such execution or other proceeding as aforesaid issued of such certificate having been given or renewed.

(5) On proof being made to the satisfaction of the registrar that any such certificate or renewed certificate has ceased to be in force, any person desirous of levying any such execution or taking any such proceeding as aforesaid shall be entitled to proceed with the same.

Application to registrar to cancel or modify certificate under 1 & 2 Geo. V. c. 55, s. 68 (1).

25.—(1) Where a person desirous of levying a distress or an execution upon any goods or chattels belonging to an insured person in receipt of sickness benefit, and being on premises occupied by him, or of taking proceedings in ejectment or for the recovery of rent, or to enforce any judgment in ejectment against any such person, disputes the accuracy of a certificate of the medical practitioner attending on such person granted to such person for the purpose of section 68 of the National Insurance Act, 1911, and sent to the insurance committee and recorded in manner provided by the said section, the following provisions shall apply.

(2) The person disputing the accuracy of the certificate may apply to the registrar of the county court in the district of which the insured person resides for an order cancelling or modifying the certificate.

(3) The application may be made either in or out of court on notice in writing according to the form in the Appendix, which shall be filed with the registrar; and a copy thereof shall be served on the insured person two clear days at least before the hearing of the application, unless the registrar gives leave for shorter notice. Form 449.

A copy of the certificate shall be filed with the notice of the application. Form 450.

Rule 25.

(4) On the hearing of the application evidence may be given on oath or affidavit, and the registrar may after hearing such evidence either dismiss the application or make an order cancelling or modifying the certificate, and may make such order and give such directions as may be just.

(5) The allowance of costs of and incidental to the application shall be in the discretion of the registrar.

(6) A sealed copy of the order made on the application shall be sent by post to the applicant and to the person insured, and to the insurance committee.

(7) Where a certificate is cancelled or modified, the applicant may, subject in any case in which the certificate is modified to any directions given by the order of the registrar, proceed as if the certificate had ceased to be in force.

Application to registrar to determine disputes as to sufficiency of security under 1 & 2 Geo. V. c. 55, s. 68 (2).

26.—(1) Where a person desirous of levying such distress or execution or of taking such proceedings or enforcing such judgment as in the last preceding rule mentioned has demanded security for payment of rent thereafter to become due from the insured person, or of the amount of the judgment debt, as the case may be, and security is not given or offered, the person demanding security may, after the expiration of one month from the date of the grant of the original certificate, on proof being made to the satisfaction of the registrar of the county court in the district of which the insured person resides that security has been demanded and has not been given or offered, proceed as if the certificate had ceased to be in force.

(2) If security has been demanded and is given or offered, but any dispute arises as to the sufficiency of the security, either party may apply to the registrar of the county court in the district of which the insured person resides to determine such dispute, and in any such case the following provisions shall apply.

Form 451.

(3) The application may be made either in or out of court on notice in writing according to the form in the Appendix, which shall be filed with the registrar; and a copy thereof shall be served on the opposite party two clear days at least before the hearing of the application, unless the registrar gives leave for shorter notice.

Form 452.

(4) On the hearing of the application evidence may be given on oath or affidavit, and the registrar shall after hearing such evidence determine the dispute, and may make such order and give such directions as may be just. If he declares the security offered to be insufficient, he may further declare what security would be sufficient.

(5) The allowance of costs of and incidental to the application shall be in the discretion of the registrar.

(6) A sealed copy of the order made on the application shall be sent by post to each party to the application.

(7) If the registrar declares the security offered to be insufficient, and further declares what security would be sufficient, then, if such security is not given, the person demanding security may, after the expiration of one month from the date of the grant of the original certificate, on proof being made to the satisfaction of the registrar that security has not been given, and subject to any directions given by the order of the registrar, proceed as if the certificate had ceased to be in force.

APPENDIX.

448A.

Notice of Appeal under the National Insurance Act, 1911, *and the Acts amending the same.*

In the County Court of holden at . Order XLIIA.
In the matter of the National Insurance Act, 1911, and the Acts amending the same, Rules 3, 5, 6, 8–10.

and

In the matter of an appeal by
of
under Section 66 of the said Act.

TAKE NOTICE, that of intends to appeal to the judge at a court to be holden at on the day of at the hour of in the noon, against a decision of the Insurance Commissioners [*or* the Welsh Insurance Commissioners] given on the day of whereby the said Commissioners decided

[*here set forth the decision*]

AND FURTHER TAKE NOTICE, that the grounds of the appeal are

[*here state grounds of appeal*]

Dated this day of .

(Signed) ,
Appellant
[*or* ,
[Appellant's Solicitor],
whose address for service is

To the Registrar of the Court,
and to
(*names and addresses or places of business of Respondents*),
and to
The Insurance Commissioners
[*or* the Welsh Insurance Commissioners].

448B.

Notice of Day on which Appeal under the National Insurance Act, 1911, *and the Acts amending the same, will be heard.*

In the County Court of holden at . Order XLIIA
In the matter of the National Insurance Act, 1911, and the Acts amending the same, Rules 8, 10.

and

In the matter of an appeal by
of
under Section 66 of the said Act.

TAKE NOTICE, that the appeal, a sealed copy of notice whereof is served herewith, will be heard at a court to be holden at on the day of at the hour of in the noon, and that if you do not attend either in person or by your solicitor at the time and place above

mentioned such order will be made and proceedings taken as the judge may think just.

Dated this day of .

Registrar.

To

[*the Respondents named in the notice of appeal, stating their names and addresses or places of business*].

[*Or, where the Commissioners are made Respondents* To the Insurance Commissioners

[*or* the Welsh Insurance Commissioners].]

449.

Application for Cancellation or Modification of Certificate granted for the purpose of Section 68 of the National Insurance Act, 1911.

1 & 2 Geo. V. c. 55, s. 68. Order XLIIA. Rule 7.

In the county court of holden at

In the matter of the National Insurance Act, 1911, and in the matter of a certificate granted to of for the purpose of section 68 of the said Act.

TAKE NOTICE that of is desirous of levying a distress [*or* an execution] upon the goods and chattels belonging to of , an insured person in receipt of sickness benefit under the above-mentioned Act, and being on premises occupied by him [*or* of taking proceedings in ejectment *or* for the recovery of rent *or* to enforce a judgment in ejectment against of an insured person in receipt of sickness benefit under the above-mentioned Act]:

And that the said disputes the accuracy of a certificate dated the day of granted by of to the said for the purpose of section 68 of the above-mentioned Act and sent to the insurance committee and recorded in manner provided by the said section:

And that the said intends to apply to the registrar of the above-mentioned court at the court house [*or* the county court office] situate at on day the day of , at the hour of in the noon, for an order cancelling or modifying the said certificate.

Dated this day of

To

of

and to the registrar of the court.

450.

Order on Application for Cancellation or Modification of Certificate granted for the purpose of Section 68 of the National Insurance Act, 1911.

[*Heading as in Form* 449.]

1 & 2 Geo. V. c. 55, s. 68. Order XLIIA. Rule 7.

Upon the application of of for an order cancelling or modifying a certificate dated the day of granted by of to of , an insured person in receipt of sickness benefit under the above-mentioned Act for the purpose of section 68 of the said Act:

And upon hearing the said and the said , and evidence on both sides [*or as the case may be*]:

I order that the said certificate be cancelled [or be modified as follows (*state modification*)]:

[*Or* I order that the said application be dismissed]:

If any order made as to costs, add:

And I order that the said do pay the said the sum of for his costs of and relating to the said application, and that the said do pay to the said the said sum of £ on the day of [*or* by instalments of for every days, the first instalment to be paid on the day of .]

Dated this day of .

Registrar.

451.

Application for Settlement of Dispute as to Sufficiency of Security to be given pursuant to demand under Section 68 of the National Insurance Act, 1911.

1 & 2 Geo. V. c. 55, s. 68. Order XLIIA. Rule 8.

In the county court of holden at .

In the matter of the National Insurance Act, 1911, and in the matter of a demand for security made by of on of for security under section 68 of the said Act.

TAKE NOTICE, that a demand has been made by of on of under section 68 of the National Insurance Act, 1911, for proper security for the payment of rent thereafter to become due from the said to the said [*or* for the amount of a judgment debt of £ due from the said to the said]:

And that a dispute has arisen as to the sufficiency of the security offered by the said :

And that the said intends to apply to the registrar of the above-mentioned court at the court house [*or* the county court office] situate at on the day of , at the hour of in the noon, to determine the said dispute.

Dated this day of .

To [*the opposite party*] :
and to the registrar of the court

452.

Order on Application for Settlement of Dispute as to Sufficiency of Security to be given pursuant to Demand under Section 68 of the National Insurance Act, 1911.

[*Heading as in Form* 451.]

1 & 2 Geo. V. c. 55, s. 68. Order XLIIA. Rule 8.

Upon the application of of for the determination of a dispute as to the sufficiency of the security offered by of on demand made by of under section 68 of the National Insurance Act, 1911, on the said for proper security for payment of rent to become due from the said to the said [*or* for the amount of a judgment debt of £ due from the said to the said]:

And upon hearing the said and the said , and evidence on both sides [*or as the case may be*]:

I declare that the security offered by the said for the rent so to become due [*or* for the amount of the said judgment debt] is sufficient:

Or I declare that the security offered by the said for the rent so to become due [*or* for the amount of the said judgment debt] is insufficient [*add, if registrar so declares*, but that the following security would be sufficient, viz.:—(*state security*)]:

If any order made as to costs, add:

And I order that the said do pay to the said the sum of for his costs of and relating to the said application, and that the said do pay the said sum of to the said on the day of [*or* by instalments of for every days, the first payment to be made on the day of].

Dated this day of

Registrar.

OATHS ACT, 1888.

COMMISSIONERS FOR OATHS ACT, 1889.

OATHS ACT, 1909.

[51 & 52 Vict. c. 46; 52 Vict. c. 10; 9 Edw. VII. c. 39.]

When affirmation may be made instead of oath.

1. Every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath; and if any person making such affirmation shall wilfully, falsely, and corruptly affirm any matter or thing which, if deposed on oath, would have amounted to wilful and corrupt perjury, he shall be liable to prosecution, indictment, sentence, and punishment in all respects as if he had committed wilful and corrupt perjury.

Form of affirmation.

2. Every such affirmation shall be as follows: "I, A.B., do solemnly, sincerely, and truly declare and affirm," and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.

Validity of oath not affected by absence of religious belief.

3. Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had, at the time of taking such oath, no religious belief, shall not for any purpose affect the validity of such oath.

Form of affirmation in writing.

4. Every affirmation in writing shall commence "I of , do solemnly and sincerely affirm," and the form in lieu of jurat shall be "Affirmed at , this day of 18 . Before me."

Section 5.

5. If any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question. Swearing with uplifted hand.

6. The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of the schedule mentioned. Repeal.

7. This Act may be cited as the Oaths Act, 1888. Short title.

[52 VICT. C. 10.]

2. Every person who, being an officer of or performing duties in relation to any court, is for the time being so authorised by a judge of the court, or by or in pursuance of any rules or orders regulating the procedure of the court, and every person directed to take an examination in any cause or matter in the Supreme Court, shall have authority to administer any oath or take any affidavit required for any purpose connected with his duties. Powers of certain officers of court, &c. to administer oaths.

[9 EDW. VII. C. 39.]

1. This Act may be cited for all purposes as the Oaths Act, 1909; and the Oaths Act, 1888, and this Act may be cited together as the Oaths Acts, 1888 and 1909. Short title. 51 & 52 Vict. c. 46.

2.—(1) Any oath may be administered and taken in the form and manner following:— Manner of administration of oaths.

The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words "I swear by Almighty God that . . . .", followed by the words of the oath prescribed by law.

(2) The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question:

Provided that, in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any manner which is now lawful.

3. In this Act the word "officer" shall mean and include any and every person duly authorised to administer oaths. Definition.

4.—(1) This Act shall come into operation on the first day of January nineteen hundred and ten. Commencement and extent.

(2) This Act shall not apply to Scotland.

OPEN SPACES ACT, 1906.

[6 Edw. VII. c. 25.]

Jurisdiction.]—Trustees for charitable purposes of open spaces are, in certain cases, empowered to convey or demise them to the local authority in which they are wholly or partially situate to be held as open spaces. The sanction of the court is necessary in some cases, and this may be obtained either in the High Court, or the county court of the district in which the whole or part of any open space may be situated. What is an open space is defined by sect. 20.

Practice.]—The application to the court is by petition of the trustees, and the procedure to be followed is set out in Rule 18 of Order L. *post*, p. 2155 (see also sect. 4, sub-s. 3).

Local Authorities.

Local authorities.

1. Each of the following bodies shall be a local authority for the purposes of this Act, namely—

The council of any county, of any municipal or metropolitan borough, or of any district:

The common council of the city of London:

Any parish council invested with the powers of this Act by an order of the council of the county within which the parish is situate.

Transfer by charity trustees of open pace to local authority.

4.—(1) Where an open space is vested in trustees, other than such as are mentioned in the foregoing provisions of this Act, for any charitable purpose and as part of their trust estate, and it appears to the majority of the trustees that the open space is no longer required for the purposes of their trust, or may with advantage to the trust be dealt with under this section, the trustees may, in pursuance of a special resolution, and where the open space is subject to the Charitable Trusts Acts, 1853 to 1894, with such authority or approval as is required by those Acts for a sale of the open space, and in other cases in pursuance of an order of the court to be obtained as hereinafter provided, convey or demise the open space to any local authority on such terms as they may agree, and the local authority shall thenceforth be entitled to hold the same as an open space on the terms and under the conditions specified in the conveyance or demise, or on such terms or under such conditions as may be so authorised or approved, or as the court may from time to time order, as the case may be.

(2) The court for the purposes of this section shall be either the High Court or the county court of the district in which the whole or any part of the open space is situate.

(3) An order of the court for the purposes of this section may be made upon application by the trustees, in manner directed by rules of court, and the court, before making any order, may direct such inquiries to be made, such consents to be obtained, and notice

to be given to such persons, as to the court seem expedient, and may make such order thereon as in the discretion of the court appears proper. Section 4.

* * * * *

20. In this Act, unless the context otherwise requires— Definitions.
The expression "open space" means any land, whether inclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied.

COUNTY COURT RULES. ORDER L. RULE 18.

An application to the court under the Open Spaces Act, 1906, shall be made by petition intituled in the matter of the Act and of the open space, in respect of which the application is made; and the same procedure shall be followed and the same costs allowed as on any other petition to the court, the annual value of the open space being treated as the basis for determining the scale of costs. Applications under 6 Edw. 7, c. 25.

PARLIAMENTARY ELECTIONS (RETURNING OFFICERS) ACT, 1875, AND AMENDMENT ACT, 1886.

LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

[38 & 39 Vict. c. 84; 49 & 50 Vict. c. 57; 51 & 52 Vict. c. 41.]

Jurisdiction.]—By this first mentioned Act, sect. 2, the returning officer is declared to be entitled to his reasonable charges to be paid by the candidates at elections in equal shares. By sect. 5, claims against a returning officer are to be sent in to him within fourteen days after the election, with detailed particulars, and the returning officer is only liable in respect of anything duly stated in such particulars. By sect. 4, the returning officer shall within twenty-one days, transmit to every candidate, or other person, his detailed account and the amount of his claim, and is only entitled to

charges duly included. The person from whom payment is claimed, may, within fourteen days, apply to the court, *i.e.*, in the city of London, the Lord Mayor's Court, and elsewhere, the county court having jurisdiction at the place of nomination for the election, for taxation of the account, which court may depute any of its powers to the registrar or other principal officer of the court. If taxation is claimed against a returning officer, he may apply to the court to examine any claim made against him.

A letter written to the registrar of the county court within fourteen days, asking for an appointment of a day for the hearing of the application, is a sufficient application (*R.* v. *Bloomsbury* (C. A.), (1886) 17 Q. B. D. 788 ; 55 L. J. Q. B. 443).

Fees.]—A fee of 10*s.* is due to the registrar where the amount of the account taxed does not exceed 50*l.*, and an additional fee of 10*s.* for every 50*l.* or part of 50*l.* by which the account exceeds that amount.

Practice is determined by Order XLIII., *post*, p. 2164.

Enforcing Certificate.]—By sect. 4 of the 1875 Act, and sect. 1 of the 1886 Act, the certificate may be enforced as a judgment is enforced by the county court.

Appeal.]—By sect. 1 of the Amendment Act, 1886, either party may within seven days appeal from the taxation in the county court to the prescribed taxing officer of the superior court, and his review of the taxation is subject to an appeal to the superior court in like manner as in any ordinary taxation of costs. The Act was passed to meet *R.* v. *Lambeth C. C.*, (1886) 17 Q. B. D. 96.

Application of above statutes to returning officers in local elections, see *post*, p. 2164.

38 & 39 Vict. c. 84.

Construction of Act.

1. The Ballot Act, 1872, as modified by this Act, and this Act shall be construed as one Act.

This Act shall apply only to parliamentary elections.

Payments to returning officers.

2. The returning officer at an election shall be entitled to his reasonable charges, not exceeding the sums mentioned in the first schedule to this Act, in respect of services and expenses of the several kinds mentioned in the said schedule, which have been properly rendered or incurred by him for the purposes of the election.

The amount of such charges shall be paid by the candidates at the election in equal several shares, or where there is only one candidate, by such candidate. If a candidate is nominated without his consent, the persons by whom his nomination is subscribed shall be jointly and severally liable for the share of the charges for which he would be liable if he were nominated with his consent.

A returning officer shall not be entitled to payment for any other services or expenses, or at any greater rates than as in the

said schedule mentioned, any law or usage to the contrary notwithstanding. Section 2.

3. The returning officer, if he think fit, may, as hereinafter provided, require security to be given for the charges which may become payable under the provisions of this Act in respect of any election. Returning officer may require deposit or security.

The total amount of the security which may be required in respect of all the candidates at an election shall not in any case exceed the sum prescribed in the third schedule to this Act.

Where security is required by the returning officer it shall be apportioned and given as follows; viz.,

(1) At the end of the two hours appointed for the election the returning officer shall forthwith declare the number of the candidates who then stand nominated, and shall, if there be more candidates nominated than there are vacancies to be filled up, apportion equally among them the total amount of the required security:

(2) Within one hour after the end of the two hours aforesaid, security shall be given, by or in respect of each candidate then standing nominated, for the amount so apportioned to him:

(3) If in the case of any candidate security is not given or tendered as herein mentioned, he shall be deemed to be withdrawn within the provisions of the Ballot Act, 1872:

(4) A tender of security in respect of a candidate may be made by any person:

(5) Security may be given by deposit of any legal tender or of notes of any bank being commonly current in the county or borough for which the election is held, or, with the consent of the returning officer, in any other manner:

(6) The balance (if any) of a deposit beyond the amount to which the returning officer is entitled in respect of any candidate shall be repaid to the person or persons by whom the deposit was made.

4. Within twenty-one days after the day on which the return is made of the persons elected at the election, the returning officer shall transmit to every candidate or other person from whom he claims payment either out of any deposit or otherwise of any charges in respect of the election, or to the agent for election expenses of any such candidate, a detailed account showing the amounts of all the charges claimed by the returning officer in respect of the election, and the share thereof which he claims from the person to whom the account is transmitted. He shall annex to the account a notice of the place where the vouchers relating to the account may be seen, and he shall at all reasonable The accounts of a returning officer may be taxed.

Section 4.

times and without charge allow the person from whom payment is claimed, or any agent of such person, to inspect and take copies of the vouchers.

The returning officer shall not be entitled to any charges which are not duly included in his account.

If the person from whom payment is claimed objects to any part of the claim, he may, at any time within fourteen days from the time when the account is transmitted to him, apply to the court as defined in this section for a taxation of the account, and the court shall have jurisdiction to tax the account in such manner and at such time and place as the court thinks fit, and finally to determine the amount payable to the returning officer and to give and enforce judgment for the same as if such judgment were a judgment in an action in such court, and with or without costs at the discretion of the court.

The court for the purposes of this Act shall be in the city of London the Lord Mayor's court, and elsewhere in England the county court, and in Ireland the civil bill court, having jurisdiction at the place of nomination for the election to which the proceedings relate.

The court may depute any of its powers or duties under this Act to the registrar or other principal officer of the court.

Nothing in this section shall apply to the charge of the returning officer for publication of accounts of election expenses.

By the 46 & 47 Vict. c. 51, s. 32 (Corrupt and Illegal Practices Prevention Act, 1883), it is provided that, "The amount of the charges claimed by the returning officer in the case of a candidate and transmitted in pursuance of sect. 4 of the Parliamentary Elections (Returning Officers) Act, 1875, shall be transmitted within the time specified in the said section to the election agent of the candidate, and need not be transmitted to the candidate."

Claims against a returning officer.

5. Every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer for the purposes of an election, except for publication of accounts of election expenses, shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

Where application is made for taxation of the accounts of a returning officer, he may apply to the court as defined in this Act to examine any claim transmitted to him by any person in pursuance of this section, and the court after notice given to such person, and after hearing him, and any evidence tendered by him, may allow or disallow, or reduce the claim objected to, with or without costs, and the determination of the court shall be final for all purposes, and as against all persons.

Use of ballot boxes, etc., provided for

6. In any case to which the fourteenth section of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings,

and compartments provided for municipal or school board elections, and the court, upon taxation of his accounts, shall have regard to the provisions of this section. Section 6. municipal elections.

7. There shall be added to every notice of election to be published under the provisions of the Ballot Act, 1872, the notification contained in the second schedule to this Act with respect to claims against returning officers. Notices to be given by returning officers.

8. Nothing in this Act shall apply to an election for any university or combination of universities. Saving of the universities.

FIRST SCHEDULE (*c*).

Charges of Returning Officers.

The following are the maximum charges to be made by the returning officer, but the charges are in no case to exceed the sums actually and necessarily paid or payable.

PART I.

Counties and District or Contributory Boroughs.

This part of this Schedule applies to an election for a county, or for either of the boroughs of Aylesbury, Cricklade, Monmouth, East Retford, Stroud, and New Shoreham, or for any borough or burgh consisting of a combination of separate boroughs, burghs or towns.

	£	*s.*	*d.*
For preparing and publishing the notice of election	2	2	0
For preparing and supplying the nomination papers	1	1	0
For travelling to and from the place of nomination, or of declaring the poll at a contested election, per mile	0	1	0
For hire or necessary fitting up of rooms or buildings for polling, or damage or expenses by or for use of such rooms or buildings	The necessary expenses, not exceeding at any one polling station the charge for constructing and fitting a polling station.		

Note.—(*c*) Notwithstanding the scales contained in the first schedule, "it shall be lawful in any county constituency in England for the returning officer to charge four guineas for each presiding officer, and thirty shillings for each clerk at a polling station" (48 & 49 Vict. c. 62, s. 4).

FIRST SCHEDULE—*continued.*

	£	s.	d.
For constructing a polling station, with its fittings and compartments, in England . .	7	7	0
And in Ireland the sum or sums payable under the provisions of the 13th and 14th Victoria, chap. 68, and 35th and 36th Victoria, chap. 33.			
In Ireland the returning officer shall use a court house where one is available as a polling station, and his maximum charge for using and fitting the same shall in no case exceed three pounds three shillings.			
For each ballot box required to be purchased .	1	1	0
For the use of each ballot box, when hired .	0	5	0
For stationery at each polling station . .	0	10	0
For printing and providing ballot papers, per thousand	1	10	0
For each stamping instrument . . .	0	10	0
For copies of the register	The sums payable by statute for the necessary copies.		
	£	s.	d.
For each presiding officer	3	3	0
For one clerk at each polling station where not more than 500 voters are assigned to such station	1	1	0
For an additional clerk at a polling station for every number of 500 voters, or fraction thereof beyond the first 500 assigned to such polling station	1	1	0
For every person employed in counting votes, not exceeding six such persons where the number of registered electors does not exceed 3,000, and one for every additional 2,000 electors	1	1	0
For making the return to the clerk of the Crown	1	1	0
For the preparation and publication of notices (other than the notice of election).	Not exceeding for the whole of such notices 20*l.*, and 1*l.* for every additional 1,000 electors above 3,000.		
	£	s.	d.
For conveyance of ballot boxes from the polling stations to the place where the ballot papers are to be counted, per mile . . .	0	1	0
For professional and other assistance in and about the conduct of the election.	In a contested election not exceeding 25*l.*, and an additional 3*l.* for every 1,000 registered electors or fraction thereof above 3,000 and up to 10,000, and 2*l.* for every 1,000 or fraction thereof above 10,000. In an uncontested election, one fifth of the above sums.		
	£	s.	d.
For travelling expenses of presiding officers and clerks, per mile.	0	1	0

FIRST SCHEDULE—*continued.*

	£ s. d.
For services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate . . .	2 2 0
For all other expenses	In a contested election not exceeding 10*l.*, and an additional 1*l.* for every 1,000 electors or fraction thereof above 1,000. In an uncontested election, nil.

NOTE.—*Travelling expenses are not to be allowed in the case of any person unless for distances exceeding two miles from the place at which he resides.*

PART II.

BOROUGHS.

This part of the Schedule applies to all boroughs not included in Part I. of this Schedule.

	£ s. d.
For preparing and publishing the notice of election	2 2 0
For preparing and supplying the nomination papers	1 1 0
For hire or necessary fitting up of rooms or buildings for polling, or damage or expenses by or for use of such rooms or buildings.	The necessary expenses, not exceeding at any one polling station the charge for constructing and fitting a polling station.
	£ s. d.
In England, for constructing a polling station, with its fittings and compartments, not exceeding two in number	7 7 0
For each compartment required to be constructed, when more than two be used .	1 1 0
For the use of each compartment hired, when more than two are used	0 5 0
And in Ireland, in lieu of the charges payable in respect of the foregoing last three services, the sum or sums payable under the provisions of 13th and 14th Victoria chap. 68, and 35th and 36th Victoria, chap. 33.	
For each ballot box required to be purchased .	1 1 0
For the use of each ballot box, when hired .	0 5 0
For stationery at each polling station . .	0 10 0
For printing and providing ballot papers, per thousand	1 10 0
For each stamping instrument	0 10 0
For copies of the register	The sums payable by statute for the necessary copies.

FIRST SCHEDULE—*continued.*

	£ s. d.
For each presiding officer	3 3 0
For one clerk at each polling station where not more than 500 voters are assigned to such station	1 1 0
For an additional clerk at a polling station for every number of 500 voters or fraction thereof beyond the first 500 assigned to such station	1 1 0
For every person employed in counting votes, not exceeding six such persons where the number of registered electors does not exceed 3,000, and one for every additional 2,000 electors	1 1 0
For making the return to the clerk of the Crown	1 1 0
For the preparation and publication of notices (other than the notice of election).	Not exceeding for the whole of such notices 10*l.*, and 1*l.* for every additional 1,000 electors above 1,000.
For professional and other assistance in and about the conduct of the election.	In a contested election, not exceeding 20*l.*, an additional 2*l.* for every 1,000 registered electors or fraction thereof above 1,000 and up to 10,000, and 1*l.* additional for every 1,000 or fraction thereof above 10,000. In an uncontested election one fifth of the above sum.
For services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate	£ s. d. 1 1 0
For all other expenses	Not exceeding 10*l.*, and an additional 1*l.* for every 1,000 electors above the first 1,000.

NOTE TO PARTS I. AND II. OF SCHEDULE I.

The above sums are the aggregate charges, the amount of which is to be apportioned among the several candidates or other persons liable for the same.

SECOND SCHEDULE.

1. NOTIFICATION TO BE ADDED TO THE NOTICE OF ELECTION.

Take notice, that by the Parliamentary Elections (Returning Officers) Act, 1875, it is provided that every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer for the purposes of an election (except for publications of account of election expenses), shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the

returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

THIRD SCHEDULE.

Maximum Amount of Security which may be required by a Returning Officer.

—	County or District of Contributory Borough.	Borough.
	£	£
Where the registered electors do not exceed 1,000 .	150	100
Where the registered electors exceed 1,000 but do not exceed 2,000	200	150
Where the registered electors exceed 2,000 but do not exceed 4,000	275	200
Where the registered electors exceed 4,000 but do not exceed 7,000	400	250
Where the registered electors exceed 7,000 but do not exceed 10,000	550	300
Where the registered electors exceed 10,000 but do not exceed 15,000	700	450
Where the registered electors exceed 15,000 but do not exceed 20,000	800	500
Where the registered electors exceed 20,000 but do not exceed 30,000	900	600
Where the registered electors exceed 30,000 . .	1,000	700

If at the end of the two hours appointed for the election, not more candidates stand nominated than there are vacancies to be filled up, the maximum amount which may be required is *one fifth of the maximum according to the above scale.*

"Twenty-five pounds" is now substituted for the words printed in italics (48 & 49 Vict. c. 62, s. 2).

PARLIAMENTARY ELECTIONS AMENDMENT ACT, 1886.

[49 & 50 Vict. c. 57.]

Review of taxation. 38 & 39 Vict. c. 84.

1. The judge or officer by whom any account or claim is taxed or examined under the Parliamentary Elections (Returning Officers) Act, 1875 (herein called the "principal Act"), shall deliver to the returning officer, and to the other party to the taxation or examination, a certificate showing the items and amounts allowed or disallowed, with a copy of any order or judgment made thereon.

Either party may, within seven days of the delivery to him of such certificate, give notice in writing to the said judge or officer of intention to appeal, specifying in the notice the items and amounts in respect of which he intends to appeal.

Section 1.

The said judge or officer shall thereupon forthwith transmit to the prescribed taxing officer of the superior court the said account or claim, with any vouchers relating thereto, the certificate and the notice of appeal, and such taxing officer shall forthwith proceed to review the taxation or examination in the usual manner, or in such manner as may be prescribed, and shall, if required, receive evidence in relation to the matters in dispute, and may confirm or vary the certificate, and direct by whom all or any part of the costs of review are to be paid, and shall return the certificate as confirmed or varied to the said judge or officer with any such direction, and effect shall be given to a certificate as so confirmed or varied, and to any such direction, as if the same had been a judgment of the court as defined in the principal Act.

Any taxation or review of taxation under this Act shall be subject to appeal to the superior court in like manner as any ordinary taxation of costs is now subject.

In this Act "superior court" means in England the Queen's Bench Division of the High Court of Justice in England, and in Ireland the Common Pleas Division of the High Court of Justice in Ireland. "Prescribed" means prescribed by rules of the superior court in England or Ireland, as the case may be.

Short title.

2. This Act may be cited as the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, and shall be read as one with the principal Act.

LOCAL GOVERNMENT ACT, 1888.

[51 & 52 Vict. c. 41.]

75.

* * * * *

(19) Sections 4, 5, 6 and 7 of the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, shall apply as if they were herein re-enacted with the necessary modifications, and in particular with the substitution of the county council for the person from whom payment is claimed and of one month for the period of fourteen days within which application may be made for taxation. See 56 & 57 Vict. c. 73.

COUNTY COURT RULES. ORDER XLIII.

TAXATION OF CHARGES OF RETURNING OFFICERS. THE PARLIAMENTARY ELECTIONS (RETURNING OFFICERS) ACT, 1875. THE LOCAL GOVERNMENT ACT, 1888, S. 75, SUB-S. 19.

Application for taxation of costs of election.
38 & 39 Vict. c. 84.
51 & 52 Vict. c. 41, s. 75, sub-s. 19.
Form 423.

1. An application to the court to tax the charges of any returning officer in respect of any election, under the Parliamentary Elections (Returning Officers) Act, 1875, or any Act applying to the said Act, or under any other Act providing for the taxation by the court of costs of elections, shall be made in writing according to the form in the Appendix, and shall state on whose behalf the application is made, and shall contain a submission on the part of the applicant to pay what shall be found to be due on taxation.

Rule 2.

2. On receipt of such application the court shall fix a place and time for proceeding with such taxation, and the registrar shall issue to the bailiff for service on the applicant and the officer whose account is to be taxed a notice according to the form in the Appendix, signed by the registrar himself, and under the seal of the court, stating the place, day, and hour at and on which the taxation will be proceeded with, and requiring the parties to attend and produce documents and be examined, and warning them that if they do not attend, in person or by their solicitors, such order will be made and such proceedings taken as to the court shall seem just.

Notice of place and time for taxation. Form 424.

3. Where application is made for taxation of the charges of a returning officer, and such officer applies to the court to examine any claim transmitted to him by any person pursuant to section 5 of the Parliamentary Elections (Returning Officers) Act, 1875, or any Act applying the said section, such application shall be in writing according to the form in the Appendix, and shall contain a submission on the part of the applicant to pay what shall be found due on examination.

Application for examination of claim transmitted to returning officer. 38 & 39 Vict. c. 84, s. 5. Form 426.

4. On receipt of any such application the court shall fix a place and time for such examination, which shall take place before the taxation of the charges of the returning officer is concluded, and such taxation shall, if necessary, be adjourned until such examination has been completed. The registrar shall issue to the bailiff for service on the returning officer and the person by whom the claim was transmitted to the returning officer a notice according to the form in the Appendix, signed by the registrar himself and under the seal of the court, stating the place, day, and hour at and on which such examination will be proceeded with, and requiring the parties to attend and produce documents and be examined, and warning them that if they do not attend, in person or by their solicitors, such order will be made and such proceedings taken as to the court shall seem just.

Notice of time and place for examination. Form 427.

5. The bailiff shall serve all copies of such notices as herein-before mentioned ten clear days at least before the day fixed for any taxation or examination in accordance with the rules as to service of ordinary summonses.

Service of notices.

6. Unless by consent, or otherwise ordered, oral evidence only shall be admitted on such taxation or examination.

Evidence to be oral.

7. The order made on any taxation or examination shall determine the amount payable to or by the returning officer, and shall contain directions as to fees and costs and as to the addition to the sum allowed to any party of any costs adjudged to be paid to him, or the set-off against such sum of any costs adjudged to be paid by him, and as to the payment of the balance ascertained to be due from any party to any other, and the application of any sum deposited by any party to the proceeding with the returning officer as security for his charges, or advanced to the returning officer on account of his charges ; and such order shall be according to such of the forms in the Appendix as shall be applicable to the case, with such variations as circumstances may require.

Order on taxation or examination of claim. Forms 425, 428.

Rule 8.

Certificate under 49 & 50 Vict. c. 57, s. 1. Form 429.

8. The certificate to be delivered under sect. 1 of the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, shall be according to the form in the Appendix.

FORMS.

423.

Application for Taxation of Charges of Returning Officer.

[*Not to be printed.*]

In the County Court of , holden at .

Order XLIII. Rule 1.

In the matter of the Parliamentary Elections (Returning Officers) Act, 1875, [as applied by sub-section 19 of section 75 of the Local Government Act, 1888 (*or as the case may be*)]; and

In the matter of an election of a member to serve in Parliament for the division of the county of [*or as the case may be*].

Application is hereby made to the Court on behalf of [*a person or the authority from whom payment is claimed*] to tax the account of , the Returning Officer at the above-mentioned election, of the charges claimed by him in respect of such election, and to fix a place and time for such taxation, the Applicant [*or* Applicants] hereby submitting to pay to the said [*Returning Officer*] what shall be found to be due to him on the taxation of his said account.

Dated this day of 19 .

Applicant.
or Clerk to the Applicants.
or Solicitor to the Applicants.

To the Registrar of the Court.

424.

Notice of Place and Time fixed for Taxation.

[*Not to be printed.*]

[*Heading as in Form* 423.]

Order XLIII. Rule 2.

Application having been made to the Court on behalf of to tax the account of , the Returning Officer at the above-mentioned election, of the charges claimed by him in respect of such election, and to fix a place and time for such taxation:

Take notice, that the Court will proceed with such taxation at [*place*] on the day of at the hour of in the noon:

And you the said [*Applicant*], and you the said [*Returning Officer*] are hereby respectively required to attend before the Court at the place and time above-mentioned, and to produce before the Court on oath all books, papers, and writings in your respective custody or power relating to the above-mentioned matter, and to be examined touching the said matter as the Court shall direct.

And further take notice, that if you or either of you do not attend, either

in person or by your solicitor, at the place and time above-mentioned, such order will be made and such proceedings taken as to the Court shall seem just.

Dated this day of .

Registrar.

To [*the Applicant*]
and to
[*Returning Officer*].

425.

Order on Taxation.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Form* 423.]

Order XLIII. Rule 7.

It is this day adjudged and determined on the taxation of the account of the charges claimed by , the Returning Officer at the above-mentioned election, in respect of such election, that the amount payable to the said in respect of such charges is the sum of £ :

Result of taxation.

And it is adjudged that the said do recover the said sum of £ [*or* the sum of £ , being one part of the said sum of £] against [*the Applicant*]:

Amount payable by applicant.

And it is further adjudged that the said [*Returning Officer*] do recover against the said [*Applicant*] the sum of £ for his costs of such taxation:

Costs payable by applicant.

[*or* that the said [*Applicant*] do recover against the said [*Returning Officer*] the sum of £ for his costs of such taxation]:

Or costs payable by returning officer.

And it is ordered that the Court fees amounting to £ payable in respect of this applicant be paid by [*state by whom and in what proportion*].

Court fees.

And it is ordered that the said [*Returning Officer*] be at liberty to retain the sum of £ deposited with him by the said [*Applicant*] as security for his charges in respect of the said election [*or* advanced to him by the said [*Applicants*] on account of his charges in respect of the said election] in part payment of the said sums of £ and £ , making together the sum of £ , which the said [*Returning Officer*] is entitled to recover against the said [*Applicant*], and that the said [*Applicant*] do on or before the day of pay the sum of £ , being the balance of the said sum of £ , to the Registrar of this Court for the use of the said [*Returning Officer*].

Order for payment where returning officer allowed costs.

[*If no deposit made or no sum advanced, order payment by Applicant of the whole sum recoverable for charges and costs: if deposit or advance more than sufficient for payment of charges and costs, order payment of balance by Returning Officer to Registrar for use of Applicant.*]

[*Or*, And it is ordered that the said sum of £ for costs to be recovered by the said [*Applicant*] against the said [*Returning Officer*] be set off against the said sum of £ to be recovered by the said [*Returning Officer*] against the said [*Applicant*], and that the said [*Returning Officer*] be at liberty to retain the sum of £ , being the balance of the said sum of £ after allowing the said set-off, out of the sum of £ deposited with him by the said [*Applicant*] as security for his charges in respect of the said election, [*or* advanced to him by the said [*Applicants*] on account of his charges in respect of the said election], and that the said [*Returning Officer*] do on or before the day of pay the sum of £ , being the balance of the said deposit [*or* advance], to the Registrar of this Court for the use of the said [*Applicant*].

Order for set-off and payment of balance where applicant allowed costs.

[*If no deposit or advance made, or deposit or advance insufficient, order payment by Applicant to Registrar of sum or balance due to Returning*

Officer. If costs payable by Returning Officer exceed charges payable to him, order payment of balance and repayment of deposit or advance by Returning Officer to Registrar for use of Applicant.]

Given under the seal of the Court this day of 19 .

By the Court,

Registrar.

To [*the Applicant*]
and to
[*Returning Officer*].

426.

Application for Examination of Claim transmitted to Returning Officer.

[*Not to be printed.*]

[*Heading as in Form* 423.]

Order XLIII. Rule 3.

Application is hereby made to the Court on behalf of , the Returning Officer at the above-mentioned election, to examine a claim for transmitted to him by *A.B.*, of , pursuant to section 5 of the Parliamentary Elections (Returning Officers) Act, 1875 [as applied by sub-section 19 of section 75 of the Local Government Act, 1888 (*or as the case may be*)], and to fix a place and time for such examination, the applicant hereby submitting to pay to the said *A.B.* what shall be found to be due to him on such examination.

Dated this day of .

Returning Officer.

To the Registrar of the Court.

— — —

427.

Notice of Place and Time fixed for Examination of Claim.

[*Not to be printed.*]

[*Heading as in Form* 423.]

Order XLIII. Rule 4.

Application having been made to the Court on behalf of , the Returning Officer at the above-mentioned election, to examine a claim for transmitted to him by *A.B.*, , of , pursuant to section 5 of the Parliamentary Elections (Returning Officers) Act, 1875 [as applied by sub-section 19 of section 75 of the Local Government Act, 1888 (*or as the case may be*)], and to fix a place and time for such examination :

Take notice, that the Court will proceed with such examination at [*place*] on the day of at the hour of in the noon :

And you the said [*Returning Officer*], and you the said *A.B.*, , are hereby respectively required to attend before the Court at the place and time above-mentioned, and to produce before the Court on oath all books, papers, and writings in your respective custody or power relating to the above-mentioned matter, and to be examined touching the said matter as the Court shall direct.

And further take notice, that if you or either of you do not attend, either in person or by your solicitor, at the place and time above-mentioned, such order will be made and such proceedings taken as to the Court shall seem just.

Dated this day of , 19 .

Registrar.

To [*the Returning Officer*]
and to
[*the person transmitting the claim*].

428.

Order on Examination of Claim.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Form* 423.]

It is this day adjudged and determined on the examination of a claim for transmitted by *A.B.*, , of , to , the Returning Officer at the above-mentioned election, pursuant to section 5 of the Parliamentary Elections (Returning Officers) Act, 1875, as applied by sub-section 19 of section 75 of the Local Government Act, 1888 [*or as the case may be*], that the said *A.B.* is entitled to recover the sum of against the said [*Returning Officer*] in respect of the said claim: [*or* that the said *A.B.* is not entitled to recover anything against the said [*Returning Officer*] in respect of the said claim].

[*Order as to fees, costs, set-off, and payment of balance due from either party to the Registrar for the use of the other party.*]

Given under the seal of the Court this day of , 19 .

The Registrar.

To [*Returning Officer*]
and to
[*the person transmitting the claim*].

429.

Certificate under 49 & 50 Vict. c. 57, s. 1.

[*Not to be printed.*]

[*Title as in Form* 423.]

I, Judge of the above-mentioned Court [*or* I, Registrar of the above-mentioned Court, having been deputed by the Judge of the said Court to exercise the powers of the Court under the above-mentioned Act, do hereby, pursuant to sect. 1 of the Parliamentary Elections (Returning Officers) Act, 1875, Amendment Act, 1886, certify that I have, on the application of , taxed the account of , the Returning Officer at the above-mentioned election, of the charges claimed by him in respect of such election, and have allowed the same at the sum of £ [*or* that I have, on the application of , the Returning Officer at the above-mentioned election, examined the claim transmitted to him by for work [*or* labour, material, services, *or* expenses] in respect of the contract made with the said by the said [*Returning Officer*] for the purpose of the said election, and have allowed such claim at the sum of £], and that the particulars of the items, and amounts claimed and of the items and amounts allowed or disallowed, are set forth in the schedule hereunto annexed. Order XLIII. Rule 8.

Dated this day of 19 .

Judge [*or* Registrar].

SCHEDULE.

No. of Item.	Particulars.	Details of Items.	Amounts Claimed.	Amounts Allowed.	Amounts Disallowed.

ORDER, DATED AUGUST 16, 1895, MADE BY THE TREASURY, WITH THE CONCURRENCE OF THE LORD CHANCELLOR, AS TO TAXATION OF COSTS OF SCHOOL BOARD ELECTIONS.

Taxation of Costs of School Board Elections.

Order as to Fees.

In pursuance of the powers given by the County Courts Act, 1888, and of all other powers enabling us in this behalf, we, the undersigned, two of the Commissioners of Her Majesty's Treasury whose names are hereunto subscribed, do hereby, with the consent of the Lord Chancellor, order that on and after the 1st September, 1895, the fees specified in the schedule hereunder written shall be taken by the registrars of county courts and retained by them for their own use; viz.:—

	s.	*d.*
Taxing every account of returning officers at school board elections, where the amount of the account to be taxed does not exceed 50*l.*	10	0
Where such amount exceeds 50*l.*, for every additional 50*l.* or fractional part of 50*l.* a fee of . .	10	0

(Signed) STANLEY.
W. H. FISHER.

16th August, 1895.

I approve of the annexed Schedule of Fees.
(Signed) HALSBURY, C.

PARTITION ACTS, 1868, 1876.

[31 & 32 VICT. c. 40; 39 & 40 VICT. c. 17.]

Jurisdiction.]—Under these Acts county courts have the same powers as the High Court in actions for partition, where the property to which the action relates does not exceed 500*l.* (sect. 12 of the 1868 Act).

Besides freeholds, which have always been partitionable, the court may order partition of leaseholds (*Rowe* v. *Gray*, (1877) 5 Ch. D. 263; 46 L. J. Ch. 279), copyholds, and customary freeholds (*Jope* v. *Morshead*, (1843) 6 Beav. 213; 12 L. J. Ch. 190), manors (*Hanbury* v. *Hussey*, (1851) 14 Beav. 152; 20 L. J. Ch. 557), advowsons (*Johnstone* v. *Baber*, (1856) 6 D. M. & G. 439; 25 L. J Ch. 899), tithes (*Baxter* v. *Knollys*, (1750) 1 Ves. sen. 494), and rent-charges (*Rivis* v. *Watson*, (1839) 5 M. & W. 255; 9 L. J. Ex. 67).

Who entitled to.

Every coparcener, and every joint tenant or tenant in common in possession (*Brook* v. *Hertford*, (1729) 2 P. Wms. 518)—but not in reversion or remainder (*Evans* v. *Bagshaw*, (1870) L. R. 5 Ch. 340; 39 L. J. Ch. 145)—whether in tail (*Brook* v. *Hertford*, *supra*), for life (*Gaskell* v. *Gaskell*, (1836) 6 Sim. 643), for years (*Baring* v. *Nash*, (1813) 1 V. & B. 555), or for an estate determinable on marriage (*Hobson* v. *Sherwood*, (1841) 4 Beav. 184), has a right to bring an action for a partition.

The existence of a joint tenancy or tenancy in common is essential to the jurisdiction of the court for the purposes of an order of partition; and the court has no jurisdiction to order partition where there are subsisting trusts for management vested in trustees (*Dodd* v. *Cattell*, (1914) 2 Ch. 1; 83 L. J. Ch. 721).

Sale instead of partition.

Prior to these Acts the court could not, without consent of all parties interested, order a sale (*Turner* v. *Morgan*, (1803) 8 Ves. 143). The Acts remedy this inconvenience, and empower the court to order a sale instead of a partition (sects. 3, 4, 5 of 1868 Act).

Under sect. 3 of the 1868 Act, the sale may be ordered at the request of

one of several parties interested, notwithstanding the dissent or disability of the majority, if the court is satisfied that it will be more beneficial for the parties. The *onus* of satisfying the court lies on the party requesting the sale (*Drinkwater* v. *Ratcliffe*, (1875) L. R. 20 Eq. 528; 44 L. J. Ch. 605; *Pitt* v. *Jones*, (1880) 5 App. Cas. 651; 49 L. J. Ch. 795).

Under sect. 4 of the 1868 Act parties interested, individually or collectively, to the extent of one moiety, may request a sale, and the court, unless it sees good reason to the contrary, must then direct a sale. The burthen is thus thrown upon those resisting a sale to show that a partition will be more beneficial (*Rowe* v. *Gray*, (1877) 5 Ch. D. 263; 46 L. J. Ch. 279; *Porter* v. *Lopes*, (1877) 7 Ch. D. 358). The request for a sale may be signed at any time after entry of a plaint for partition, the signatures of the parties being attested by the registrar or one of his clerks. If all the parties interested sign, the order for sale may be made at the next court, although it may be held before the return day of the summons (Order IX. r. 10, *post*).

The above provisions are independent of, and are not controlled by, sect. 5 of the 1868 Act (see *Pitt* v. *Jones*, *supra*), which enables the court to direct a sale unless the other parties entitled agree to purchase the share of one who requests a sale. This section appears to give a different power from that given by the other sections; but a person requesting a sale under it cannot be compelled to sell his share at a valuation (*Williams* v. *Games*, (1875) L. R. 10 Ch. 204; 44 L. J. Ch. 245). Nor can the owner of less than a moiety obtain a sale, unless he can show good reason for a sale, even though the owners of the major part do not offer to purchase his share (*Richardson* v. *Feary*, (1888) 39 Ch. D. 45; 57 L. J. Ch. 1049).

When partition ordered.

If the court orders a partition and not a sale, and the parties do not agree as to how it is to be made, the practice in the High Court is to effect it by reference to chambers. In county courts, it is believed that the partition may be effected by reference to the registrar for inquiry and report, and by the judge on such report making such order as appears just (see Seton on Decrees, 7th Ed., 1783, for forms of orders in chambers in High Court).

Where commenced.

Practice.]—The action must be commenced in the court within the district of which the land to be divided is situate; but when both plaintiff and defendant dwell or carry on business in one or more of the Metropolitan districts, the action must, although authorised by special Act, apparently be commenced as prescribed by the 51 & 52 Vict. c. 43, s. 84.

Parties.

Generally speaking, all persons interested must either be parties or must be served with notice of any order or judgment made by the court, and no sale can be ordered unless all such persons are before the court, or their absence is satisfactorily accounted for; but in certain cases, however, service of notice may be dispensed with (see sects. 3, 4 of 1876 Act). The action may be brought by a person of unsound mind, not so found, by a next friend (*Porter* v. *Porter* (C. A.), (1888) 37 Ch. D. 420).

Particulars.

When a sale is claimed by the particulars, it is no longer necessary to claim a partition also (see sect. 7 of the 1876 Act).

Request for sale.

When a request for sale, pursuant to the Partition Act, 1868, s. 4, is made by all the parties interested, they may attend, and the request may be signed at the county court offices, at any time after entry of the plaint, and the signatures must then be attested by the registrar or one of his clerks. When all the parties interested have signed, they may then and there accept service; and the order for sale may be made at the next court, although it be held before the return-day (see Order IX. r. 10, Form 325).

Conduct of proceedings.

On an order for sale being made the court must appoint one solicitor to have the conduct of the proceedings, and no other solicitor will be entitled to any costs incurred afterwards (see Order IX. r. 11). This part of the rule appears to be general, and not to be limited to cases in which all parties interested sign a request for a sale.

Defence.

As to notice of defence, see Part I., p. 446.

For forms of particulars and orders, see Seton on Decrees, 7th Ed. p. 1783. See Order 9, rr. 10—11, and Forms 324—330, *post*, pp. 2175—2178.

Costs.

Costs are in the discretion of the court, but as a general rule the costs of all parties have been ordered to be paid out of the estate (*Belcher* v. *Williams*, (1890) 45 Ch. D. 510). This case was not followed in *Catton* v. *Banks*, (1893) 2 Ch. 221; 62 L. J. Ch. 600, where only one set of costs in respect of each share was allowed out of the fund in court.

31 & 32 Vict. c. 40.

Power to court to order sale instead of division.

3. In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if it appears to the court that, by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

Sale on application of certain proportion of parties interested.

4. In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property to which the suit relates, request the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.

As to purchase of share of party desiring sale.

5. In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if any party interested in the property to which the suit relates requests the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the court may, if it thinks fit, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions, and in case of such undertaking being given the court may order a valuation of the share of the party requesting a sale in such manner as the court thinks fit, and may give all necessary or proper consequential directions.

Authority for parties interested to bid.

6. On any sale under this Act, the court may, if it thinks fit, allow any of the parties interested in the property to bid at the sale, on such terms as to non-payment of deposit, or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same, or as to any other matters, as to the court seem reasonable.

[Section 7 repealed 56 & 57 Vict. c. 53, s. 51.]

Application of proceeds of sale.

8. Sections twenty-three to twenty-five (both inclusive) of the Act of the session of the nineteenth and twentieth years of Her

Majesty's reign (chapter one hundred and twenty), "to facilitate leases and sales of settled estates," shall extend and apply to money to be received on any sale effected under the authority of this Act. (19 & 20 Vict. c. 120, ss. 23, 24, 25.)

Section 8.

Notwithstanding sect. 8, order for sale converts share of person absolutely entitled and *sui juris* at date of order into personalty (*Herbert* v. *Herbert*, (1912) 2 Ch. 268; 81 L. J. Ch. 733).

9. Any person who, if this Act had not been passed, might have maintained a suit for partition may maintain such suit against any one or more of the parties interested without serving the other or others (if any) of those parties; and it shall not be competent to any defendant in the suit to object for want of parties; and at the hearing of the cause the court may direct such inquiries as to the nature of the property, and the persons interested therein, and other matters, as it thinks necessary or proper with a view to an order for partition or sale being made on further consideration; but all persons who, if this Act had not been passed, would have been necessary parties to the suit, shall be served with notice of the decree or order on the hearing, and after such notice shall be bound by the proceedings as if they had been originally parties to the suit, and shall be deemed parties to the suit; and all such persons may have liberty to attend the proceedings; and any such person may, within a time limited by general orders, apply to the court to add to the decree or order.

Parties to partition suits.

[Sections 10 and 11 repealed 56 & 57 Vict. c. 14.]

12. In England the county courts shall have and exercise the like power and authority as the Court of Chancery in suits for partition (including the power and authority conferred by this Act) in any case where the property to which the suit relates does not exceed in value the sum of five hundred pounds, and the same shall be had and exercised in like manner and subject to the like provisions as the power and authority conferred by section one of the County Courts Act, 1865.

Jurisdiction of county courts in partition. (28 & 29 Vict. c. 99, s. 1.)

39 & 40 Vict. c. 17.

1. This Act may be cited as the Partition Act, 1876, and shall be read as one with the Partition Act, 1868.

Short title.

2. This Act shall apply . . . . and the term "action" includes a suit, and the term "judgment" includes decree or order.

Application of Act.

3. Where in an action for partition it appears to the court that notice of the judgment on the hearing of the cause cannot be served on all the persons on whom that notice is by the Partition Act, 1868, required to be served, or cannot be so served without expense disproportionate to the value of the property to which the action relates, the court may, if it thinks fit, on the request of any of the parties interested in the property, and notwithstanding the dissent or disability of any others of them, by order, dispense with that service on any person or class of persons specified in the order, and, instead thereof, may direct advertisements to be published at such times and in such manner as the court shall think fit, calling upon all persons claiming to be interested in such property who have not been so served to come in and establish their respective claims in respect thereof before the judge in

Power to dispense with service of notice of decree or order in special cases.

Section 3.

chambers within a time to be thereby limited. After the expiration of the time so limited all persons who shall not have so come in and established such claims, whether they are within or without the jurisdiction of the court (including persons under any disability), shall be bound by the proceedings in the action as if on the day of the date of the order dispensing with service they had been served with notice of the judgment, service whereof is dispensed with ; and thereupon the powers of the court under the Trustee Act, 1850, shall extend to their interests in the property to which the action relates as if they had been parties to the action ; and the court may thereupon, if it shall think fit, direct a sale of the property and give all necessary or proper consequential directions.

Proceedings where service is dispensed with.

4. Where an order is made under this Act dispensing with service of notice on any person or class of persons, and property is sold by order of the court, the following provisions shall have effect :

(1) The proceeds of sale shall be paid into court to abide the further order of the court :

(2) The court shall, by order, fix a time, at the expiration of which the proceeds will be distributed, and may from time to time, by further order, extend that time :

(3) The court shall direct such notices to be given by advertisements or otherwise as it thinks best adapted for notifying to any persons on whom service is dispensed with, who may not have previously come in and established their claims, the fact of the sale, the time of the intended distribution, and the time within which a claim to participate in the proceeds must be made :

(4) If at the expiration of the time so fixed or extended the interests of all the persons interested have been ascertained, the court shall distribute the proceeds in accordance with the rights of those persons :

(5) If at the expiration of the time so fixed or extended the interests of all the persons interested have not been ascertained, and it appears to the court that they cannot be ascertained or cannot be ascertained without expense disproportionate to the value of the property or of the unascertained interests, the court shall distribute the proceeds in such manner as appears to the court to be most in accordance with the rights of the persons whose claims to participate in the proceeds have been established, whether all those persons are or are not before the court, and with such reservations (if any) as to the court may seem fit in favour of any other persons (whether ascertained or not) who may appear from the evidence before the court to have any *primâ facie* rights which ought to be so provided for, although such rights may not have been fully established, but to the exclusion of all other persons, and thereupon all such other persons shall by virtue of this Act be excluded from participation in those proceeds on the distribution thereof, but notwithstanding the distribution any excluded person may recover from any participating person any portion received by him of the share of the excluded person.

Section 5.

Provision for case of successive sales in same action.

5. Where in an action for partition two or more sales are made, if any person who has by virtue of this Act been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the proceeds of a subsequent sale, the shares of the other persons interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claim thereto had been established in due time.

Request by married woman, infant, or person under disability.

6. In an action for partition a request for sale may be made or an undertaking to purchase given on the part of a married woman, infant, person of unsound mind, or person under any other disability, by the next friend, guardian, committee in lunacy (if so authorised by order in lunacy), or other person authorised to act on behalf of the person under such disability, but the court shall not be bound to comply with any such request or undertaking on the part of an infant unless it appear that the sale or purchase will be for his benefit.

Action for partition to include action for sale and distribution of the proceeds.

7. For the purposes of the Partition Act, 1868, and of this Act, an action for partition shall include an action for sale and distribution of the proceeds, and in an action for partition it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

COUNTY COURT RULES.—ORDER IX. RULES 10, 11.

Request under 31 & 32 Vict. c. 40, may be signed any time after entry of plaint.

10. At any time after the entry of a plaint for partition, all the parties interested may attend and accept service and sign the request referred to in section four of the Partition Act, 1868, and their signatures shall be attested by the registrar, or by one of his clerks. Where all the parties interested have signed the request, the order for the sale thereon may be made at the next court to be held, although such court may be held before the return-day of the summons.

Form 325.

Conduct of proceedings on order for sale in partition action.

11. Upon an order for sale being made in a partition action, the judge shall appoint one solicitor to have the conduct of the proceedings, and no other solicitor shall be entitled to any costs incurred after such order shall have been made.

FORMS.

324.

Particulars in an Action for Partition or for Sale and Distribution of Proceeds.

The Partition Acts, 1868 and 1876. 31 & 32 Vict. c. 40. 39 & 40 Vict. c. 17.

1. By will dated 1st January 1889, D. devised all his real estate to E. his wife for life, with remainder to such of his children as should survive him as tenants in common in fee.

2. D. died on the 2nd January 1891, and his will was proved on the 3rd March 1891. *Order VI. Rule 1.*

3. D. left the said E. his widow and three children only, viz., the plaintiff A., the defendant B., and a daughter C., him surviving.

4. The said E., the widow of the testator, and the tenant for life of the real estate of the testator under his said will, died on the 4th day of April 19 .

5. The said C. married F., and went with her said husband to reside in the United States and she died there, leaving her husband and three children her surviving. It is not known in whom the one-third part or share of the real estate of the testator by his will devised to the said C. is now vested.

6. The real estate of the said testator consists of two houses situate at . . . . The value of the said two houses does not exceed £500.

7. A sale of the said two houses and a distribution of the proceeds will be more beneficial than a division of the property.

The plaintiff claims a sale of the said two houses and a distribution of the proceeds amongst the parties interested.

325.

Request for Sale under Partition Act, 1868.

31 & 32 Vict. c. 40, s. 4. *Order IX., Rule* 10.

We, the undersigned, being all the persons interested or claiming to be interested in the hereditaments mentioned in the particulars filed in this action, hereby request that the said hereditaments may be sold and the proceeds thereof distributed instead of being divided between or amongst the persons interested.

326.

Preliminary Inquiry directed in an Action for Partition for the Purpose of ascertaining who are the Persons interested in the Property.

The Partition Acts, 1868 and 1876.

31 & 32 Vict. c. 40. 39 & 40 Vict. c. 17.

It is ordered that an inquiry be made who are the persons interested in the hereditaments in the particulars in this action mentioned, and in what shares and proportions and for what estates and interests, and whether they are parties to this action, and whether it will be more beneficial to the parties interested in the said hereditaments that the same should be sold and the proceeds of sale distributed among them, or that a division of the said hereditaments should be made. And it is ordered that the further hearing of this action be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

327.

Order dispensing with Service of Notice of Judgment on Persons interested.

The Partition Acts, 1868 and 1876.

31 & 32 Vict. c. 40. 39 & 40 Vict. c. 17.

It appearing that notice of the judgment [*or* order] given [*or* made] on the hearing of this action cannot be served on all the persons on whom that notice is by the Partition Act, 1868, required to be served [*or* cannot be served on all the persons on whom that notice is by the Partition Act, 1868, required to be served without expense disproportionate to the value of the property to which the action relates], it is, on the request of parties interested in the said property, ordered that service on [*name persons*] be dispensed with, and instead thereof it is ordered that advertisement be published in [*state particulars of advertisements, names of*

newspapers, &c., &c., and times when to be published] calling upon all persons claiming to be interested in the property to which this action relates who have not been so served to come in and establish their claims in respect thereof before the court within from the publication of the said advertisement.

328.

Judgment for Partition without reference.

The Partition Acts, 1868 and 1876.

Declare that the plaintiff is entitled to one equal moiety of the two freehold houses mentioned in the plaintiff's particulars of claim, and that the infant defendant is entitled to the remaining moiety: And it appearing that the said two houses are of equal value, declare that it will be for the benefit of the infant defendant that the said two houses be partitioned, divided, and allotted in manner following; that is to say, that the house being No. 1 . . . . . be allotted to the plaintiff, and the house being No. . . . . be allotted to the infant defendant, and it is ordered that the said two houses be partitioned, divided, and allotted accordingly. And it is ordered that the plaintiff and the said infant defendant shall hold and enjoy their said moieties in severalty according to such allotment. And it is declared that the said infant defendant is a trustee within the meaning of the Trustee Acts. And it is ordered that the plaintiff and of the guardian of the infant defendant on behalf of the said infant do execute mutual conveyances to be settled by the court in case the parties differ. And it is ordered that all such deeds and writings or other evidence of title relating to the said houses in the custody or power of any of the parties as exclusively relate to the house allotted to the plaintiff be delivered to him, and that all such deeds and writings or other evidence of title relating to the said houses in the custody or power of any of the parties as exclusively relate to the house allotted to the infant defendant be delivered to the guardian of the infant defendant to hold for and on behalf of the infant.

31 & 32 Vict. c. 40. 39 & 40 Vict. c. 17.

Add special direction as to deeds and writings relating to both houses.

Liberty to apply, &c.

329.

Order for Sale under Section 3 of the Partition Act, 1868.

The plaintiff by his solicitor requesting a sale of the hereditaments in his particulars of claim in this action mentioned, and it appearing to the judge that by reason of the nature of the property [*or* of the number of the parties interested or presumptively interested therein] a sale of the property and a distribution of the proceeds will be more beneficial to the parties interested than a division of the property between or among them, it is ordered that an inquiry be made by the registrar who are the persons interested in the said hereditaments, and in what shares and proportions and for what estates and interests, and whether they are parties to this action. And if it shall be certified that all the parties interested are parties to this action, and that the plaintiff is one of the said parties, it is ordered that the said hereditaments be sold with the approbation of the judge, and it is ordered that the money to arise from such sale be paid into court to the credit of this action; but if it shall be certified that all the parties interested are not parties to this action, it is ordered that any of the parties interested are to be at liberty to apply to the judge for an order for sale when it shall have been certified that all persons who are not parties and who ought to be served with notice of this judgment or order have been so served or that service of such notice

31 & 32 Vict. c. 40, s. 3. State grounds on which court proceeds under section 3.

has been dispensed with ; and any party to this action is to be at liberty to apply for an order dispensing with such service on any person who cannot be discovered, or who cannot be served without expense disproportionate to the value of the said hereditaments. And it is ordered that the further consideration of this action be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

330.

Order for Sale under Section 4 of the Partition Act, 1868.

31 & 32 Vict. c. 40, s. 4.

The plaintiffs who claim to be interested in a moiety or upwards of the hereditaments in the particulars of claim in this action mentioned, by their solicitor requesting a sale of the said hereditaments and a distribution of the proceeds instead of a division of the same between or amongst the persons interested, it is ordered that an inquiry be made who are the persons interested in the said hereditaments, and in what shares and proportions, and for what estates and interests, and whether they are parties to this action ; and if it shall be certified that all the persons interested are parties to this action, and that the plaintiffs are interested to the extent of one moiety or upwards in the said hereditaments and request a sale thereof, it is ordered that the said hereditaments be sold with the approbation of the judge, and that the money to arise from such sale be paid into court to the credit of this action ; but if it shall be certified that all the persons interested are not parties to this action, it is ordered that any of the parties interested are to be at liberty to apply to the judge for an order for sale when it shall have been certified that all persons who are not parties and who ought to be served with notice of this judgment [*or* order] have been so served, or that service of such notice has been dispensed with, and that the parties or party interested collectively or individually to the extent of one moiety or upwards in the said hereditaments request a sale ; and any party to this action is to be at liberty to apply for an order dispensing with service of notice of this judgment [*or* order] on any person who cannot be discovered, or who cannot be served without expense disproportionate to the value of the said hereditaments. And it is ordered that the further consideration of this action be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

PHARMACY ACTS, 1852, 1868, 1869.

POISONS AND PHARMACY ACT, 1908.

[15 & 16 Vict. c. 56 ; 31 & 32 Vict. c. 121 ; 32 & 33 Vict. c. 117 8 Edw. VII. c. 55.]

These Acts were passed to cause persons entitled to use the name or title of pharmaceutical chemist to be registered ; to prevent unregistered persons from using such title, and to control the sale of poisons.

Jurisdiction of the county court is exclusive in actions brought to recover penalties of 5*l.* each, under sect. 12 of the 1852 Act, against persons not duly registered, for assuming or using the title of pharmaceutical chemist, or any name, title, or sign implying the same ; of like sums under sect. 15 of the 1868 Act, for selling or keeping an open shop for the sale of poisons, or for using the title of chemist or druggist, not being a duly registered pharmaceutical chemist ; of a like sum under sect. 3 of the 1908 Act, for being a duly registered pharmaceutical chemist, not by himself or by a duly registered

chemist conducting the said business; the name of such duly registered chemist, by whom the business is being conducted, must be conspicuously exhibited on the premises.

The schedule to the Act of 1908 specifies the articles to be deemed poisons within the Act, and by the said Act, is substituted for Schedule A to the Act of 1868.

Practice.]—Such penalties may be recovered by the registrar appointed by the council of the society, in the name and by the authority of such council in England and Wales by plaint and summons (sect. 12 of the 1852 Act). The action should be brought in the district in which the defendant dwells or carries on business, and may not be brought after the expiration of six months from the date of the offence (sect. 13, *infra*). The proceedings will follow the ordinary practice of the court. No special rules.

Costs.]—In every action, the party who shall prevail shall recover his full costs of suit (sect. 13, *infra*).

15 & 16 Vict. c. 56.

Registrar bound to certify, etc., and his certificate good evidence in absence of the contrary.

7. The registrar to be appointed under or by virtue of this Act shall be bound, on the application of any person paying one shilling, to certify under his hand whether or no any person whose name and address shall be furnished to him appears in the said register or is a member of the Pharmaceutical Society of Great Britain or not; and the certificate of such registrar, signed by the said registrar, and countersigned by the president or two members of the council of the said society, shall, in the absence of evidence to the contrary, be sufficient evidence of the facts therein stated up to the date of the said certificate.

* * * * *

Persons not duly registered shall not assume or use name or title of pharmaceutical chemist, or any name, title, or sign implying the same.

Penalty on persons offending.

12. From and after the passing of this Act, it shall not be lawful for any person, not being duly registered as a pharmaceutical chemist according to the provisions of this Act, to assume or use the title of pharmaceutical chemist or pharmaceutist in any part of Great Britain, or to assume, use, or exhibit any name, title, or sign implying that he is registered under this Act, or that he is a member of the said society; and if any person, not being duly registered under this Act, shall assume or use the title of pharmaceutical chemist or pharmaceutist, or shall use, assume, or exhibit any name, title, or sign implying that he is a person registered under this Act, or that he is a member of the said society, every such person shall be liable to a penalty of five pounds; and such penalty may be recovered by the registrar to be appointed under this Act, in the name and by the authority of the council of the said society, in manner following; (that is to say,)

Penalties, how recoverable in England and Wales;

In England or Wales, by plaint under the provisions of any Act in force for the more easy recovery of small debts and demands:

* * * * *

Limitation for recovery of penalties, etc.

13. Provided always, that no action or other proceeding for any offence under this Act shall be brought after the expiration of six months from the commission of such offence; and in every such action or proceeding the party who shall prevail shall recover his full costs of suit or of such other proceedings.

Section 14 — Application of penalties.

14. All and every sums and sum of money which shall arise from any conviction and recovery of penalties for offences incurred under this Act shall be paid as the Commissioners of Her Majesty's Treasury shall direct.

31 & 32 VICT. C. 121.

Persons selling or compounding poisons, or assuming the title of chemist and druggist, to be qualified.

1. From and after the thirty-first day of December one thousand eight hundred and sixty-eight it shall be unlawful for any person to sell or keep open shop for retailing, dispensing, or compounding poisons, or to assume or use the title "chemist and druggist," or chemist or druggist, or pharmacist, or dispensing chemist or druggist, in any part of Great Britain, unless such person shall be a pharmaceutical chemist, or a chemist and druggist within the meaning of this Act, and be registered under this Act, and conform to such regulations as to the keeping, dispensing, and selling of such poisons as may from time to time be prescribed by the Pharmaceutical Society with the consent of the Privy Council.

Articles named in Schedule (A) to be deemed poisons within the meaning of this Act.

2. The several articles named or described in the Schedule (A) shall be deemed to be poisons within the meaning of this Act, and the council of the Pharmaceutical Society of Great Britain (hereinafter referred to as the Pharmaceutical Society) may from time to time, by resolution, declare that any article in such resolution named ought to be deemed a poison within the meaning of this Act; and thereupon the said society shall submit the same for the approval of the Privy Council, and if such approval shall be given, then such resolution and approval shall be advertised in the *London Gazette*, and on the expiration of one month from such advertisement the article named in such resolution shall be deemed to be a poison within the meaning of this Act.

By sect. 1 of the 1908 Act (*post*) this Schedule (A) has been repealed, and the schedule to the 1908 Act substituted therefor. As to veterinary surgeons, see Pharmacy Act, 1869, s. 1.

Protection of titles, and restrictions on sale of poisons.

15. From and after the thirty-first day of December one thousand eight hundred and sixty-eight any person who shall sell or keep an open shop for the retailing, dispensing, or compounding poisons, or who shall take, use, or exhibit the name or title of chemist and druggist, or chemist or druggist, not being a duly registered pharmaceutical chemist, or chemist and druggist, or who shall take, use, or exhibit the name or title pharmaceutical chemist, pharmaceutist, or pharmacist, not being a pharmaceutical chemist, or shall fail to conform with any regulation as to the keeping or selling of poisons made in pursuance of this Act, or who shall compound any medicines of the British Pharmacopeia except according to the formularies of the said pharmacopeia, shall for every such offence be liable to pay a penalty or sum of five pounds, and the same may be sued for, recovered, and dealt with in the manner provided by the Pharmacy Act for the recovery of penalties under that Act; but nothing in this Act contained shall prevent any person from being liable to any other penalty, damages, or punishment to which he would have been subject if this Act had not passed.

This section, and sect. 16, amended by sect. 3, Poisons and Pharmacy Act,

1908. The prohibition against the sale of poisons extends to the sale of a compound containing a scheduled poison (*Pharmaceutical Society* v. *Piper & Co.*, (1893) 1 Q. B. 686; 62 L. J. Q. B. 305). A defendant may be liable under this section, though he is also liable under sect. 17 (*Pharmaceutical Society* v. *Jacks*, (1911) 2 K. B. 115; 80 L. J. K. B. 767). Not sufficient to prove an infinitesimally small quantity of poison in the compound sold (*Pharmaceutical Society* v. *Armson*, (1894) 2 Q. B. 720; 64 L. J. Q. B. 32; *Pharmaceutical Society* v. *Delve*, (1894) 1 Q. B. 71; 63 L. J. Q. B. 360). An unregistered assistant who sells in the absence of his master is liable though the master be registered (*Pharmaceutical Society* v. *Wheeldon*, (1890) 24 Q. B. D. 683; 59 L. J. Q. B. 400). Section 15 Notes.

16. Nothing hereinbefore contained shall extend to or interfere with the business of any legally qualified apothecary or of any member of the Royal College of Veterinary Surgeons of Great Britain, nor with the making or dealing in patent medicines, nor with the business of wholesale dealers in supplying poisons in the ordinary course of wholesale dealing; and upon the decease of any pharmaceutical chemist or chemist and druggist actually in business at the time of his death it shall be lawful for any executor, administrator, or trustee of the estate of such pharmaceutical chemist or chemist and druggist to continue such business if and so long only as such business shall be *bonâ fide* conducted by a duly qualified assistant, and a duly qualified assistant within the meaning of this clause shall be a pharmaceutical chemist or a chemist and druggist registered by the registrar under the Pharmacy Act or this Act: Provided always, that registration under this Act shall not entitle any person so registered to practise medicine or surgery, or any branch of medicine or surgery. Reserving rights of certain persons.

This section and sect. 15 amended by sect. 3, Poisons and Pharmacy Act, 1908, *post*, p. 2184.

17. It shall be unlawful to sell any poison, either by wholesale or by retail, unless the box, bottle, vessel, wrapper, or cover in which such poison is contained be distinctly labelled with the name of the article and the word poison, and with the name and address of the seller of the poison; and it shall be unlawful to sell any poison of those which are in the first part of Schedule (A) to this Act, or may hereafter be added thereto under section two of this Act, to any person unknown to the seller, unless introduced by some person known to the seller; and on every sale of any such article the seller shall, before delivery, make or cause to be made an entry in a book to be kept for that purpose stating, in the form set forth in Schedule (F) to this Act, the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, to which entry the signature of the purchaser and of the person, if any, who introduced him shall be affixed; and any person selling poison otherwise than is herein provided shall, upon a summary conviction before two justices of the peace in England or the sheriff in Scotland, be liable to a penalty not exceeding five pounds for the first offence, and to a penalty not exceeding ten pounds for the second or any subsequent offence, and for the purposes of this section the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the seller; but the provisions of this section, which Regulations to be observed in the sale of poisons.

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are solely applicable to poisons in the first part of the Schedule (A) to this Act, or which require that the label shall contain the name and address of the seller, shall not apply to articles to be exported from Great Britain by wholesale dealers, nor to sales by wholesale to retail dealers in the ordinary course of wholesale dealing, nor shall any of the provisions of this section apply to any medicine supplied by a legally qualified apothecary to his patient, nor apply to any article when forming part of the ingredients of any medicine dispensed by a person registered under this Act; provided such medicine be labelled, in the manner aforesaid, with the name and address of the seller, and the ingredients thereof be entered, with the name of the person to whom it is sold or delivered, in a book to be kept by the seller for that purpose; and nothing in this Act contained shall repeal or affect any of the provisions of an Act of the session holden in the fourteenth and fifteenth years in the reign of her present Majesty, intituled *An Act to regulate the Sale of Arsenic.*

NOTE.—See also sect. 15, *supra.*

* * * * *

SCHEDULE F.

Date.	Name and Address of Purchaser.	Name and Quantity of Poison Sold.	Purpose for which it is required.	Signature of Purchaser.	Signature of Person introducing Purchaser.

32 & 33 VICT. C. 117.

Reserving rights of certain persons.

1. Nothing contained in the first fifteen sections of the recited Act shall affect any person who has been registered as a legally qualified medical practitioner before the passing of this Act; and the said clauses shall not apply to any person who may hereafter be registered as a legally qualified practitioner, and who, in order to obtain his diploma for such registration, shall have passed an examination in pharmacy; nor shall the said clauses prevent any person who is a member of the Royal College of Veterinary Surgeons of Great Britain, or holds a certificate in veterinary surgery from the Highland and Agricultural Society of Scotland, from dispensing medicines for animals under his care.

* * * * *

Excepting medicine supplied by a legally qualified medical man.

3. Nothing contained in section seventeen of the said recited Act shall apply to any medicine supplied by a legally qualified medical practitioner to his patient or dispensed by any person registered under the said Act, provided such medicine be distinctly

labelled with the name and address of the seller, and the ingredients thereof be entered, with the name of the person to whom it is sold or delivered, in a book to be kept by the seller for that purpose. Section 3.

* * * * *

5. Schedule (F) of the said recited Act is hereby altered by substituting for the second column headed "Name of Purchaser" a column headed "Name and Address of Purchaser." Schedule (F.) amended.

8 EDW. VII. c. 55.

1.—(1) Schedule A to the Pharmacy Act, 1868 (which specifies the articles to be deemed poisons within the meaning of that Act), is hereby repealed, and the schedule to this Act shall be substituted therefor. Amendment of 31 & 32 Vict. c. 121, schedule A.

(2) The schedule to this Act may be amended by adding thereto or removing therefrom any article, or by transferring any article from one part of the schedule to the other in the manner provided by section two of the Pharmacy Act, 1868, for adding to the list of articles deemed to be poisons within the meaning of that Act.

2.—(1) So much of the Pharmacy Act, 1868, as makes it an offence for any person to sell or keep open shop for the sale of poisons, unless he is a duly registered pharmaceutical chemist or chemist and druggist and conforms to regulations made under section one of that Act, shall not apply in the case of poisonous substances to be used exclusively in agriculture or horticulture for the destruction of insects, fungi, or bacteria, or as sheep dips or weed killers which are poisonous by reason of their containing arsenic, tobacco, or the alkaloids of tobacco, if the person so selling or keeping open shop is duly licensed for the purpose under this section by a local authority, and conforms to any regulations as to the keeping, transporting, and selling of poisons made under this section, but nothing in this section shall exempt any person so licensed from the requirements of any other provision of the Pharmacy Act, 1868, or of the Arsenic Act, 1851, relating to poisons: Regulation of sale of certain poisonous substances for agricultural and horticultural purposes. 14 & 15 Vict. c. 13.

Provided that His Majesty may by Order in Council amend this provision by adding thereto or removing therefrom any poisonous substance, and, upon any such Order being made, this provision shall have effect as if the added poisonous substances were included therein and the removed poisonous substances were excluded therefrom.

(2) Before granting any licence under this section the local authority shall take into consideration whether in the neighbourhood where the applicant for the licence carries on or intends to carry on business the reasonable requirements of the public with respect to the purchase of such poisonous substances as aforesaid are satisfied.

(3) His Majesty may, by Order in Council, make regulations as to—

(*a*) the granting of licences under this section; and

(*b*) the duration, renewal, revocation, suspension, extent, and production of such licences; and

(*c*) the keeping, inspection, and copying of registers of licences; and

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(*d*) the fees to be charged for licences and for inspection and copying of registers; and

(*e*) the keeping, transporting, and selling of the poisonous substances to which this section applies;

and generally for the purposes of carrying this section into effect.

(4) The local authority for the purposes of this section shall, as respects the area of any municipal borough in England having a population of more than ten thousand according to the last published census for the time being, be the council of that borough, and, as respects the area of any royal, parliamentary, or police burgh in Scotland, be the town council, and, as respects any other place, be the council of the county.

(5) An Order in Council under this section shall be laid before both Houses of Parliament as soon as may be after it is made.

"The person so selling," in sub-s. 1, includes the person actually conducting the sale, *e.g.*, the shop-assistant (*Pharmaceutical Society* v. *Nash*, (1911) 1 K. B. 520; 80 L. J. K. B. 416).

Amendment of 31 & 32 Vict. c. 121, ss. 15, 16.

3.—(1) Any person who, being a duly registered pharmaceutical chemist or chemist and druggist, carries on the business of pharmaceutical chemist or chemist and druggist shall, unless in every premises where the business is carried on the business is *bonâ fide* conducted by himself or some other duly registered pharmaceutical chemist or chemist and druggist, as the case may be, and unless the name and certificate of qualification of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises, be guilty of an offence under section fifteen of the Pharmacy Act, 1868.

(2) The provisions of section sixteen of the Pharmacy Act, 1868, which enable the executor, administrator, or trustee of the estate of a deceased pharmaceutical chemist or chemist and druggist to continue his business so long as such business is *bonâ fide* conducted by a duly qualified assistant, shall be construed as enabling such executor, administrator, or trustee to carry on the business if and so long only as, in every premises where the business is carried on, the business is *bonâ fide* conducted by a duly registered pharmaceutical chemist or chemist and druggist, as the case may be, and the name and certificate of qualification of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises.

(3) A registered chemist or druggist may notwithstanding anything in section fifteen of the Pharmacy Act, 1868, take, use, or exhibit the name or title of pharmacist.

(4) A body corporate, and in Scotland a firm or partnership, may carry on the business of a pharmaceutical chemist or chemist and druggist—

(*a*) if the business of the body corporate, firm, or partnership, so far as it relates to the keeping, retailing, and dispensing of poisons, is under the control and management of a superintendent who is a duly registered pharmaceutical chemist or chemist and druggist, whose name has been forwarded to the registrar appointed under the Pharmacy Act, 1852, to be entered by him in a register to be kept for that purpose, and who does not act at the

same time in a similar capacity for any other body corporate, firm, or partnership; and Section 3.

(*b*) if in every premises where such business as aforesaid is carried on, and is not personally conducted by the superintendent, such business is *bonâ fide* conducted under the direction of the superintendent by a manager or assistant who is a duly registered pharmaceutical chemist or chemist and druggist, and whose certificate of qualification is conspicuously exhibited in the shop or other place in which he so conducts the business.

A body corporate, and in Scotland a firm or partnership, may use the description of chemist and druggist, or of chemist or of druggist, or of dispensing chemist or druggist, if the foregoing requirements as to the carrying on of the business are observed, and if the superintendent is a member of the board of directors or other governing body of the body corporate, or of the firm or partnership, as the case may be.

Subject as aforesaid, section twelve of the Pharmacy Act, 1852, and sections one and fifteen of the Pharmacy Act, 1868, shall apply to a body corporate, and in Scotland to a firm or partnership, in like manner as they apply to an individual. 15 & 16 Vict. c. 56.

5.—(1) It shall not be lawful to sell any substance to which this section applies by retail, unless the box, bottle, vessel, wrapper, or cover in which the substance is contained is distinctly labelled with the name of the substance and the word "poisonous," and with the name and address of the seller of the substance, and unless such other regulations as may be prescribed under this section by Order in Council are complied with; and, if any person sells any such substance otherwise than in accordance with the provisions of this section or of any Order in Council made thereunder, he shall, on conviction under the Summary Jurisdiction Acts, be liable for each offence to a fine not exceeding five pounds. Restrictions on sale of certain poisonous substances.

(2) The substances to which this section applies are sulphuric acid, nitric acid, hydrochloric acid, soluble salts of oxalic acid, and such other substances as may for the time being be prescribed by Order in Council under this section.

SCHEDULE.

PART I.

Arsenic, and its medicinal preparations.
Aconite, aconitine, and their preparations.
Alkaloids—all poisonous vegetable alkaloids not specifically named in this schedule, and their salts, and all poisonous derivatives of vegetable alkaloids.
Atropine, and its salts, and their preparations.
Belladonna, and all preparations or admixtures (except belladonna plaisters) containing 0·1 or more per cent. of belladonna alkaloids.
Cantharides, and its poisonous derivatives.
Coca, any preparation or admixture of, containing 1 or more per cent. of coca alkaloids.
Corrosive sublimate.
Cyanide of potassium, and all poisonous cyanides and their preparations.
Emetic tartar, and all preparations or admixtures containing 1 or more per cent. of emetic tartar.
Ergot of rye, and preparations of ergots.

Nux vomica, and all preparations or admixtures containing 0·2 or more per cent. of strychnine.
Opium, and all preparations or admixtures containing 1 or more per cent. of morphine.
Picrotoxin.
Prussic acid, and all preparations or admixtures containing 0·1 or more per cent. of prussic acid.
Savin, and its oil, and all preparations or admixtures containing savin or its oil.

PART II.

Almonds, essential oil of (unless deprived of prussic acid).
Antimonial wine.
Cantharides, tincture and all vesicating liquid preparations or admixtures of.
Carbolic acid, and liquid preparations of carbolic acid, and its homologues containing more than 3 per cent. of those substances, except preparations for use as sheep wash or for any other purpose in connection with agriculture or horticulture, contained in a closed vessel distinctly labelled with the word "Poisonous," the name and address of the seller, and a notice of the special purposes for which the preparations are intended.
Chloral hydrate.
Chloroform, and all preparations or admixtures containing more than 20 per cent. of chloroform.
Coca any preparation or admixture of, containing more than 0·1 per cent., but less than 1 per cent. of coca alkaloids.
Digitalis.
Mercuric iodide.
Mercuric sulphocyanide.
Oxalic acid.
Poppies, all preparations of, excepting red poppy petals and syrup of red poppies (*papaver rhœas*).
Precipitate, red, and all oxides of mercury.
Precipitate, white.
Strophanthus.
Sulphonal.
All preparations or admixtures which are not included in Part I. of this schedule, and contain a poison within the meaning of the Pharmacy Acts, except preparations or admixtures the exclusion of which from this schedule is indicated by the words therein relating to carbolic acid, chloroform, and coca, and except such substances as come within the provisions of section five of this Act.

POOR LAW AMENDMENT ACTS, 1834, 1848, AND 1867.

[4 & 5 WILL. IV. c. 76; 11 & 12 VICT. c. 110.]

DIVIDED PARISHES AND POOR LAW AMENDMENT ACT, 1876.

[39 & 40 VICT. c. 61.]

By sect. 58 of the 1834 Act, any relief given to any poor person above the age of twenty-one, or to his wife, or to any part of his family over the age of sixteen, which the Commissioners should by any rule or order declare to be given by way of loan, and whether any receipt for such relief or engagement to repay the same, shall have been given or not, by the person to or on

account of whom the same shall have been so given, the same was thereby declared to be a loan to such person.

Jurisdiction.]—By sect. 8 of the 1848 Act, all relief granted to any pauper upon loan chargeable to the common fund of the union, or to any parish therein might be recovered in the county court of the district comprising the union or the major part thereof, on the plaint of the guardians who may be heard by any officer appointed by them for the purpose.

By sect. 25 of the 1876 Act, the board of guardians of a parish may recover the costs of the maintenance of a pauper in same manner as a guardian of a union can under the Act of 1834.

Practice.]—Proceedings are by plaint and summons under the general practice of the court (Order L. rr. 35, 36), see pp. 631—632. It is not considered necessary to set out the sections of the statutes.

POOR LAW AMENDMENT ACT, 1867.

[30 & 31 VICT. C. 106, S. 26.]

Where an order of removal of a pauper from one union to another is suspended, the guardians of the poor in whose favour such order is made, may, whilst the suspension is in force, recover the expenses of keeping such pauper and his family, from the union on whom the order is made in the county court within whose jurisdiction their union, or the greater part thereof shall be situated.

PRIVATE STREET WORKS ACT, 1892.

[55 & 56 VICT. C. 57.]

This Act applies only to those urban sanitary districts in which it is adopted in the manner required by the Act (sect. 2). If adopted, the provisions of sects. 150 to 152 of the Public Health Act, 1875, do not apply.

Jurisdiction.]—Expenses of private street works in whole or any portion thereof (see sects. 10 and 12) incurred pursuant to the Act, together with interest at 4 per centum per annum from the date of the final apportionment (sect. 12) till payment may be recovered as a simple contract debt by action in any court of competent jurisdiction, *i.e.*, in the county court up to 100*l.*

Practice.]—The procedure will be by plaint and summons as in an action for debt, and Order L. rr. 35, 36 (see p. 631) shall apply. Notice particularly the provisions of sects. 6, 7 and 8; by sect. 6 the resolution approving the specification, etc. and provisional apportionments shall be published in manner prescribed (and copies served on the owners of premises liable to be charged), and kept open to inspection for one month. During this month, by sect. 7, objections to the proposals on any of the grounds set out in the said section may be lodged. By sect. 8, at any time after the expiration of the month, the objections made may be determined by a court of summary jurisdiction, and by sect. 8, sub-s. 2, *no objection which could be made under the Act, shall be otherwise made or allowed in any court or proceeding.*

Short title, construction, and extent.

1. This Act may be cited as the Private Street Works Act, 1892, and shall be construed as one with the Public Health Acts, and shall extend only to England; and this Act and the Public Health Acts may be cited together as the Public Health Acts.

Adoption of Act.

2. This Act shall extend and apply to any urban sanitary district in which it is respectively adopted under the provisions of this Act.

* * * * *

Section 6. —— Private street works.

6.—(1) Where any street or part of a street is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the urban authority, the urban authority may from time to time resolve with respect to such street or part of a street to do any one or more of the following works (in this Act called private street works); that is to say, to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting such street or part of a street; and the expenses incurred by the urban authority in executing private street works shall be apportioned (subject as in this Act mentioned) on the premises fronting, adjoining, or abutting on such street or part of a street. Any such resolution may include several streets or parts of streets, or may be limited to any part or parts of a street.

(2) The surveyor shall prepare, as respects each street or part of a street,—

(*a*) A specification of the private street works referred to in the resolution, with plans and sections (if applicable);

(*b*) An estimate of the probable expenses of the works;

(*c*) A provisional apportionment of the estimated expenses among the premises liable to be charged therewith under this Act.

Such specification, plans, sections, estimate, and provisional apportionment shall comprise the particulars prescribed in Part I. of the schedule to this Act, and shall be submitted to the urban authority, who may by resolution approve the same respectively with or without modification or addition as they think fit.

(3) The resolution approving the specifications, plans, and sections (if any), estimates, and provisional apportionments, shall be published in the manner prescribed in Part II. of the schedule to this Act, and copies thereof shall be served on the owners of the premises shown as liable to be charged in the provisional apportionment within seven days after the date of the first publication. During one month from the date of the first publication the approved specifications, plans, and sections (if any), estimates, and provisional apportionments (or copies thereof certified by the surveyor), shall be kept deposited at the urban authority offices, and shall be open to inspection at all reasonable times.

See remarks on this and sects. 7 and 8 in note "Practice," *ante*, p. 2187.

Objections to proposed works.

7. During the said month any owner of any premises shown in a provisional apportionment as liable to be charged with any part of the expenses of executing the works may, by written notice served on the urban authority, object to the proposals of the urban authority on any of the following grounds; (that is to say,)

(*a*) That an alleged street or part of a street is not or does not form part of a street within the meaning of this Act;

(*b*) That a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large;

(*c*) That there has been some material informality, defect, or error in or in respect of the resolution, notice, plans, sections, or estimate;

(*d*) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive;

(*e*) That any premises ought to be excluded from or inserted in the provisional apportionment;

(*f*) That the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or (where the provisional apportionment is made with regard to other considerations than frontage as herein-after provided) in respect of the degree of benefit to be derived by any persons, or the amount or value of any work already done by the owner or occupier of any premises.

For the purposes of this Act joint tenants or tenants in common may object through one of their number authorised in writing under the hands of the majority of such joint tenants or tenants in common.

See *Porthcawl Urban Council* v. *Brogden*, (1917) 86 L. J. Ch. 393.

Hearing and determination of objections.

8.—(1) The urban authority at any time after the expiration of the said month may apply to a court of summary jurisdiction to appoint a time for determining the matter of all objections made as in this Act mentioned, and shall publish a notice of the time and place appointed, and copies of such notice shall be served upon the objectors; and at the time and place so appointed any such court may proceed to hear and determine the matter of all such objections in the same manner as nearly as may be, and with the same powers and subject to the same provisions with respect to stating a case, as if the urban authority were proceeding summarily against the objectors to enforce payment of a sum of money summarily recoverable. The court may quash in whole or in part or may amend the resolution, plans, sections, estimates, and provisional apportionments, or any of them, on the application either of any objector or of the urban authority. The court may also, if it thinks fit, adjourn the hearing and direct any further notices to be given.

(2) No objection which could be made under this Act shall be otherwise made or allowed in any court proceeding or manner whatsoever.

(3) The costs of any proceedings before a court of summary jurisdiction in relation to objections under this Act shall be in the discretion of the court, and the court shall have power, if it thinks fit, to direct that the whole or any part of such costs ordered to be paid by an objector or objectors shall be paid in the first instance by the urban authority, and charged as part of the expenses of the works on the premises of the objector or objectors in such proportions as may appear just.

See remarks on sects. 6 and 7 above.

* * * * *

Apportionment of expenses.

10. In a provisional apportionment of expenses of private street works the apportionment of expenses against the premises fronting, adjoining or abutting on the street or part of a street in respect of which the expenses are to be incurred shall, unless the urban authority otherwise resolve, be apportioned according to the frontage of the respective premises; but the urban authority may if they think just, resolve that in settling the apportionment regard shall be had to the following considerations (that is to say),

(*a*) The greater or less degree of benefit to be derived by any premises from such works;

Section 10.

(*b*) The amount and value of any work already done by the owners or occupiers of any such premises.

They may also, if they think just, include any premises which do not front, adjoin or abut on the street or part of a street but access to which is obtained from the street through a court, passage or otherwise and which in their opinion will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly.

Amendment of plan, etc.

11. The urban authority may from time to time amend the specifications, plans and sections (if any), estimates and provisional apportionments for any private street works, but if the total amount of the estimate in respect of any street or part of a street is increased, such estimate and the provisional apportionment shall be published in the manner prescribed in Part II. of the schedule to this Act, and shall be open to inspection at the urban authority offices at all reasonable times, and copies thereof shall be served on the owners of the premises affected thereby; and objections may be made to the increase and on apportionment and if made shall be dealt with and determined in like manner as objections to the original estimate and apportionment.

Final apportionment and recovery of expenses.

12.—(1) When any private street works have been completed and the expenses thereof ascertained the surveyor shall make a final apportionment by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment (as the case may be) and such final apportionment *shall be conclusive for all purposes*; and notice of such final apportionment shall be served upon the owners of the premises affected thereby; and the sums apportioned thereby shall be recoverable in manner provided by this Act, or in the same manner as private improvement expenses are recoverable under the Public Health Act, 1875, including the power to declare any such expenses to be payable by instalments.

38 & 39 Vict. c. 55.

(2) Within one month after such notice the owner of any premises charged with any expenses under such apportionment may, by a written notice to the urban authority, object to such final apportionment on the following grounds, or any of them :—

(*a*) That the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen per cent.

(*b*) That the final apportionment has not been made in accordance with this section.

(*c*) That there has been an unreasonable departure from the specification, plans, and sections.

(3) Objections under this section shall be determined in the same manner as objections to the provisional apportionment.

Charge on premises.

13.—(1) Any premises included in the final apportionment, and all estates and interests from time to time therein, shall stand and remain charged (to the like extent and effect as under section two hundred and fifty-seven of the Public Health Act, 1875) with the sum finally apportioned on them, or if objection has been made against the final apportionment with the sum determined to be due as from the date of the final apportionment, with

interest at the rate of four pounds per centum per annum, and the urban authority shall, for the recovery of such sum and interest, have all the same powers and remedies under the Conveyancing and Law of Property Act, 1881, and otherwise as if they were mortgagees having powers of sale and lease and of appointing a receiver. Section 13.

(2) The urban authority shall keep a register of charges under this Act and of the payments made in satisfaction thereof, and the register shall be open to inspection to all persons at all reasonable times on payment of not exceeding one shilling in respect of each name or property searched for, and the urban authority shall furnish copies of any part of such register to any person applying for the same on payment of such reasonable sum as may be fixed by the urban authority.

See note on sect. 257 of the Public Health Act, 1875, p. 2212.

14. The urban authority, if they think fit, may from time to time (in addition and without prejudice to any other remedy) recover summarily in a court of summary jurisdiction, or as a simple contract debt by action in any court of competent jurisdiction, from the owner for the time being of any premises in respect of which any sum is due for expenses of private street works the whole or any portion of such sum, together with interest at a rate not exceeding four pounds per centum per annum, from the date of the final apportionment till payment thereof. Recovery of expenses summarily or by action.

The High Court held in *Mayor of Blackburn* v. *Sanderson*, (1902) 1 K. B. 794; 71 L. J. (K. B.) 590, that the six months' limitation only applies to summary proceedings, and not to an action brought in a court of competent jurisdiction; and hence does not apply to an action brought under the provisions of this section. Followed in *Metropolitan Water Board* v. *Bunn*, C. A., [1913] 3 K. B. 181; 82 L. J. K. B. 1024.

25. Neither sections one hundred and fifty, one hundred and fifty-one, and one hundred and fifty-two of the Public Health Act, 1875, nor section forty-one of the Public Health Acts Amendment Act, 1890, shall apply to any district or part of a district in which this Act is in force. Certain sections of Public Health Acts not to apply

THE SCHEDULE.

* * * * *

PART II.

Publication of Notice.

Any resolution, notice, or other document required by this Act to be published in the manner prescribed by this schedule shall be published once in each of two successive weeks in some local newspaper circulating within the district, and shall be publicly posted in or near the street to which it relates once at least in each of three successive weeks

THE PROBATE ACTS, 1857 AND 1858.

[20 & 21 VICT. C. 77 ; 21 & 22 VICT. C. 95.]

Jurisdiction.]—Sect. 10 of the 1858 Act (substituted for sect. 54 of the 1857 Act), gives the judge of the county court (having jurisdiction in the place in which the deceased had at the time of death a fixed abode) the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate, provided the deceased had at the time of his death his fixed place of abode in one of the districts specified in Schedule A to the 1857 Act, and that the deceased's personal estate (without deducting debts) was at the time of death under the value of 200*l.*, and that the deceased was not entitled beneficially to real estate of the value of 300*l.* or upwards. To give rise to this jurisdiction, the above conditions as to the place of abode, and the amount of the property, must be proved to the satisfaction of a registrar of the principal registry, the application to him being on affidavit ; the affidavit is *primâ facie* conclusive, but if in the course of the proceedings it be shown to the judge that the conditions are not correctly stated in the affidavit, and if correctly stated, would not have given him jurisdiction, he must stay the proceedings, make such order as to costs as he may think just, and leave any party to apply to the Court of Probate (see sect. 57 of the 1857 Act).

Transfer from Probate Division to County Court.]—Where the application for the grant or revocation of a grant of probate or letters of administration is made through the principal registry, the judge of the Probate Division, if any contentious matters arise, and the amount of the property and the place of abode of the deceased be such as to give contentious jurisdiction to a judge of a county court, may send the cause to the county court, and the judge of the said court may then proceed as if the application had been made to his court in the first instance (sect. 59 of the 1857 Act) ; but that both the place of the abode and the value of the property should be as above are essential conditions necessary to enable the Probate Division to make the order. Where either the personalty is not under 200*l.*, or the realty not under 300*l.*, there is no power to transfer (see *Davies* v. *Brecknell*, (1870) L. R. 2 P. & D. 177; 40 L. J. P. 15, where the estate of the deceased consisted of personalty under 20*l.* in value, and of realty valued at 370*l.* subject to a mortgage ; and *Thomas* v. *Nurse*, (1870) 39 L. J. P. 80, where all conditions to give the county court jurisdiction existed, except that the realty exceeded 300*l.*, though not affected by the action).

Practice is governed by Order XLIX. (see p. 2201) framed under the authority of sect. 60 of the Act of 1857. The proceedings are commenced by plaint and summons in the ordinary way, but *before* the entry of any plaint the proposed plaintiff must lodge with the registrar an office copy of the minute of the High Court, authorising the commencement of the proceedings (Rule 4). The plaint and all subsequent proceedings are to be intituled " The Court of Probate Acts, 1857 and 1858 " (Rule 1).

Parties.]—Where a caveat has been lodged against the grant of probate or administration, the person who applies for probate or administration will be plaintiff in the proceedings, and the person lodging the caveat defendant (Rule 2). In proceedings for revocation of a grant, the party applying will be plaintiff, and the person against whom the application is made defendant (Rule 3).

Particulars.]—Particulars of demand must be filed in all cases, stating concisely the nature of the proceedings and the relief or order which the plaintiff claims (Rule 5).

Service.]—Service of a summons or notice of a summons out of England and Wales may be allowed by leave of the court (Order VII. r. 43).

Interveners.]—Any person not named in the summons may intervene and appear in the action, on filing an affidavit showing how he is interested in the estate of the deceased (Rule 6).

Notice for Production of Will, etc.]—The registrar, on issuing a plaint for revocation of probate or administration, must send notice (Form 443) by post to the district probate registrar by whom the probate or letters of administration has or have been granted, to produce the original will and other necessary documents at the hearing (Rule 7).

Transmission of Action from High Court.]—Where application for the grant or revocation of probate or letters of administration has been made at the principal registry of the Probate Division, and a judge of the said division shall send any action or contentious matter arising out of such application to the county court, the provisions of Order XLIX. *post*, p. 2201, and Order XXXIII. p. 606, relating to actions or matters remitted from the Chancery Division to the county court shall apply to the proceedings in the county court (Rule 10). Where no provision has otherwise been made, the rules and practice of the Probate Division shall be followed so far as applicable (Rule 12).

After the transfer of an action, it becomes for all purposes a county court case, and the Probate Division cannot direct a new trial (*Zeally* v. *Veryard*, (1866) L. R. 1 P. & D. 195; 35 L. J. P. 127), or make an order as to costs either before or after removal (*Macleur* v *Macleur*, (1868) L. R. 1 P. & D. 604; 37 L. J. P. & M. 68).

Production of Documents.]—The judge, upon application, may order any instrument, purporting to be testamentary, to be produced before him by the person in whose possession or control it may be; or where there is reasonable ground for believing that any person has knowledge of such paper or writing, the judge may require his attendance for the purpose of his being examined in open court, or upon interrogatories; and such person is to be liable to process of contempt in case he does not answer such interrogatories, or, if ordered, produce the document. The costs of the application are to be in the discretion of the judge (sect. 26 of the 1857 Act).

Administration pendente Lite.]—Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or any grant of letters of administration, the judge of the county court before whom such suit may be pending, may appoint an administrator of the personal estate of the deceased. The administrator has all the rights and powers of a general administrator, other than the right of distributing the residue of the personal estate, and is subject to the immediate control of the judge and must act under his directions (sect. 70 of the 1857 Act).

If in any such suit the will, the validity of which is disputed, affects real estate, the judge may appoint such administrator or any other person to be the receiver of the real estate, with such powers to receive all rents and profits, and of letting and managing it, as the judge may direct (sect. 71 of the 1857 Act).

The administrators and receivers so appointed are to receive out of the personal and real estate of the deceased such reasonable remuneration as the judge thinks fit (sect. 72 of the 1857 Act).

Jury.]—The judge of the county court may cause any question of fact arising in any suit or proceeding to be tried by a jury, or may direct an issue to be sent for trial to the High Court, in the same manner as an issue could formerly be directed by the Court of Chancery (sect. 35 of the 1857 Act).

Where an heir-at-law, cited or otherwise made party to a suit or proceeding, makes application to the judge for the question to be tried by a jury, the question must be so tried (*Ib.*).

In any other case where all the parties concur in an application for the question to be tried by a jury, or where any party or parties, other than the

heir-at-law, make such application, and the court refuses to cause such trial, the applicant may appeal (*Ib.*).

The order of the judge shall be in Form 445, and a copy shall be sent by post to the plaintiff and defendant, and to any party intervening (Rule 9); the judge can enforce his judgments and orders as in an ordinary action (sect. 56 of the 1857 Act). The judge may order the costs to be taxed under column B or C, in default of an order they will be taxed under B (see Order LIII. r. 8, as to allowance of special items).

Proving a Will in Solemn Form of Law.]—Where proceedings are taken for proving a will in solemn form, or for revoking the probate of a will on the ground of the invalidity thereof, or where in any other contentious cause or matter, the validity of a will may be disputed, unless the will affects only personal estate, the heir-at-law, devisees and other persons having or pretending interest in the real estate affected by the will may be cited to see proceedings or otherwise summoned, in like manner as the next-of-kin having or pretending interest in the personal estate affected by a will are to be cited or summoned, and the heir-at-law, devisees or other persons may become parties or intervene for their respective interests, subject to the rules and orders of the court and to its discretion (sect. 61 of the 1857 Act).

They, however, need not be cited, unless the judge is shown and satisfied that, at the time of his death, the deceased was seised of or entitled to, or had power to appoint by will, some real estate beneficially.

Unless, however, the heir or any other interested person has been cited, or derives title under or through a person cited or made party, the interest of the heir or person in real estate is not affected by the probate, decree or order (sect. 36 of the 1857 Act).

Appeal.]—If either party is dissatisfied with the determination of the judge of the county court in point of law, or upon the admission or rejection of any evidence, he may appeal to the Probate Division of the High Court (sect. 58 of the 1857 Act; *Leigh* v. *Green*, (1892) P. 17; 61 L. J. P. 66). The right of appeal extends to proceedings under the Act of 1857 as well as 1858 (*Copeland* v. *Simister*, (1893) P. 16; 62 L. J. P. 38). The appeal will, it is believed, lie by motion, and generally the ordinary practice seems to apply (sect. 120, County Courts Act, 1888, Part I., p. 123).

20 & 21 VICT. C. 77.

Interpretation of terms.

2. In the construction of this Act, unless the context be inconsistent with the meaning hereby assigned:—

"Will" shall comprehend "testament" and all other testamentary instruments of which probate may now be granted:

"Administration" shall comprehend all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes:

"Matters and causes testamentary" shall comprehend all matters and causes relating to the grant and revocation of probate of wills or of administration:

"Common form business" shall mean the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the court of probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the court in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration.

Section 24.

Power to examine witnesses and order production of deeds, etc.

24. The Court of Probate may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be; and the court may by writ require such attendance, and order to be produced before itself or otherwise any deeds, evidences, or writings, in the same form or nearly as may be, as that in which a writ of subpœna *ad testificandum*, or of subpœna *duces tecum*, is now issued by any of Her Majesty's superior courts of law at Westminster; and every person disobeying any such writ shall be considered as in contempt of the court, and also be liable to forfeit a sum not exceeding one hundred pounds.

Power to make summary order to produce any instrument purporting to be testamentary, etc.

26. The Court of Probate may, on motion or petition or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the court with respect to any probate or administration, order any person to produce and bring into the principal or any district registry or otherwise as the court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the court may direct such person to attend for the purpose of being examined in open court, or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit in the court and had made such default; and the costs of any such motion, petition or other proceeding shall be in the discretion of the court.

Mode of taking evidence in contentious matters.

31. Subject to the regulations to be established by such rules and orders as aforesaid, the witnesses, and, where necessary, the parties in all contentious matters where their attendance can be had, shall be examined orally by or before the judge in open court: provided always, that, subject to any such regulations as aforesaid, the parties shall be at liberty to verify their respective cases, in whole or in part, by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open court as aforesaid, and after such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.

Court may issue commissions or

32. Provided, that where a witness in any such matter is out of the jurisdiction of the court, or where, by reason of his illness or otherwise, the court shall not think fit to enforce the attendance

Section 32.

give orders for examination of witnesses who are abroad, or unable to attend.

13 Geo. III. c. 63.

1 Will. c. 22.

of the witness in open court, it shall be lawful for the court to order a commission to issue for the examination of such witness on oath, upon interrogatories or otherwise, or if the witness be within the jurisdiction of the court to order the examination of such witness on oath, upon interrogatories or otherwise, before any officer of the said court, or other person to be named in such order for the purpose; and all the powers given to the courts of law at Westminster by the Acts of the thirteenth year of King George the Third, chapter sixty-three, and of the first year of King William the Fourth, chapter twenty-two, for enabling the courts of law at Westminster to issue commissions and give orders for the examination of witnesses in actions depending in such courts, and to enforce such examination, and all the provisions of the said Acts, and of any other Acts for enforcing or otherwise applicable to such examination, and the witnesses examined, shall extend and be applicable to the said Court of Probate, and to the examination of witnesses under the commissions and orders of the said court, and to the witnesses examined, as if such court were one of the courts of law at Westminster, and the matter before it were an action pending in such court.

Rules of evidence in common law courts to be observed.

33. The rules of evidence observed in the superior courts of common law at Westminster shall be applicable to and observed in the trial of all questions of fact in the Court of Probate.

Court may cause questions of fact to be tried by a jury before itself, or direct an issue to a court of law.

35. It shall be lawful for the Court of Probate to cause any question of fact arising in any suit or proceeding under this Act to be tried by a special or common jury before the court itself, or by means of an issue to be directed to any of the superior courts of common law, in the same manner as an issue may now be directed by the Court of Chancery, and such question shall be so tried by a jury in any case where an heir-at-law, cited or otherwise made party to the suit or proceeding, makes application to the Court of Probate for that purpose; and in any other case where all the parties to the suit or proceeding concur in such an application, and where any party or parties other than such heir-at-law make a like application (the other party or parties not concurring therein), and the court shall refuse to cause such question to be tried by a jury, such refusal of the court shall be subject to appeal as herein provided.

Question to be stated, and jury sworn to try it.

Court, on trial, to have the same authority as a judge at *nisi prius*.

37. When any such question shall be so ordered to be tried by a jury before the court itself, such question shall be reduced into writing in such form as the court shall direct, and at the trial the jury shall be sworn to try the said question, and a true verdict to give thereon according to the evidence; and upon every such trial the Court of Probate shall have the same powers, jurisdiction, and authority as belong to any judge of any of the said superior courts sitting at *nisi prius*.

District registrar in case of doubt as to grant to transmit

50. In every case where it appears to a district registrar that it is doubtful whether the probate or letters of administration which may be applied for should or should not be granted, or where any question arises in relation to the grant, or application for the grant, of any probate or administration, the district registrar shall transmit a statement of the matter in question to the registrars of the Court of Probate, who shall obtain the

directions of the judge in relation thereto, and the judge may direct the district registrar to proceed in the matter of the application according to such instructions as to the judge may seem necessary, or may forbid any further proceeding by the district registrar in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Court of Probate through its principal registry, or, if the case be within its jurisdiction, to a county court. Section 50. — the matter for the directions of the judge.

55. On a decree being made by a judge of a county court for the grant or revocation of a probate or administration in any such cause, the registrar of the county court shall transmit to the district registrar of the district in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode, a certificate under the seal of the county court of such decree having been made; and thereupon on the application of the party or parties in favour of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued from such district registry; or, as the case may require, the probate or letters of administration theretofore granted shall be recalled or varied by the district registrar according to the effect of such decree. Registrar of county court to transmit certificate of decree for grant or revocation of probate.

NOTE.—Where the next of kin were alien enemies, the Public Trustee, as custodian under the Trading with the Enemy (Amendment) Act, 1914 (5 Geo. 5, c. 12), was appointed administrator in preference to a person named as executor in an informal testamentary document (*Schiff, In re,* (1915) P. 86; 84 L. J. P. 79).

56. The judge of any county court before whom any disputed question shall be raised relating to matters and causes testamentary under this Act shall, subject to the rules and orders under this Act, have all the jurisdiction, power, and authority to decide the same and enforce judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the county court. The judge of the county court to decide causes and enforce judgments as in other cases.

57. The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the judge of a county court under the previous provisions shall, except as hereinafter provided, be conclusive for the purpose of authorising the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with the decree of such judge; and no such grant of probate or administration shall be liable to be recalled, revoked or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such judge or within any of the said districts at the time of his death, or by reason that the personal estate sworn to be under the value of two hundred pounds did in fact amount to or exceed that value, or that the value of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death amounted to or exceeded three hundred pounds: provided, that where it shall be shown to the judge of a county court before whom any matter is pending under this Act that the place of abode or state of the property of the testator or intestate in respect of whose will or estate he may have been applied to for grant or revocation of probate or administration has not been correctly stated in the affidavit, and if correctly Affidavit of the facts giving the county court jurisdiction to be conclusive, unless disproved while the matter is pending.

Section 57. stated would not have authorised him to exercise such contentious jurisdiction, he shall stay all further proceedings in his court in the matter, leaving any party to apply to the Court of Probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just.

Appeals from county court.

58. Any party who shall be dissatisfied with the determination of the judge of the county court in point of law, or upon the admission or rejection of any evidence in any matter or cause under this Act, may appeal from the same to the Court of Probate, in such manner and subject to such regulations as may be provided by the rules and orders made under this Act, and the decision of the Court of Probate on such appeal shall be final.

Application for probate, etc., need not be made to district registry or county court, but may in every case be made to principal registry. See 21 & 22 Vict. c. 95, s. 12, Ed.

59. It shall not be obligatory on any person to apply for probate or administration to any district registry, or through any county court, but in every case such application may be made through the principal registry of the Court of Probate, wherever the testator or intestate may at the time of his death have had his fixed place of abode: provided that where in any contentious matter arising out of any such application it is shown to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the judge of a county court, the Court of Probate may send the cause to such county court, and the judge thereof shall proceed therein as if such application and cause had been made to and arisen in his court in the first instance.

Rules and orders for regulating the procedure of county courts under the Act to be made by the judges now having authority for the like purpose.

60. For regulating the procedure and practice of the county courts, and the judges, registrars and officers thereof, in relation to their jurisdiction and proceedings under this Act, rules and orders may be from time to time framed, amended and certified by the county court judges appointed for the time being to frame rules and orders for regulating the practice of the county courts under the Act of the session holden in the nineteenth and twentieth years of Her Majesty, chapter one hundred and eight, and shall be subject to be allowed or disallowed or altered and shall be in force from the day named for that purpose by the Lord Chancellor, as in the said Act is provided in relation to other rules and orders regulating the practice of the same courts.

Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the heir and persons interested in the real estate to be cited.

61. Where proceedings are taken under this Act for proving a will in solemn form, or for revoking the probate of a will, on the ground of the invalidity thereof, or where in any other contentious cause or matter under this Act the validity of a will is disputed, unless in the several cases aforesaid the will affects only personal estate, the heir-at-law, devisees and other persons having or pretending interest in the real estate affected by the will shall, subject to the provisions of this Act, and to the rules and orders under this Act, be cited to see proceedings, or otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become parties, or intervene for their respective interests in such real estate, subject to such rules and orders, and to the discretion of the court.

Section 63. Heir in certain cases not to be cited, and where not cited not to be affected by probate.

63. Nothing herein contained shall make it necessary to cite the heir-at-law or other persons having or pretending interest in the real estate of a deceased person, unless it is shown to the court, and the court is satisfied that the deceased was at the time of his decease seised of or entitled to or had power to appoint by will some real estate beneficially, or in any case where the will propounded or of which the validity is in question would not in the opinion of the court, though established as to personalty, affect real estate, but in every such case, and in any other case in which the court may, with reference to the circumstances of the property of the deceased or otherwise, think fit, the court may proceed without citing the heir or other persons interested in real estate; provided that the probate, decree or order of the court shall not in any case affect the heir or any person in respect of his interest in real estate, unless such heir or person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

Probate or office copy to be evidence of the will in suits concerning real estate, save where the validity of the will is put in issue.

64. In any action at law or suit in equity, where, according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party, ten days at least before the trial or other proceeding in which the said proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the said will or the letters of administration with the will annexed, or a copy thereof stamped with any seal of the Court of Probate; and in every such case such probate or letters of administration, or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, as herein provided, unless the party receiving such notice shall, within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition.

Costs of production, etc., of original will in such suits.

65. In every case in which, in any such action or suit, the original will shall be produced and proved, it shall be lawful for the court or judge before whom such evidence shall be given to direct by which of the parties the costs thereof shall be paid.

Administration *pendente lite*.

70. Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the court, and act under its direction.

Receiver of real estate *pendente lite*

71. It shall be lawful for the Court of Probate to appoint any administrator appointed as aforesaid, or any other person, to be

Section 71. receiver of the real estate of any deceased person pending any suit in the court touching the validity of any will of such deceased person by which his real estate may be affected ; and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the court may direct.

Remuneration to administrators and receivers *pendente lite.*

72. The Court of Probate may direct that administrators and receivers appointed pending suits involving matters and causes testamentary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the court think fit.

Section 97 relating to fees is repealed by S. L. R. Act, 1892. Fees payable in respect of probate business must be received in judicature stamps. (Treasury Instructions, September, 1894.)

21 & 22 VICT. c. 95.

Where personalty is under 200*l.* county court to have jurisdiction.

10. Where it appears by affidavit to the satisfaction of a registrar of the principal registry that the testator or intestate, in respect of whose estate a grant or revocation of a grant of probate or letters of administration is applied for, had at the time of his death his fixed place of abode in one of the districts specified in Schedule (A) to the said "Court of Probate Act," and that the personal estate in respect of which such probate or letters of administration are to be or have been granted, exclusive of what the deceased may have been possessed of or entitled to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, was at the time of his death under the value of 200*l.*, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate of the value of 300*l.* or upwards, the judge of the county court having jurisdiction in the place in which the deceased had at the time of his or her death a fixed place of abode shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.

* * * * *

20 & 21 Vict. c. 77, s. 59, to apply to revocations.

12. The said Court of Probate Act, section 59, shall, so far as the county courts or a judge thereof are concerned, apply to an application for the revocation of a grant of probate or administration as well as to an application for any such grant.

Rules and orders, etc., for the county courts.

13. The power and authority to make rules and orders for regulating the proceedings of the county courts shall extend and be applicable to all proceedings in the county courts under this Act, and also to framing a scale of costs and charges to be paid to counsel, proctors, solicitors and attorneys, in respect of proceedings in county courts, under the said Court of Probate Act or this Act.

COUNTY COURT RULES.—ORDER XLIX.

Probate and Letters of Administration.

Rule 1.

Proceedings under Court of Probate Acts, 1857 and 1858.

1. Proceedings under the Court of Probate Act, 1857, as amended by the Court of Probate Act, 1858, or by any other Act, shall be commenced by plaint and summons in the ordinary way. The plaint and all subsequent proceedings shall be intituled "The Court of Probate Acts, 1857 and 1858."

20 & 21 Vict. c. 77; 21 & 22 Vict. c. 95.

2. Where any person has lodged a caveat against the grant of probate or letters of administration, and proceedings are taken to obtain such grant, the person applying for the probate or letters of administration shall be plaintiff, and the person who has lodged the caveat shall be defendant.

Parties where caveat lodged.

3. In proceedings for the revocation of probate or letters of administration the person applying for such revocation shall be plaintiff and the person against whom the application is made shall be defendant.

Parties on application to revoke grant.

4. Before the entry of the plaint the plaintiff shall lodge with the registrar an office copy of the minute of the High Court authorizing the commencement of proceedings.

Production of authority of High Court.

5. Particulars of demand shall be filed in all cases, stating concisely the nature of the proceeding, and the relief or order which the plaintiff claims.

Particulars.

6. In a probate action any person not named in the summons may intervene and appear in the action, on filing an affidavit showing how he is interested in the estate of the deceased.

Intervention by person not named in summons.

7. The registrar on issuing a plaint for the revocation of the grant of probate or letters of administration shall give notice by post, according to the form in the Appendix, to the district probate registrar by whom the probate or letters of administration has or have been granted, to produce the original will or other necessary documents at the court at which the plaint is to be heard.

Notice to district registrar.

Form 443.

8. The certificate to be given by the registrar under section 55 of the Court of Probate Act, 1857, shall be according to the form in the Appendix.

Certificate.

20 & 21 Vict. c. 77, s. 55.

Form 444.

9. The order of the judge on the hearing of the plaint shall be according to the form in the Appendix, and a copy of such order shall be sent by post to the plaintiff and the defendant and any party intervening.

Order.

Form 445.

10. Where application for the grant or revocation of probate or letters of administration has been made at the principal registry of the Probate Division of the High Court, and any contentious matter arises out of such application, and a judge of the said division sends the action or matter to the county court, the provisions of this Order and the provisions of Order XXXIII.

Transmission of action from High Court.

Rule 10. relating to actions or matters remitted from the Chancery Division of the High Court to a county court shall apply to the proceedings in the county court in the action or matter so sent to the county court.

Costs. 11. The judge may order the costs of proceedings under the said Acts to be taxed either under column B or column C, and in default of any such order they shall be taxed under column B; and Rule 8 of Order LIII. shall apply to such proceedings.

Practice in proceedings for which no provision made. 12. In proceedings under this Order for which no provision is otherwise made the rules and practice of the Probate Division of the High Court shall be followed so far as they are applicable.

FORMS.

443.

Notice to Probate District Registrar.

The Court of Probate Acts, 1857 and 1858.

In the county court holden at

Between A. B., plaintiff,
and
C. D., defendant.

Order 49, *Rule* 7. Whereas an application has been made to this court to revoke the grant of probate of the will [*or* letters of administration granted by you in the goods] of [*here insert the name and address of the testator or intestate*];

And whereas the matter of such application will be considered by this court on the day of at the hour of in the noon, I therefore request that you will cause to be produced before the court on that day [the will *and] all documents which are in your possession relating to the matter.

Dated this day of 19 .

Registrar.

* To be left out where administration without will annexed has been granted.

444.

Certificate of Registrar.

The Court of Probate Acts, 1857 and 1858.

[*Heading as in Form* 443.]

Order 49, *Rule* I, A. B., registrar of the above court, do hereby certify that the following order was made in the above action on the day of 19 .

[*Here set out the order.*]

Certified under the seal of the court this day of 19 .

Registrar.

445.

Order in Probate Action.

The Court of Probate Acts, 1857 and 1858.

[*Heading as in Form* 443.]

Upon the hearing of this action at a court holden this day, it is adjudged as follows: *Order 49, Rule 9.*

[*Here set out the order.*]

and it is ordered, that the do pay the sum of for the 's costs, and that the same be paid to the registrar of this court on the day of 19 .

Given under the seal of the court this day of 19 .

By order of the court,

Registrar.

Hours of attendance at the office of the registrar [*place of office*] from ten till four, except on , when the office will be closed at one.

[*As the forms relating to probate matters will seldom be required, they are not to be printed, but are to be written on foolscap paper.*]

THE PUBLIC HEALTH ACT, 1875.

[38 & 39 Vict. c. 55.]

Jurisdiction.]—For the purposes of the Act, sect. 91 declares certain things to be nuisances liable to be dealt with summarily as provided by the Act, and by sect. 35 of the Public Health Acts Amendment Act, 1907 (7 Edw. VII. c. 53), this definition of nuisance has been extended. By sects. 104 and 106, costs and expenses of the local authority, or of the officer of police authorised by the Local Government Board, incurred in making a complaint, or giving notice, or obtaining an order of the court of summary jurisdiction, or in carrying the same into effect, are declared to be money paid for the use and at the request of the person on whom the order is made, or of the person by whose act or default the nuisance was caused, and such costs and expenses to be recoverable in a summary manner, or in any county or superior court. It is submitted that this gives under these two sections, county courts jurisdiction to the extent of 100*l.*

Further, by sect. 261, proceedings for the recovery of demands below 50*l.* which local authorities are empowered to recover in a summary manner may at the option of the authority be taken in the county court. There are many sections which empower local authorities to recover money summarily, but sect. 150 is the one on which proceedings are taken most frequently in the county court by virtue of the jurisdiction given by sect. 261.

Practice.]—The proceedings should be by action commenced in usual way, by plaint and summons, and are regulated by Order L. rr. 35 and 36, see pp. 631—632. No special rules.

Time within which proceedings should be taken is discussed in notes to the respective sections.

PART I.

Preliminary.

1. This Act may be cited as The Public Health Act, 1875.

* * * * *

Section 4.

4. In this Act, if not inconsistent with the context, the following words and expressions have the meaning herein-after assigned to them; that is to say—

* * * * *

"Person" includes any body of persons, whether corporate or unincorporate:

"Local authority" means urban sanitary authority and rural sanitary authority:

"Surveyor" includes any person appointed by a rural authority to perform any of the duties of surveyor under this Act:

"Lands" and "premises" include messuages, buildings, lands, easements, and hereditaments of any tenure:

"Owner" means the person for the time being receiving the rackrent of the lands or premises in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent:

"Rackrent" means rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent:

"Street" includes any highway, and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not:

* * * * *

Nuisances.

Definition of nuisances.

91. For the purposes of this Act,—

(1) Any premises in such a state as to be a nuisance or injurious to health:

(2) Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul or in such a state as to be a nuisance or injurious to health:

(3) Any animal so kept as to be a nuisance or injurious to health:

(4) Any accumulation or deposit which is a nuisance or injurious to health:

(5) Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family:

(6) Any factory, workshop, or workplace (not already under the operation of any general Act for the regulation of factories or bakehouses), not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on

therein that are a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein:

(7) Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill. factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufacturing or trade process whatsoever; and

(8) Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance,

shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act: Provided—

First. That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture if it be proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health:

Secondly. That where a person is summoned before any court in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if it is satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.

The above definition of nuisance has been extended by the Public Health Acts Amendment Act, 1907, s. 35, which section is as follows:—

35. For the purpose of the Public Health Act, 1875,

(1) Any cistern used for the supply of water for domestic purposes so placed, constructed, or kept as to render the water therein liable to contamination, causing or likely to cause risk to health.

(2) Any gutter, drain, shoot, stack-pipe, or down-spout of a building which, by reason of its insufficiency or its defective condition, shall cause damp in such building, or in an adjoining building; and

(3) Any deposit of material in or on any building or land which shall cause damp in such building, or in an adjoining building, so as to be dangerous or injurious to health,

shall be deemed to be a nuisance within the meaning of the said Act.

Duty of local authority to inspect district for detection of nuisances.

92. It shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act in order to abate the same; also to enforce the provisions of any Act in force within their district requiring fireplaces and furnaces to consume their own smoke.

Section 93. Information of nuisances to local authority.

93. Information of any nuisance under this Act in the district of any local authority may be given to such local authority by any person aggrieved thereby, or by any two inhabitant householders of such district, or by any officer of such authority, or by the relieving officer, or by any constable or officer of the police force of such district.

Local authority to serve notice requiring abatement of nuisance.

94. On the receipt of any information respecting the existence of a nuisance the local authority shall, if satisfied of the existence of a nuisance, serve a notice (*a*) on the person by whose act default or sufferance the nuisance arises or continues, or, if such person cannot be found (*b*), on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose :

NOTE.—(*a*) The notice must not be ambiguous (*Whatling* v. *Rees*, (1915) 84 L. J. K. B. 1122).

NOTE (*b*).—"Cannot be found." See, *Rhymney Iron Co.* v. *Gelligaer District Council*, (1917) 1 K. B. 589 ; 86 L. J. K. B. 564.

Provided—

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner :

Secondly. That where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act default or sufferance of the owner or occupier of the premises, the local authority may themselves abate the same without further order.

On non-compliance with notice complaint to be made to justice.

95. If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction.

Power of court of summary jurisdiction to make order dealing with nuisance.

96. If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court shall make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose ; or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence ; or an order both requiring abatement and prohibiting the recurrence of the nuisance.

The Court may by their order impose a penalty not exceeding five pounds on the person on whom the order is made, and shall also give directions as to the payment of all costs incurred up to the time of hearing or making the order for abatement or prohibition of the nuisance.

Order of prohibition

97. Where the nuisance proved to exist is such as to render a house or building in the judgment of the court unfit for human

habitation the court may prohibit the using thereof for that purpose until in its judgment the house or building is rendered fit for that purpose; and on the court being satisfied that it has been rendered fit for that purpose the court may determine its previous order by another declaring the house or building habitable and from the date thereof such house or building may be let or inhabited. Section 97. In case of house unfit for human habitation.

98. Any person not obeying an order to comply with the requisitions of the local authority or otherwise to abate the nuisance shall if he fails to satisfy the court that he has used all due diligence to carry out such order be liable to a penalty not exceeding ten shillings per day during his default: and any person knowingly and wilfully acting contrary to an order of prohibition shall be liable to a penalty not exceeding twenty shillings per day during such contrary action; moreover the local authority may enter the premises to which any order relates and abate the nuisance. and do whatever may be necessary in execution of such order and recover in a summary manner the expenses incurred by them from the person on whom the order is made. Penalty for contravention of order of court.

Mandamus to compel a local authority to abate a nuisance will not be granted (*In re Ham Local Board*, (1857) 26 L. J. M. C. 64).

* * * * * *

104. All reasonable costs and expenses incurred in making a complaint, or giving notice, or in obtaining any order of the court or any justice in relation to a nuisance under this Act, or in carrying the same into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order is made on the local authority, or if no order is made, but the nuisance is proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, such costs and expenses may be recovered from any person who is for the time being owner of such premises: Provided that such costs and expenses shall not exceed in the whole one year's rack-rent of the premises. Costs and expenses of execution of provisions relating to nuisances.

Such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered in a summary manner or in any county or superior court; and the court shall have power to divide costs expenses and penalties between persons by whose acts or defaults a nuisance is caused as to it may seem just.

Any costs and expenses recoverable under this section by a local authority from an owner of premises may be recovered from the occupier for the time being of such premises; and the owner shall allow such occupier to deduct any moneys which he pays under this enactment out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent:

Provided, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses, on application to

Section 104.

him by the local authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie on such occupier:

Provided also, that nothing herein contained shall affect any contract between any owner or occupier of any house building or other property whereby it is or may be agreed that the occupier shall pay or discharge all rates dues and sums of money payable in respect of such house building or other property, or to affect any contract whatsoever between landlord and tenant.

The time within which an action may be brought for the recovery of costs and expenses and penalties has been discussed under divers sections of this Act and of local Acts, and the decisions have turned upon slight verbal differences in the different sections. The result of the decisions seems to be that if the statute allows proceedings to be taken *either* by complaint before justices, *or* by action in a court of competent jurisdiction, the six months' limit only applies to the summary proceedings, and not to the alternative proceedings (*Mayor of Blackburn* v. *Sanderson*, (1902) 1 K. B. 794; 71 L. J. K. B. 590), followed in *Metropolitan Water Board* v. *Bunn* (C. A.) (1913) 3 K. B. 181; 82 L. J. K. B. 1024; doubts being thrown upon *Vestry of Hammersmith* v. *Lowenfeld*, (1896) 2 Q. B. 278; 65 L. J. Q. B. 662; but if, as in sect. 261, demands made recoverable by summary proceedings are by another section made recoverable in the county court, the six months' limit of time wherein proceedings must be brought in the court of summary jurisdiction applies also to any action brought in the county court (*Tottenham Local Board* v. *Rowell* (C. A.), (1876) 1 Ex. D. 514; 46 L. J. Ex. 432); the time therefore under this section and sect. 106 is the usual period of limitation and not six months.

* * * * *

Power of officer of police to proceed in certain cases against nuisances.

106. Where it is proved to the satisfaction of the Local Government Board that a local authority have made default in doing their duty in relation to nuisances under this Act, the Local Government Board may authorise any officer of police acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances, and such officer may recover in a summary manner or in any county or superior court any expenses incurred by him, and not paid by the person proceeded against, from the defaulting authority:

But such officer of police shall not be at liberty to enter any house used as the dwelling of any person without such person's consent, or without the warrant of a justice, for the purpose of carrying into effect this enactment.

As to the time within which an action must be brought in county court, see note to sect. 104.

* * * * *

Regulation of Streets and Buildings.

Vesting of streets, etc., in urban authority.

149. All streets, being or which at any time become highways repairable by the inhabitants at large within any urban district, and the pavements stones and other materials thereof, and all buildings implements and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority.

Section 149.

The urban authority shall from time to time cause all such streets to be levelled paved metalled flagged channelled altered and repaired as occasion may require; they may from time to time cause the soil of any such street to be raised lowered or altered as they may think fit, and may place and keep in repair fences and posts for the safety of foot passengers.

Any person who without the consent of the urban authority wilfully displaces or takes up or who injures the pavement stones materials fences or posts of or the trees in any such street shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement stones or other materials so displaced taken up or injured; he shall also be liable in the case of any injury to trees to pay to the local authority such amount of compensation as the court may award.

Power to compel paving, etc., of private streets.

150. Where any street within any urban district (not being a highway repairable by the inhabitants at large) or the carriageway footway or any other part of such street is not sewered levelled paved metalled flagged channelled and made good or is not lighted to the satisfaction of the urban authority, such authority may, by notice addressed to the respective owners or occupiers of the premises fronting adjoining or abutting on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, require them to sewer level pave metal flag channel or make good or to provide proper means for lighting the same within a time to be specified in such notice.

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground: such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice.

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the urban authority may by order declare the expenses so incurred to be private improvement expenses.

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at

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large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large.

Though the practice in the county court to recover claims by sect. 261 under this section is very simple, viz., by plaint and summons, to satisfy the burden of proof thrown on the plaintiff is far from a simple matter, each step indicated by the section must be proved step by step; thus it must be proved (a) that the condition of the street is unsatisfactory in the opinion of the urban authority; this may be proved by a resolution to that effect; (b) that plans and sections as provided by the section have been made under the direction of their surveyor; (c) that an estimate of the probable cost has been drawn up under the same direction; (d) that the said plans, etc., and estimates had been deposited in the office of the urban authority; (e) that notice had been addressed to the owners or occupiers of the premises fronting, adjoining, or abutting on such part of the street as may require to be made good, requiring them to make good or provide the work specified in such notice within a named time; (f) such notice must contain a statement of the place where the said plans, etc., and estimate have been deposited, and that the same are open daily during business hours during the time specified in the notice for inspection by all persons interested; (g) that such notice was not complied with, and that the works mentioned were executed by the urban authority; (h) the expenses incurred in doing the works; (i) the proportion payable by the respective owners in default as settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by the Act; (k) a demand for payment.

Time.]—The action must be brought within six months (*Tottenham Local Board* v. *Rowell* (C. A.), (1876) 1 Ex. D. 514; 46 L. J. Ex. 432).

"Street," for the meaning of, see sect. 4, *ante*, as explained in *Fenwick* v. *Rural Sanitary Authority of Croydon*, (1891) 2 Q. B. 212; 60 L. J. M. C. 161, following the dictum of Lord Selborne in *Robinson* v. *Barton and Eccles Local Board*, (1883) 8 App. Cas. 798; 53 L. J. Ch. 226, that "street" in this Act means the roadway as distinguished from the road with houses.

Notice must be specific; a notice which refers in general terms to the provisions of the section is bad (*Stourbridge Urban District Council* v. *Butler and Grove*, (1909) 1 Ch. 87; 78 L. J. Ch. 59), and must be served on the owner *or* occupier or expenses cannot be recovered (*Jarrow Local Board* v. *Kennedy*, (1870) L. R. 6 Q. B. 128).

Dispute as to the apportionment must be referred to arbitration (*Sandgate Local Board* v. *Keene*, (1892) 1 Q. B. 831; 61 L. J. Q. B. 775); as to what is a dispute, see *Mayor of Folkestone* v. *Brooks*, (1893) 3 Ch. 22; 62 L. J. Ch. 863; *Stoker* v. *Mayor, &c., of Morpeth*, (1915) 2 K. B. 511.

Abutting.]—A house may abut upon a street though it has no access thereto (*Newport Urban Sanitary Authority* v. *Graham*, (1882) 9 Q. B. D. 183).

Street or Road of which Part is a Public Footpath.]—Frontagers liable to expense of improving the whole street, and not merely such part as had been added to ancient highway (*Evans* v. *Newport Urban Sanitary Authority*, (1890) 24 Q. B. D. 264; 59 L. J. M. C. 8).

Private Improvement Expenses.]—The urban authority may declare the expenses under this section to be private improvement expenses; such expenses may be recovered under sects. 213 and 257.

There is a vast field of learning, and many decisions on this section which cannot satisfactorily be dealt with in a book merely dealing with the practice of a particular court, but can be found on reference to Lumley's Public Health (7th edit.), pp. 287—318.

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PRIVATE IMPROVEMENT RATE.

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Power to make private improvement rates.

213. Whenever an urban authority have incurred or become liable to any expenses which by this Act are or by such authority may be declared to be private improvement expenses, such authority may, if they think fit, make and levy on the occupier of the premises in respect of which the expenses have been incurred, in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds per centum per annum, in such period not exceeding thirty years as the urban authority may in each case determine.

Provided that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge on and be paid by the owner for the time being of the premises so long as the same continue to be unoccupied.

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LEGAL PROCEEDINGS.

Prosecution of Offences and Recovery of Penalties, etc.

Summary proceedings for offences, penalties, etc.

251. All offences under this Act, and all penalties forfeitures costs and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction. The court of summary jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice.

General provisions as to summary proceedings.

252. Any complaint or information made or laid in pursuance of this Act shall be made or laid within six months from the time when the matter of such complaint or information respectively arose.

The description of any offence under this Act in the words of this Act shall be sufficient in law.

Any exception exemption proviso excuse or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information; and, if so specified or negatived, no proof in relation to the matters so

Section 252. specified or negatived shall be required on the part of the informant.

This limitation of six months does not apply to proceedings in the county court under sects. 104 or 106, nor to proceedings to enforce a charge under sect. 257 (see note to those sections).

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Recovery of expenses by local authority from owners.

257. Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceeding five pounds per centum per annum, from the date of service of a demand for the same till payment thereof, from any person who is the owner of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred. In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same.

The local authority may, by order, declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum, until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act.

Time within which proceedings may be taken to enforce a charge on the land is the usual period of limitation (*Tottenham Local Board* v. *Rowell* (*No.* 2), (1880) 15 Ch. D. 378; 50 L. J. Ch. 99 (C. A.)), and the time begins to run from the demand for payment.

The proceedings to enforce such a charge in the county court should be taken under sect. 67 of the County Courts Act, 1888, as to which, see Part I. p. 51.

How the charge ought to be apportioned. Where a local authority have made up a road fronting several premises, held that the charge must be for an apportioned sum in respect of each one of the premises fronting on the road (*Croydon Rural District Council* v. *Betts*, (1914) 1 Ch. 870; 82 L. J. Ch. 709).

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Appearance of local authorities in legal proceedings.

259. Any local authority may appear before any court, or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and their clerk, or any officer or member so authorised shall be at liberty to institute and carry

on any proceeding which the local authority is authorised to institute and carry on under this Act. Section 259.

260. In any proceeding instituted by or against a local authority under this Act it shall not be necessary for the plaintiff to prove the corporate name of the local authority or the constitution or limits of their district: Provided that this section shall not abridge or prejudice the right of any defendant to take or avail himself of any objection which he might have taken or availed himself of if this Act had not been passed. Name of local authority need not be proved.

261. Proceedings for the recovery of demands below fifty pounds, which local authorities are empowered to recover in a summary manner, may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognizance of such courts. Demands below 50*l.* may be recovered in county courts.

Time for taking proceedings in the county court under this section, as well as before a court of summary jurisdiction, is six months, as provided by sect. 252 (*Tottenham Local Board* v. *Rowell* (C. A.), (1876) 1 Ex. D. 514; 46 L. J. Ex. 432; see note to sect. 104).

262. No rate order conviction or thing made or done or relating to the execution of this Act shall be vacated quashed or set aside for want of form, or (unless otherwise expressly provided by this Act) be removed or removable by certiorari or any other writ or process whatsoever into any of the superior courts: Provided that nothing in this section shall prevent the removal of any case stated for the opinion of a superior court, or of any rate order conviction or thing to which such special case relates. Proceedings not to be quashed for want of form.

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267. Notices orders and any other documents required or authorised to be served under this Act may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of premises by delivering the same or a true copy thereof to some person on the premises, or if there is no person on the premises who can be so served by fixing the same on some conspicuous part of the premises; they may also be served by post by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice order or other document was properly addressed and put into the post. Service of notices.

Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description.

Appeal.

268. Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board stating the grounds of his complaint, and Appeal in certain cases to Local Government Board.

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shall deliver a copy thereof to the local authority; the Local Government Board may make such order in the matter as to the said board may seem equitable, and the order so made shall be binding and conclusive on all parties.

Any proceedings that may have been commenced for the recovery of such expenses by the local authority shall, on the delivery to them of such copy as aforesaid, be stayed; and the Local Government Board may, if it thinks fit, by its order, direct the local authority to pay to the person so proceeded against such sum as the said board may consider to be a just compensation for the loss damage or grievance thereby sustained by him.

PUBLIC HEALTH (LONDON) ACT, 1891.

[54 & 55 Vict. c. 76.]

By this Act certain things are declared to be nuisances by sect. 2, and under sects. 4 and 5 certain steps may be taken to abate such nuisances.

Jurisdiction.]—By sect. 11, sub-s. 1, all reasonable costs and expenses incurred in abating such nuisances shall be deemed to be money paid for the use and at the request of the person on whom the order is made; by sect. 11, sub-s. 2, such costs and expenses and fines may be recovered in a summary manner, or in the county court or High Court. The court has further power to divide costs, expenses and fines between the persons responsible for the nuisance.

By sect. 117, sub-s. 2, a demand not exceeding 50*l.*, which a sanitary authority can recover in a summary manner, may be recovered in the county court as if such demand were a debt.

Practice.]—Proceedings are to be by action commenced by plaint and summons in the ordinary way (Order L. rr. 35, 36 apply; see p. 631).

No special rules.

Time within which the action should be commenced is a matter of some doubt, but the better opinion seems to be that the action must be commenced within six calendar months' time (see note to sect. 11).

Nuisances (General).

What nuisances may be abated summarily.

2.—(1) For the purposes of this Act,—

(*a*) Any premises in such a state as to be a nuisance or injurious or dangerous to health;

(*b*) Any pool, ditch, gutter, watercourse, cistern, watercloset, earth closet, privy, urinal, cesspool, drain, dung-pit, or ashpit so foul or in such a state as to be a nuisance or injurious or dangerous to health;

(*c*) Any animal kept in such place or manner as to be a nuisance or injurious or dangerous to health;

(*d*) Any accumulation or deposit which is a nuisance or injurious or dangerous to health;

(*e*) Any house or part of a house so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family;

(*f*) Any such absence from premises of water fittings as is a nuisance by virtue of section thirty-three of the Metropolis Water Act, 1871, set out in the first schedule to this Act; and

34 & 35 Vict. c. 113.

(*g*) Any factory, workshop, or workplace which is not a factory subject to the provisions of the Factory and Workshop Act, 1878, relating to cleanliness, ventilation, and overcrowding, and 41 & 42 Vict. c. 16.

(i.) is not kept in a cleanly state and free from effluvia arising from any drain, privy, earth closet, watercloset, urinal, or other nuisance, or

(ii.) is not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or,

(iii.) is so overcrowded while work is carried on as to be injurious or dangerous to the health of those employed therein,

shall be nuisances liable to be dealt with summarily under this Act.

(2) Provided that—

(i.) Any accumulation or deposit necessary for the effectual carrying on of any business or manufacture shall not be punishable as a nuisance under this section, if it is proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health; and

(ii.) In considering whether any dwelling-house or part of a dwelling-house which is used also as a factory, workshop, or workplace, or whether any factory, workshop, or workplace used also as a dwelling-house, is a nuisance by reason of overcrowding, the court shall have regard to the circumstance of such other user.

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Notice requiring abatement of nuisance.

4.—(1) On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Act the sanitary authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or, if such person cannot be found, on the occupier or owner of the premises on which the nuisance arises, requiring him to abate the same within the time specified in the notice, and to execute such works and do such things as may be necessary for that purpose, and, if the sanitary authority think it desirable (but not otherwise) specifying any works to be executed.

(2) The sanitary authority may also by the same or another notice served on such occupier, owner, or person require him to do what is necessary for preventing the recurrence of the nuisance, and, if they think it desirable, specify any works to be executed for that purpose, and may serve that notice notwithstanding that the nuisance may for the time have been abated, if the sanitary authority consider that it is likely to recur on the same premises.

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(3) Provided that—

(*a*) where the nuisance arises from any want or defect of a structural character, or where the premises are unoccupied, the notice shall be served on the owner:

(*b*) where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the occupier or owner of the premises, the sanitary authority may themselves abate the same and may do what is necessary to prevent the recurrence thereof:

(*c*) where the medical officer of health certifies to the sanitary authority that any house or part of a house in their district is so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family, the sanitary authority shall take proceedings under this section for the abatement of such nuisance:

(*d*) where the nuisance is such absence of water-fittings as is declared a nuisance by section thirty-three of the Metropolis Water Act, 1871 (set out in the first schedule to this Act), such absence shall be deemed to render the premises unfit for human habitation unless and until the contrary is shown to the satisfaction of the court.

34 & 35 Vict. c. 113.

(4) Where a notice has been served on a person under this section, and either—

(*a*) the nuisance arose from the wilful act or default of the said person; or

(*b*) such person makes default in complying with any of the requisitions of the notice within the time specified,

he shall be liable to a fine not exceeding ten pounds for each offence, whether any such nuisance order as in this Act mentioned is or is not made upon him.

On non-compliance with notice, order to be made.

5.—(1) If either—

(*a*) the person on whom a notice to abate a nuisance has been served as aforesaid makes default in complying with any of the requisitions thereof within the time specified; or

(*b*) the nuisance, although abated since the service of the notice, is, in the opinion of the sanitary authority, likely to recur on the same premises,

the sanitary authority shall make a complaint, and the petty sessional court hearing the complaint may make on such person a summary order (in this Act referred to as a nuisance order).

(2) A nuisance order may be an abatement order, a prohibition order, or a closing order, or a combination of such orders.

(3) An abatement order may require a person to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order.

(4) A prohibition order may prohibit the recurrence of a nuisance.

(5) An abatement order or prohibition order shall, if the person on whom the order is made so requires, or the court considers it desirable, specify the works to be executed by such person for the purpose of abating or preventing the recurrence of the nuisance.

(6) A closing order may prohibit a dwelling-house from being used for human habitation.

(7) A closing order shall only be made where it is proved to the satisfaction of the court that by reason of a nuisance a dwelling-house is unfit for human habitation, and if such proof is given the court shall make a closing order, and may impose a fine not exceeding twenty pounds.

(8) A petty sessional court, when satisfied that the dwelling-house has been rendered fit for human habitation, may declare that it is so satisfied and cancel the closing order.

(9) If a person fails to comply with the provisions of a nuisance order with respect to the abatement of a nuisance, he shall, unless he satisfies the court that he has used all due diligence to carry out such order, be liable to a fine not exceeding twenty shillings a day during his default; and if a person knowingly and wilfully acts contrary to a prohibition or closing order he shall be liable to a fine not exceeding forty shillings a day during such contrary action; moreover the sanitary authority may enter the premises to which a nuisance order relates, and abate or remove the nuisance, and do whatever may be necessary in execution of such order.

Provision as to appeal against order.

6.—(1) Where a person appeals to the court of quarter sessions against a nuisance order, no liability to a fine shall arise, nor, save as in this section mentioned, shall any proceedings be taken or work done under such order until after the determination or abandonment of such appeal.

(2) There shall be no appeal to quarter sessions against a nuisance order, unless it is or includes a prohibition or closing order, or requires the execution of structural works.

(3) Where a nuisance order is made and a person does not comply with it and appeals against it to the court of quarter sessions, and such appeal is dismissed or is abandoned, the appellant shall be liable to a fine not exceeding twenty shillings a day during the non-compliance with the order, unless he satisfies the court before whom proceedings are taken for imposing a fine that there was substantial ground for the appeal, and that the appeal was not brought merely for the purpose of delay, and where the appeal is heard by the court of quarter sessions, that court may, on dismissing the appeal, impose the fine as if the court were a petty sessional court.

(4) Where a nuisance order is made on any person and appealed against, and the court which made the order is of opinion that the continuance of the nuisance will be injurious or dangerous to health, and that the immediate abatement thereof will not cause any injury which cannot be compensated by damages, the court may authorize the sanitary authority immediately to abate the nuisance; but the sanitary authority, if they do so, and the appeal is successful, shall pay the cost of such abatement and the damages (if any) sustained by the said person by reason of such abatement; but, if the appeal is dismissed or abandoned, the sanitary authority may recover the cost of the abatement in a summary manner from the said person.

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Section 11.

Costs of execution of provisions relating to nuisances.

11.—(1) All reasonable costs and expenses incurred in serving notice, making a complaint, or obtaining a nuisance order, or in carrying the order into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order is made on the sanitary authority, or, if no order is made, but the nuisance is proved to have existed when the notice was served or the complaint made, then of the person by whose act, default, or sufferance, the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, such costs and expenses may be recovered from any person who is for the time being owner of such premises.

(2) Such costs and expenses, and any fines incurred in relation to any such nuisance, may be recovered in a summary manner or in the county court or High Court, and the court shall have power to divide costs, expenses and fines between persons by whose acts, defaults, or sufferance a nuisance is caused, as to it may seem just.

In the case of *Vestry of Hammersmith* v. *Lowenfeld*, (1896) 2 Q. B. 278; 65 L. J. Q. B. 662, it was held that any such action in a county court must be brought within six months from the time when the costs and expenses were incurred; some doubts were thrown upon this decision in the *Mayor of Blackburn* v. *Sanderson*, (1902) 1 K. B. 794; 71 L. J. K. B. 590. See also *Metropolitan Water Board* v. *Bunn*, C. A., (1913) 3 K. B. 181; 82 L. J. K. B. 1024, but the better opinion seems to be that the first-named case is correct, especially as fines are expressly named in the section, and would have to be recovered within six months if recovered in a summary manner.

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Recovery of costs of maintenance of non-infectious patient in hospital.

76. Any expenses incurred by a sanitary authority in maintaining in a hospital (whether or not belonging to that authority) a patient who is not a pauper, and is not suffering from an infectious disease, shall be a simple contract debt due to the sanitary authority from that patient, or from any person liable by law to maintain him, but proceedings for its recovery shall not be commenced after the expiration of six months from the discharge of the patient, or if he dies in such hospital from the date of his death.

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Summary proceedings for offences, expenses, etc.

117.—(1) All offences, fines, penalties, forfeitures, costs, and expenses under this Act or any bye-law made under this Act directed to be prosecuted or recovered in a summary manner, or the prosecution or recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts.

(2) Proceedings for the recovery of a demand not exceeding fifty pounds, which a sanitary authority or any person are or is empowered to recover in a summary manner, may, at the option of the authority or person, be taken in the county court as if such demand were a debt.

(3) A proceeding under this Act shall not be taken by the county council against a sanitary authority save with the sanction of the Local Government Board, unless such proceeding is for the recovery of expenses or of money due from the sanitary authority to the council.

Proceedings under this section should be taken within six months (see note to sect. 261 of the Public Health Act, 1875, and note to sect. 11 of this Act).

PUBLIC TRUSTEE ACT, 1906.

[6 EDW. VII. c. 55.]

This Act provided for the appointment of a public trustee in England (*a*), a corporation sole which may sue or be sued under that name. The public trustee may, if he think fit (*a*) act in the administration of estates of small value, (*b*) as custodian trustee, (*c*) as an ordinary trustee, (*d*) as a judicial trustee, (*e*) as the administrator of the property of a convict under the Forfeiture Act, 1870.

NOTE (*a*).—Not Scotland. See *Hewitt's Settlements, In re*, (1915) 1 Ch. 228; 84 L. J. Ch. 358.

Jurisdiction of the county court is limited to estates which do not exceed 500*l.* in value. By sect. 10 of this Act any person aggrieved by any act or omission or decision of the public trustee in relation to any trust, may apply to the "court," and the "court" may make such order in the matter as it thinks fit. Under sect. 13, sub-s. 6, the "court" may make such order as it thinks just if the auditor, mentioned in that section, is refused access to any document, or is obstructed in his investigations. The word "court" by sect. 15 means the High Court, and as respects trusts within its jurisdiction, the county court; the County Courts Act, 1888, s. 67, limits the powers of the county court as to trust estates to 500*l.* A corporate body may be appointed custodian trustees (*In re Cherry's Trusts, Robinson* v. *Trustees for Wesleyan Methodists*, (1914) 1 Ch. 83; 83 L. J. Ch. 142).

Practice.]—The proceedings are commenced by petition, and carried on as provided by Order XXXVIII. (see p. 620).

Appeal from the county court will be as in cases under sect. 67 of the County Courts Act, 1888.

The Public Trustee Rules, 1912, have been made by the Lord Chancellor for carrying into effect the objects of this Act; none of these rules touch the practice of the county court, and they are, therefore, not set out.

SUPPLEMENTAL PROVISIONS AS TO PUBLIC TRUSTEE.

Appeal to the court.

10.—(1) A person aggrieved by any act or omission or decision of the Public Trustee in relation to any trust may apply to the court, and the court may make such order in the matter as the court thinks just.

(2) Subject to rules of court, an application under this section to the High Court shall be made to a judge of the Chancery Division of the High Court in chambers.

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INVESTIGATION AND AUDIT OF TRUST ACCOUNTS.

Investigation and audit of trust accounts.

13.—(1) Subject to rules under this Act and unless the court otherwise orders, the condition and accounts of any trust shall, on an application being made and notice thereof given in the prescribed manner by any trustee or beneficiary, be investigated and audited by such solicitor or public accountant as may be agreed on by the applicant and the trustees or, in default of agreement, by the Public Trustee or some person appointed by him:

Provided that (except with the leave of the court) such an investigation or audit shall not be required within twelve months after any such previous investigation or audit, and that a trustee or beneficiary shall not be appointed under this section to make an investigation or audit.

(2) The person making the investigation or audit (herein-after

Section 13.

called the auditor) shall have a right of access to the books, accounts, and vouchers of the trustees, and to any securities and documents of title held by them on account of the trust, and may require from them such information and explanation as may be necessary for the performance of his duties, and upon the completion of the investigation and audit shall forward to the applicant and to every trustee a copy of the accounts, together with a report thereon, and a certificate signed by him to the effect that the accounts exhibit a true view of the state of the affairs of the trust and that he has had the securities of the trust fund investments produced to and verified by him or (as the case may be) that such accounts are deficient in such respects as may be specified in such certificate.

(3) Every beneficiary under the trust shall, subject to rules under this Act, be entitled at all reasonable times to inspect and take copies of the accounts, report, and certificate, and, at his own expense, to be furnished with copies thereof or extracts therefrom.

(4) The auditor may be removed by order of the court, and, if any auditor is removed, or resigns, or dies, or becomes bankrupt or incapable of acting before the investigation and audit is completed, a new auditor may be appointed in his place in like manner as the original auditor.

(5) The remuneration of the auditor and the other expenses of the investigation and audit shall be such as may be prescribed by rules under this Act, and shall, unless the Public Trustee otherwise directs, be borne by the estate; and, in the event of the Public Trustee so directing, he may order that such expenses be borne by the applicant or by the trustees personally or partly by them and partly by the applicant.

(6) If any person having the custody of any documents to which the auditor has a right of access under this section fails or refuses to allow him to have access thereto or in anywise obstructs the investigation or audit, the auditor may apply to the court, and thereupon the court shall make such order as it thinks just.

* * * * *

Definitions.

15. In this Act, unless the context otherwise requires—
the expression "court" means the High Court and, as respects trusts within its jurisdiction, the county court:

RAILWAY REGULATION AMENDMENT ACT, 1871.

[34 & 35 Vict. c. 78.]

Jurisdiction.]—The county court as a court has no jurisdiction under this Act but by sect. 7 the Board of Trade is empowered, when it considers that a formal investigation as to the causes and circumstances of any railway accident ought to be made to direct that such investigation shall be held (amongst other persons) by a county court judge, with the assistance of an inspector or an assessor or assessors. The said persons constitute a court, and by sect. 7, sub-s. 3, are given divers powers therein set forth. The court has to report to the Board of Trade as to the causes and circumstances attending the accident.

ACCIDENTS.

Section 6.

Companies to make returns of accidents to Board of Trade.

6. Where in or about any railway or any of the works or buildings connected with such railway, or any building or place, whether open or enclosed, occupied by the company working such railway, any of the following accidents takes place in the course of working any railway; (that is to say),

(1) Any accident attended with loss of life or personal injury to any person whomsoever;

(2) Any collision where one of the trains is a passenger train;

(3) Any passenger train or any part of a passenger train accidentally leaving the rails;

(4) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused or be likely to cause loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Board of Trade,

the company working such railway, and also, if the accident happen to a train belonging to any other company, such last-mentioned company, shall send notice of such accident and of the loss of life or personal injury (if any) occasioned thereby to the Board of Trade.

Such notice shall be in such form and shall contain such particulars as the Board of Trade may from time to time direct, and shall be sent by the earliest practicable post after the accident takes place.

The Board of Trade may from time to time by order direct that notice of any class of accidents shall be sent to them by telegraph, and may revoke any such order. Notice of every such order shall be sent to every railway company, and while it is in force notice of every accident of the class to which the order relates shall be sent to the Board of Trade by telegraph immediately after the accident takes place.

Every company who fail to comply with the provisions of this section shall be liable for each offence to a penalty not exceeding twenty pounds.

Inquiry into accidents and formal investigation in serious cases.

7. The Board of Trade may direct an inquiry to be made by an inspector into the cause of any accident, of which notice is for the time being required by or in pursuance of this Act to be sent to the Board of Trade; and where it appears to the Board of Trade, either before or after the commencement of any such inquiry, that a more formal investigation of the accident, and of the causes thereof, and of the circumstances attending the same, is expedient, the Board of Trade may, by order, direct such investigation to be held, and with respect to such investigation the following provisions shall have effect:

(1) The Board of Trade may, by the same or any subsequent order, appoint any person or persons possessing legal or special knowledge to assist an inspector in holding the same, or may direct the county court judge, stipendiary magistrate, metropolitan police magistrate, or other person or persons named in the same or any subsequent order, to hold the same with the assistance of an inspector or any other assessor or assessors named in the order:

Section 7.

(2) The persons holding any such formal investigation (hereinafter referred to as the court) shall hold the same in open court in such manner and under such conditions as they may think most effectual for ascertaining the causes and circumstances of the accident, and enabling them to make the report in this section mentioned :

(3) The court shall have for the purpose of such investigation all the powers of a court of summary jurisdiction when acting as a court in the exercise of its ordinary jurisdiction, and all the powers of an inspector under this Act, and in addition the following powers ; namely,

(*a*) They may enter and inspect any place or building the entry or inspection whereof appears to them requisite for the said purpose :

(*b*) They may by summons under their hands require the attendance of all such persons as they think fit to call before them and examine for the said purpose, and may for such purpose require answers or returns to such inquiries as they think fit to make :

(*c*) They may require and enforce the production of all books, papers, and documents which they consider important for the said purpose :

(*d*) They may administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination :

(*e*) Every person so summoned not being a person engaged in the management, service, or employment of a company, or otherwise connected with a company, shall be allowed such expenses as would be allowed to a witness attending on subpœna before a court of record ; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of the superior courts, who, on request under the hands of the members of the court, shall ascertain and certify the proper amount of such expenses :

(4) The inspector making an inquiry into any accident and the court holding an investigation of any accident shall make a report to the Board of Trade stating the causes of the accident and all the circumstances attending the same, and any observations thereon or on the evidence or on any matters arising out of the investigation which they think right to make to the Board of Trade, and the Board of Trade shall cause every such report to be made public in such manner as they think expedient.

REMOVAL OF POOR PERSONS FROM ENGLAND TO SCOTLAND AND FROM SCOTLAND TO ENGLAND AND IRELAND.

[25 & 26 Vict. c. 113.]

6. Costs of removal of poor persons between these countries may be recovered in the county court.

THE RIOT (DAMAGES) ACT, 1886.

[49 & 50 VICT. c. 38.]

By this Act, sect. 2, compensation out of the police rate is given for damage by riot to any house or building in a police district, or for property therein injured or stolen by persons riotously and tumultuously assembled together, but in fixing the amount regard shall be had to the conduct of the person applying for compensation; sub-s. 2 of sect. 2 allows an insurer to stand in the shoes of his assured. By sect. 3 claim for compensation is to be made to the police authority of the district in accordance with regulations published in the *London Gazette* (see *post*). By sect. 4, where a claim has been made in accordance with the said regulations, and the claimant is aggrieved by the refusal or failure of the police authority to fix compensation or by the amount of the compensation fixed he may bring an action against the police authority in respect of the matters mentioned in such claim.

Jurisdiction of the county court is by sect. 4, sub-s. 2, exclusive as to all claims not exceeding 100*l.*, and the action shall be brought in the county court for the district in which any part of the police district is situate.

Practice.]—No special practice has been indicated, so the claimant must proceed by plaint and summons, and follow the ordinary practice of the court (Order L. rr. 35, 36; see p. 631).

Costs.]—Should the claimant fail to recover any compensation from the police authority, or only recover an amount not exceeding that fixed by the police authority, he shall pay the costs of the police authority as between solicitor and client (sect. 4, sub-s. 1).

Appeal from the county court will be under sect. 120 of the County Courts Act, 1888, p. 123.

As to liability of the police authority for damage done to vessels by persons riotously assembled, see sect. 515, Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). The Public Authorities Protection Act does not apply to a claim under the Act (*Kaufmann Bros.* v. *Liverpool Corporation*, (1916) 85 L. J. K. B. 1127).

For the elements necessary to constitute a riot, see *Field* v. *Receiver, Metropolitan Police*, (1907) 2 K. B. 853; 76 L. J. K. B. 1015.

1. This Act may be cited as the Riot (Damages) Act, 1886.

Compensation to persons for damage by riot.

2.—(1) Where a house, shop or building in any police district has been injured or destroyed, or the property therein has been injured, stolen or destroyed, by any persons riotously and tumultuously assembled together, such compensation as hereinafter mentioned shall be paid out of the police rate of such district to any person who has sustained loss by such injury, stealing, or destruction; but in fixing the amount of such compensation regard shall be had to the conduct of the said person, whether as respects the precautions taken by him or as respects his being a party or accessory to such riotous or tumultuous assembly, or as regards any provocation offered to the persons assembled or otherwise.

(2) Where any person having sustained such loss as aforesaid has received, by way of insurance or otherwise, any sum to recoup him, in whole or in part, for such loss, the compensation otherwise payable to him under this Act shall, if exceeding such sum, be reduced by the amount thereof, and in any other case shall not be paid to him, and the payer of such sum shall be entitled to compensation under this Act in respect of the sum so paid in like manner as if he had sustained the said loss, and any policy of insurance given by such payer shall continue in force as if he had made no such payment, and where such person was recouped as

Section 2.

aforesaid otherwise than by payment of a sum, this enactment shall apply as if the value of such recoupment were a sum paid.

Mode of awarding compensation.

3.—(1) Claims for compensation under this Act shall be made to the police authority of the district in which the injury, stealing, or destruction took place, and such police authority shall inquire into the truth thereof, and shall, if satisfied, fix such compensation as appears to them just. (*a*)

(2) A secretary of state may from time to time make, and when made, revoke and vary regulations respecting the time, manner, and conditions within, in, and under which claims for compensation under this Act are to be made, and all claims not made in accordance with such regulations may be excluded. . . .

(3) The said regulations shall be published in the *London Gazette*, and every police authority shall cause the same to be published in their police district, and copies thereof to be at all times sold to any applicant at a price not exceeding 6*d.* for each copy.

NOTE.—(*a*) By virtue of the Local Government Act, 1888, ss. 3 (1), (14) and 9, ss. (1), if damage by riot occurs within a police district being part of a county maintaining a separate police force the authority liable to pay the damages is the county council (*Glamorgan Coal Company, Ltd.* v. *Standing Joint Committee of the Quarter Sessions and County Council of Glamorgan*, (1915) 1 K. B. 384; 84 L. J. K. B. 362).

Right of action to person aggrieved.

4.—(1) Where a claim to compensation has been made in accordance with the regulations, and the claimant is aggrieved by the refusal or failure of the police authority to fix compensation upon such claim, or by the amount of compensation fixed, he may bring an action against the police authority to recover compensation in respect of all or any of the matters mentioned in such claim and to an amount not exceeding that mentioned therein, but if in such action he fails to recover any compensation or an amount exceeding that fixed by the police authority, he shall pay the costs of the police authority as between solicitor and client.

(2) If the amount of compensation for which such action is brought does not exceed 100*l.*, the action shall be brought in the county court for any district in which any part of the police district is situate.

Application of Act to wreck of machinery.

6. This Act shall apply—

(*a*) (Repealed).

(*b*) in the case of the injury or destruction, by persons riotously and tumultuously assembled together, of any machinery, whether fixed or movable, prepared for or employed in any manufacture, or agriculture, or any branch thereof, or of any erection or fixture about or belonging to such machinery, or of any steam-engine or other engine for sinking, draining, or working any mine or quarry, or of any staith or erection used in conducting the business of any mine or quarry or of any bridge, waggon-way, or trunk for conveying minerals or other product from any mine or quarry; or in like manner as if such injury or destruction were an injury, stealing or destruction in respect of which compensation is payable under the foregoing provisions of this Act.

Some part of this section repealed by sect. 745 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).

Section 7.

7. For the purposes of this Act—

As to claimants in the case of churches, public institutions, etc.

(*a*) where a church or chapel has been injured or destroyed, or any property therein has been injured, stolen or destroyed, the churchwardens or chapelwardens, if any, or if there are none, the persons having the management of such church or chapel, or the persons in whom the legal estate in the same is vested; and

(*b*) where a school, hospital, public institution, or public building, has been injured or destroyed, or any property therein has been injured, stolen, or destroyed, the persons having the control of such school, hospital, institution, or building, or the persons in whom the legal estate in the same is vested;

shall be deemed to be the persons who have sustained loss from such injury, stealing, or destruction, and claims may be made by any one or more of such persons in relation both to the building and to the property therein, and payment to any such claimant shall discharge the liability of the police authority to pay compensation, but shall be without prejudice to the right of any person to recover the compensation from such payee.

Definitions.

9. In this Act, unless the context otherwise requires—

The expression "person" includes a body of persons, corporate or unincorporate:

The expression "police district" means one of the districts set forth in the first column of the first schedule to the Act: and the expressions "police authority" and "police rate" mean, as respects each police district, the authority and rate respectively mentioned opposite to that district in the second and third columns of that schedule, and the expressions defined in that schedule shall have the meanings thereby assigned to them:

The expression "house, shop, or building" includes any premises appurtenant to the same:

The expression "borough" means a borough subject to the Municipal Corporations Act, 1882, and the Acts amending the same:

The expression "secretary of state" means one of Her Majesty's principal secretaries of state.

FIRST SCHEDULE. *See* Sect. 9.

POLICE DISTRICTS AND AUTHORITIES.

Police District.	Police Authority.	Police Rate.
The city of London and the liberties thereof.	The mayor and commonalty and citizens of London, acting by the common council.	The police rate.
The Metropolitan Police District.	The receiver for the Metropolitan Police District.	The rate authorised to be levied for raising that proportion of the sum required for defraying the expenses of the metropolitan police force which can be raised by a rate.

FIRST SCHEDULE—*continued.*

Police District.	Police Authority.	Police Rate.
Any county, riding, parts, division, or liberty of a county maintaining a separate police force.	The justices in general or quarter sessions assembled.	The police rate.
A borough maintaining a separate police force	The mayor, aldermen, and burgesses of the borough, acting by the council.	The borough fund or borough rate.
Any town not being a borough and maintaining a separate police force under any Local Act of Parliament.	The commissioners or other authority under the Local Act.	The fund or rate applicable under the Local Act for the expenses of the police force.
The river Tyne within the limits of the Acts relating to the Tyne Improvement Commissioners.	The Tyne Improvement Commissioners.	The tonnage rates and dues and other sums applicable under the Acts relating to the improvement of the river Tyne for the expenses of maintaining the police force.

In this Act the expression "county" does not include a county of a city or county of a town.

All liberties of a county not maintaining a separate police force under the Acts relating to police forces shall be deemed to form part of the county of which they form part for the purposes of those Acts.

Where the police force of a borough has been consolidated with the police force of a county, such borough shall be deemed for the purposes of this Act to form part of the police district constituted by the said county.

Such parts as are within the Metropolitan Police District, or as form part of any other police district, shall not be deemed for the purposes of this Act to form part of the County Police District.

REGULATIONS AS TO CLAIMS FOR COMPENSATION.

In pursuance of the above-mentioned Act, I the Right Honourable Herbert Henry Asquith, one of Her Majesty's Principal Secretaries of State, make the following Regulations:—

1. All claims for compensation under the Act shall be made in writing, and shall be delivered as under:—

When the matter in respect of which the claim is made arises in—

The City of London and the liberties thereof	To the Town Clerk of London.
The Metropolitan Police District . .	To the Receiver for the Metropolitan Police District.

Rule 1.

Any county, riding, parts, division, or liberty of a county maintaining a separate police force, or any borough the police force of which has been consolidated with the police force of a county	To the Clerk to the County Council.
A borough maintaining a separate police force	To the Town Clerk.
Any town not being a borough, and maintaining a separate police force under any local Act of Parliament	To the Clerk to the Commissioners or other authority under the local Act.
The River Tyne within the limits of the Acts relating to the Tyne Improvement Commissioners . .	To the Secretary to the Commissioners.

2. All claims shall be so delivered within fourteen clear days after the day when such injury, stealing, or destruction took place.

Provided that the police authority, on application to be made before the expiration of the fourteen days, may, for special cause shown, enlarge the period of fourteen days to forty-two days, and in the event of such application being refused, the applicant may, within seven days after such refusal, appeal to the Secretary of State, and his decision shall be conclusive as to whether the claim shall be received.

3. All claims shall be made in the form appended to these regulations.

4. The claim shall specify the name and address of the claimant, the day and hour on which the injury, stealing, or destruction took place; and as to the premises whether they are a house, shop, or building, and where they are situated, and the nature of the claimant's interest therein.

5. The claim shall state separately the sums claimed for—

(*a*) Destruction of premises,

(*b*) Injury to premises (including injury to windows, fittings, or fixtures thereof),

(*c*) Injury to other property in or on the premises,

(*d*) Theft or destruction of other property in or on the premises,

distinguishing, as regards (*c*) and (*d*), property belonging to the claimant from property belonging to others in his care.

6. Where the claim is in respect of *injury* done either to premises or to property therein, it shall state shortly the nature of the injury; if the injury has been repaired, it shall state the cost of the repairs and be accompanied by the bill for such repairs; if the injury has not been repaired, but is repairable, then the claim shall contain a specification of the repairs required and an estimate by a competent person of their cost.

7. Where the claim is in respect of *property* in or upon premises, whether such property has been injured, stolen, or destroyed, it shall, when practicable (except in the case of

Rule 7.

articles of the same nature and of small value, and except where the cost of repairs only is claimed), specify each article separately, and the sum claimed for it or for the injury thereto; and, when practicable, the claimant shall send with his claim vouchers or copies of vouchers for the sums paid by him for the property.

8. In all cases the claim shall state generally the evidence which the claimant is prepared to offer in support of it, and the place where such documents as he proposes to put in evidence may be inspected; and whether the claimant has received or may receive, or is entitled to, any compensation from any (and if so what) source for any loss included in his claim, and the amount of such compensation.

9. The claimant, if so required by the police authority, shall verify the claim by himself making such a statutory declaration, and by procuring and furnishing to the police authority such statutory declarations of other persons as the police authority may require; and he shall produce to the police authority and to any person nominated by that authority all such documents under his control as are needed to support his claim, and shall deliver to the police authority copies thereof or extracts therefrom as may be required, and shall give to the police authority or any person nominated by that authority access to the premises and produce the property for injury to which the claim is made.

10. The police authority may make separate awards as regards property of the claimant and property not belonging to him.

When an award includes compensation for property in the care of, but not belonging to the claimant, it may provide that prior to payment either the claimant shall produce receipts from the owners for the sums payable to them, or their authority to him to receive the same, or that the claimant or some other person to be approved by the police authority shall enter into a bond or personal undertaking with the police authority in such sum as the award shall name for securing payment to the owners of such property of the sums due to them. When an award includes compensation for stolen property, it may provide for a similar bond or undertaking for securing either repayment to the police authority of the whole or such part as the police authority may determine of the compensation paid for such stolen property as may be subsequently recovered, or the delivery of the property so recovered to the police authority to be realised by them for the benefit of the police rate.

11. No costs will be allowed to any claimant.

12. The above regulations shall, with the necessary variations, apply:

(*a*) In the case of the plundering, damage, or destruction of any ship or boat stranded or in distress, on or near the shore of any sea or tidal water, or of any part of the cargo or apparel of such ship or boat, by persons riotously and tumultuously assembled together; and

(*b*) In the case of the injury or destruction, by persons riotously and tumultuously assembled together, of any machinery (whether fixed or movable) prepared for or employed in any manufacture or agriculture, or any branch thereof, or of any erection or fixture about or belonging to such machinery, or of any steam engine or other engine for sinking, draining, or working any mine or quarry, or of any staith or erection used in conducting the business of any mine or quarry, or of any bridge, waggon-way or trunk for conveying minerals or other product from any mine or quarry. Rule 12.

13. The regulations made under the above-mentioned Act on the 28th July 1886 are hereby revoked.

H. H. ASQUITH.

Whitehall,
30th June, 1894.

FORM OF CLAIM.

RIOT (DAMAGES) ACT, 1886.

(1) the undersigned, claim the sum of (2) £ as compensation for (3) (*a*) destruction of, and (3) (*b*) injury done to, premises occupied by (4) and (3) (*c*) for injury to property therein, and (3) (*d*) for property therein stolen or destroyed, in the riot which occurred at (5) on the day of . Particulars of such claim are given in the Schedules hereto.

The premises (3) destroyed and injured, and wherein the property was injured, stolen or destroyed, are (6).

The following documents are sent herewith in support of the claim :—(7)

The following further evidence in support of the claim will be adduced :—(8)

(1) "I" or "We."
(2) Insert total sum claimed.
(3) If the claim is not made under all the heads, the superfluous words should be struck out.
(4) "me" or "us."
(5) Insert the hour or hours at which the riot occurred.
(6) Insert name of premises.
(7) Insert particulars of documents sent.
Note.—Bills for repairs should accompany the claim, and where the repairs have not been executed, an estimate of the cost, by a competent person, should be sent.
When practicable, vouchers or copies of vouchers for the sums paid for property injured, stolen, or destroyed, should be sent with the claim.
(8) Insert particulars, adding, in the case of documents, where they can be inspected.

SCHEDULE A.

Claims as to Destruction of Premises.

Description and Situation of Premises, and Nature of Claimant's Interest.	In what way destroyed.	Estimated Cost of Restoration.		
	Total £			
Deduct sum received or which claimant is entitled to or may receive as compensation from (1) £				
	Amount claimed £			

(1) Here insert the name of the person or company from whom compensation has been received, &c.

SCHEDULE B.

Claim as to Injury to Premises.

Description and Situation of Premises, and Nature of Claimant's Interest.	Short Particulars of Injury done.	Cost of Repairs where executed.			Estimated Cost of Repairs when not executed.		
					£		
					£		
				Total £			
Deduct sum received or which claimant is entitled to or may receive as compensation from (2)				£			
				Amount claimed £			

(2) See note above.

SCHEDULE C.

Claim as to Injury to Property.

Part I.—Property belonging to Claimant.

Premises wherein Property was injured.	Particulars of Property injured.	Cost of Repairs where Property has been repaired.	Estimated Cost of Repair where Property is proposed to be repaired.	Estimated Amount of Damage in addition to Cost of Repair.
				£ £ £
			Total £	
Deduct sum received or which claimant is entitled to or may receive as compensation from (1)			£	
			Amount claimed £	

(1) Here insert the name of the person or company from whom compensation has been received, etc.

Part II.—Property belonging to others in care of Claimant.

Premises wherein Property was injured.	Particulars of Property injured.	Name and Address of Owner.	Cost of Repairs where Property has been repaired.	Estimated Cost of Repair where Property is proposed to be repaired.	Estimated Amount of Damage in addition to Cost of Repair.
				Total £	
Deduct sum received or which claimant or owner is entitled to or may receive as compensation from (2)				£	
				Amount claimed £	

(2) See note above.

SCHEDULE D.

Claim as to Property stolen or destroyed.

Part I.—Property belonging to Claimant.

Premises wherein stolen or destroyed.	Particulars of Property stolen or destroyed.	Estimated Amount of Loss.		
		£		
Deduct sum received or which claimant is entitled to or may receive as compensation from (1)		£		
	Amount claimed £			

(1) Here insert the name of the person or company from whom compensation has been received, &c.

Part II.—Property belonging to others in care of Claimant.

Premises wherein stolen or destroyed.	Particulars of Property stolen or destroyed.	Name and Address of Owner.	Estimated Amount of Loss.		
			£		
Deduct sum received or which claimant or owner is entitled to or may receive as compensation from (2)			£		
		Amount claimed £			

(2) See note above.

SUMMARY.

SCHEDULE A.			£
„ B.			£
„ C. PART I.	£		
„ C. PART II.	£		
			£
„ D. PART I.	£		
„ D. PART II.	£		
			£
Total			£

(1) certify that the particulars above given are correct; that the claim includes only injury to, or destruction of, houses, shops, or buildings in (2) occupied or owned by (3) and property in such houses, shops, or buildings occupied by (3) injured, stolen, or destroyed by persons taking part in the riot on the day of and that (1) have not received, and (4) not entitled to receive, any compensation from any other source than is stated above.

(1) "I" or "We."
(2) Insert name of police district.
(3) "me" "us."
(4) "am" or "are."

(*Signed*)_____

(*Address*)_____

(*Date*)_____ *day of*_____

RIVERS POLLUTION PREVENTION ACTS, 1876, 1893, AND 1898.

[39 & 40 VICT. c. 75; 56 & 57 VICT. c. 31; 61 & 62 VICT. c. 34.]

Jurisdiction to Restrain Offences.]—The county court having jurisdiction in the place where any offence (see sects. 2 to 5 of the Act of 1876, and sect. 1 of 1893 Act) against these Acts is committed may, by summary order, require any person to abstain from the commission of such offence; and where such offence consists in default to perform a duty under the Act, may require him to perform such duty in manner in the order specified. The court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just; and generally may give such directions for carrying into effect any order as to the court seems fit. Previously to granting the order the court may, if it thinks fit, remit to skilled persons to report "on the best practicable and available means," and the nature and costs of the works and apparatus required, who must in all cases take into consideration the reasonableness of the expenses involved (sect. 10). The jurisdiction under these Acts is exclusive.

Practice is by plaint and summons, and follows the ordinary practice of the court, but must not be commenced until two months after written notice of the intention to take proceedings (sect. 13 of Act of 1876), which Notice of intention to proceed.

notice cannot be given until the requisite consent of the Local Government Board to the taking of proceedings has been obtained (*West Riding Rivers Board* v. *Robinson*, (1907) 1 K. B. 431; 76 L. J. K. B. 426).

Discovery.]—The proceedings are not of a criminal or penal nature, so complainants are entitled to discovery (*In re Derbyshire County Council* v. *Mayor, etc., of Derby*, (1896) 2 Q. B. 53; (C. A.), *ib.*, 297; 65 L. J. Q. B. 488, 557; affirmed, (1897) A. C. 550; 66 L. J. Q. B. 701).

In county court no special procedure is ordered, hence Order L. rr. 35, 36, apply; see p. 631.

Effect of Order.]—The order is equivalent to a judgment, and estops the defendant from disputing the commission of the alleged offence or the jurisdiction of the court (*River Ribble Committee* v. *Croston Urban District Council*, (1897) 1 Q. B. 251; 66 L. J. Q. B. 384).

Appeal.]—Either party aggrieved by the decision of the court in point of law or on the merits, or in respect of the admission or rejection of any evidence, may appeal to the High Court. The appeal must be by motion in accordance with the ordinary practice (*Kirkheaton Loc. Bd.* v. *Ainley* (C. A.), (1892) 2 Q. B. 274; 61 L. J. Q. B. 812), but the appeal court may draw inferences from the facts (39 & 40 Vict. c. 75, s. 11; see sect. 9 for provisions as to Lee Conservancy Board).

Costs.]—The judge may certify that the proceedings involve novel or difficult points of law, or that the question was to some class or body of persons of general or public interest (sect. 119, County Courts Act, 1888). See as to costs generally Order LIII., p. 636, and Part II., Chapter III.; as to an order for particular costs or for the allowance of special items see Order LIII. rr. 7, 8, 9, Part II., Chapter III.

Removal of Plaint into High Court.]—Any plaint entered in a county court under the Act may be removed into the High Court by leave of the judge of the High Court, if it appears to such judge desirable in the interests of justice that such case should be tried in the first instance in the High Court, and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any), as such judge may think fit (sect. 11), *post*, p. 2239.

39 & 40 VICT. C. 75. AUG. 15, 1876.

WHEREAS it is expedient to make further provision for the prevention of the pollution of rivers, and in particular to prevent the establishment of new sources of pollution:

Short title of Act.

1. This Act may be cited for all purposes as the Rivers Pollution Prevention Act, 1876.

PART I.

LAW AS TO SOLID MATTERS.

Prohibition as to putting solid matters into streams.

2. Every person who puts or causes to be put or to fall or knowingly permits to be put or to fall or to be carried into any stream, so as either singly or in combination with other similar acts of the same or any other person to interfere with its due flow, or to pollute its waters, the solid refuse of any manufactory, manufacturing process or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter, shall be deemed to have committed an offence against this Act.

In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution,

although each act taken by itself may not be sufficient for that purpose. Section 2.

"Solid matter" has received judicial interpretation (*River Ribble* v. *Halliwell*, (1899) 2 Q. B. 385; 68 L. J. Q. B. 984).

PART II.

Law as to Sewage Pollutions.

3. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid or liquid sewage matter, shall (subject in this Act mentioned) be deemed to have committed an offence against this Act. Prohibition as to drainage into streams of sewage.

Where any sewage matter falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage matter, the person causing or knowingly permitting the sewage matter so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream.

Where the Local Government Board are satisfied after local inquiry that further time ought to be granted to any sanitary authority, which at the date of the passing of this Act is discharging sewage matter into any stream, or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

Any order made under this section may be from time to time renewed by the Local Government Board, subject to such conditions, if any, as they may see fit.

A person other than a sanitary authority shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing.

See Rivers Pollution Act, 1893, p. 2241, *infra*, where this section is explained.

Knowingly permits.]—For interpretation of, see *Yorkshire West Riding* v. *Holmfirth Urban Sanitary Authority*, (1894) 2 Q. B. 842; 63 L. J. Q. B. 485.

PART III.

Law as to Manufacturing and Mining Pollutions.

4. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any poisonous, noxious, or polluting liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act. Prohibition as to drainage into streams from many factories.

Where any such poisonous, noxious, or polluting liquid as

Section 4.

aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream.

As to "causing," see *Southall Norwood District Council* v. *Middlesex C. C.*, (1901) 49 W. R. 376; *Butterworth* v. *West Riding Rivers Board*, (1909) A. C. 45; 78 L. J. K. B. 203; also *Moses* v. *Midland Railway*, (1915) 84 L. J. K. B. 2181. As to responsibility, see *Yorkshire (W. R.) Rivers Board* v. *Linthwaite Urban Council* (No. 2), (1915) 84 L. J. K. B. 1610.

Local Sanitary Authority.]—Proceedings can be taken against . . under s. 4: *West Riding of Yorkshire Rivers Board* v. *Linthwaite Urban District Council*, (1915) 2 K. B. 436; 84 L. J. K. B. 793 (C. A. reversing Divisional Court).

Prohibition as to drainage into stream from mines.

5. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid matter from any mine in such quantities as to prejudicially interfere with its due flow, or any poisonous, noxious, or polluting solid or liquid matter proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream.

Restriction on proceedings under this part of the Act.

6. Unless and until Parliament otherwise provides the following enactments shall take effect, proceedings shall not be taken against any person under this part of this Act save by a sanitary authority, (*a*) nor shall any such proceedings be taken without the consent of the Local Government Board: Provided always, that if the sanitary authority, on the application of any person interested alleging an offence to have been committed, shall refuse to take proceedings or apply for the consent by this section provided, the person so interested may apply to the Local Government Board, and if that board on inquiry is of opinion that the sanitary authority should take proceedings, they may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

NOTE.—(*a*) See, where river is situated partly in England and partly in Scotland, 61 & 62 Vict. c. 34.

The said board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality.

The said board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due

inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry. Section 6.

Any person within such district as aforesaid, against whom proceedings are proposed to be taken under this part of this Act, shall, notwithstanding any consent of the Local Government Board, be at liberty to object before the sanitary authority to such proceedings being taken, and such authority shall, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes. The sanitary authority shall thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority shall determine, having regard to all the considerations to which the Local Government Board are by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken; and where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other sanitary authorities to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent court under this Act.

PART IV.

Administration of Law.

Sanitary authority to afford facilities for factories draining into sewers.

7. Every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers:

Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view:

Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district, nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority.

Where these Acts provide an appropriate remedy, the High Court will not interfere by a mandamus (*Peebles* v. *Oswaldtwistle Urban District Council*, (1897) 1 Q. B. 384; 66 L. J. Q. B. 106). As to acquired rights, see *Eastwood* v. *Honley District Council*, (1900) 1 Ch. 781; 69 L. J. Ch. 470.

Power of sanitary authority to enforce Act.

8. Every sanitary authority shall, subject to the restrictions in this Act contained, have power to enforce the provisions of this Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district, of any such stream, against any other sanitary authority or person, whether

Section 8.

such offence is committed within or without the district of the first-named sanitary authority.

Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses properly incurred by that authority in the execution of the Public Health Act, 1875.

Proceedings may also, subject to the restrictions in this Act contained, be instituted in respect of any offence against this Act by any person aggrieved by the commission of such offence.

Power of Lee Conservancy Board to enforce Act.

9. The conservancy board constituted under the Lee Conservancy Act, 1868, shall, within the area of their jurisdiction, have, to the exclusion of any other authority, the powers for enforcing the provisions of this Act which sanitary authorities have under this Act.

The said conservancy board may also enforce the provisions of the Lee Conservancy Act, 1868, under the head or division "Protection of Water," by application to the county court having jurisdiction in the place in which any offence is committed against those provisions, and such court may by summary order require any person to abstain from the commission of any such offence, and the provisions of this Act with respect to summary orders of county courts and appeal therefrom shall apply accordingly.

Legal Proceedings. Saving Clauses. Definitions.

(1) *Legal Proceedings.*

Offences to be restrained by summary order of county court.

10. The county court having jurisdiction in the place where any offence against this Act is committed may by summary order require any person to abstain from the commission of such offence, and where such offence consists in default to perform a duty under this Act may require him to perform such duty in manner in the said order specified; the court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the court seems meet. Previous to granting such order the court may, if it think fit, remit to skilled parties to report on the "best practicable and available means" and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report.

Any person making default in complying with any requirement of an order of a county court made in pursuance of this section shall pay to the person complaining, or such other person as the court may direct, such sum, not exceeding fifty pounds a day for every day during which he is in default, as the court may order; and such penalty shall be enforced in the same manner as any debt adjudged to be due by the court; moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month or such other period less than a month as may be prescribed by such order, the court may in addition to any penalty it may impose appoint any person or persons to carry into effect such order, and all expenses incurred by any such person or persons to such amount as may be allowed

by the county court shall be deemed to be a debt due from the person in default to the person or persons executing such order, and may be recovered accordingly in the county court. Section 10.

See *Staffordshire County Council* v. *Seisdon Rural District Council*, (1907) 96 L. T. 328, as to test to be applied by county court judge when exercising his discretion.

11. If either party in any proceedings before the county court under this Act feels aggrieved by the decision of the court in point of law or on the merits, or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice. Appeal from county court, and removal of case into High Court of Justice.

[The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys, and, if they cannot agree, to be settled by the judge of the county court upon the application of the parties or their attorneys.]

Now obsolete. The appeal must be by motion (*Kirkheaton Local Board* v. *Ainley* (C. A.), (1892) 2 Q. B. 274; 61 L. J. Q. B. 812).

The Court of Appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses.

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the superior courts on such appeals, shall apply to all proceedings under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court.

Any plaint entered in a county court under this Act may be removed into the High Court of Justice by leave of any judge of the said High Court, if it appears to such judge desirable in the interests of justice that such case should be tried in the first instance in the High Court of Justice and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any) as such judge may think fit.

12. A certificate granted by an inspector of proper qualifications appointed for the purposes of this Act by the Local Government Board to the effect that the means used for rendering harmless any sewage matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means under the circumstances of the particular case, shall in all courts and in all proceedings under this Act be conclusive evidence of the fact; such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period. Certificate of inspector of Local Government Board as to best practicable means.

All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

Any person aggrieved by the grant or withholding of a certificate under this section may appeal to the Local Government Board against the decision of the inspector; and the board may either confirm, reverse, or modify his decision, and may make such order

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as to the party or parties by whom the costs of the appeal are to be borne as to the said board may appear just.

Restriction on proceedings for offences.

13. . . . . Nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of two months after written notice of the intention to take such proceedings has been given to the offender, nor shall proceedings under this Act be taken for any offence against this Act while other proceedings in relation to such offence are pending.

The first part of this section was repealed by the S.L.R. Act, 1883.

This section does not apply to an order to enforce penalties for non-compliance with an existing order which had been made against defendants (*Yorkshire (West Riding) Rivers Board* v. *Heckmondwike Urban District Council*, (1914) W. N. 147).

Sects. 14 and 15 have no relation to county courts.

(2) *Saving Clauses.*

Powers of Act cumulative.

16. The powers given by this Act shall not be deemed to prejudice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall legalise any act or default which would but for this Act be deemed to be a nuisance or otherwise contrary to law: Provided nevertheless, that in any proceedings for enforcing against any person such rights or powers the court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act.

Saving of rights of impounding and diverting water.

17. This Act shall not apply to affect the lawful exercise of any rights of impounding or diverting water.

See *River Ribble Joint Committee* v. *Halliwell*, (1899) 1 Q. B. 27; 68 L. J. Q. B. 20.

Saving of certain conservancy Acts.

18. Nothing in or done under this Act shall extend to interfere with, take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege given by The Thames Conservancy Acts, 1857 and 1864, or by The Thames Navigation Act, 1866, or by the Lee Conservancy Act, 1868, or by any Act or Acts extending or amending the said Acts or either of them, or affect any outfall or other works of the Metropolitan Board of Works (although beyond the metropolis) executed under the Metropolis Management Act, 1855, and the Acts amending or extending the same, or take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege of the Metropolitan Board of Works.

Saving of works of certain local authorities.

19. Where any local authority or any urban or rural sanitary authority has been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment shall be deemed to be an offence against this Act.

(3) *Definitions.*

Definitions.

20. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say,

"Person" includes any body of persons, whether corporate or unincorporate:

Section 20.

"Stream" includes the sea to such extent, and tidal waters to such point, as may, after local inquiry and on sanitary grounds, be determined by the Local Government Board, by order published in the *London Gazette*. Save as aforesaid, it includes rivers, streams, canals, lakes, and watercourses, other than watercourses at the passing of this Act mainly used as sewers, and emptying directly into the sea, or tidal waters which have not been determined to be streams within the meaning of this Act by such order as aforesaid:

"Solid matter" shall not include particles of matter in suspension in water:

"Polluting" shall not include innocuous discoloration:

"Sanitary authority" means—

In the metropolis as defined by the Metropolis Management Act, 1855, any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same;

Elsewhere in England, any urban or rural sanitary authority acting in the execution of the Public Health Act, 1875.

"Solid matter" and "particles of matter in suspension in water" interpreted (*River Ribble Joint Committee* v. *Halliwell*, (1899) 1 Q. B. 27; 68 L. J. Q. B. 20).

56 & 57 Vict. c. 31.

Explanation of 39 & 40 Vict. c. 75, s. 3, as to drainage into streams.

1. Where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall, for the purposes of section three of the Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried.

Construction and short title.

2. This Act shall be construed as one with the Rivers Pollution Prevention Act, 1876; and the Rivers Pollution Prevention Act, 1876, and this Act may be cited for all purposes as the Rivers Pollution Prevention Acts, 1876 and 1893.

61 & 62 Vict. c. 34.

Provision for enforcement of 39 & 40 Vict. c. 75 in border counties.

1. Where a river or any tributary thereof is situate partly in England and partly in Scotland, the Local Government Board for England and the Secretary for Scotland, by Provisional Order made on the application of the council of any of the counties concerned, may together constitute a joint committee or other body representing all or any of the counties through or by which such river or any specified portion or tributary thereof passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the order; and the order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the counties represented by it, and

39 & 40 Vict. c. 75.

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for the audit of the accounts of such committee or body and their officers.

Application of 38 & 39 Vict. c. 55, s. 297.

2. Section two hundred and ninety-seven of the Public Health Act, 1875 (which relates to the making of Provisional Orders by the Local Government Board) shall apply for the purposes of this Act as if the same was herein re-enacted, and in terms made applicable thereto, but with the substitution for the words "Local Government Board" of the words "Local Government Board for England and Secretary for Scotland."

Interpretation of "county."

3. In this Act the term "county" means, as regards England, an administrative county, and includes a county borough, and means, as regards Scotland, a county or burgh as defined by the Local Government (Scotland) Act, 1889.

52 & 53 Vict. c. 50.

Short title.

4. This Act may be cited as the Rivers Pollution Prevention (Border Councils) Act, 1898.

THE SALE OF EXHAUSTED PARISH LANDS ACT, 1876.

[39 & 40 VICT. C. 62.]

Provision is by this Act made for the sale and disposal by order of the Local Government Board of parish lands such as exhausted gravel pits. Before issuing their order for sale the Local Government Board shall hear and decide upon every objection and claim made in writing by anyone claiming an interest in the land.

Jurisdiction is given under sect. 3, where there is any disputed claim, or where the person entitled to any interest therein is under legal disability, if the amount of the value in question does not exceed 50*l.*, for the county court to settle such dispute or make an order as to the proper disposal of such amount where there is no dispute; for matters in excess of 50*l.* parties must go to the High Court.

Practice is governed by Order L. r. 10 (*post*). The proceedings are to be, in case of a dispute, by action commenced by plaint and summons in the ordinary way against the person or authority in whom the land is vested, or in whose hands the purchase-money may be. No provision is made as to what county court has jurisdiction, hence sect. 74 of the County Courts Act of 1888, which regulates the court by the residence of the defendant, or the place where the land is situate, should be followed. In the case of a person under legal disability, by petition, asking for directions of the court as to disposal of purchase-money. The petition should be served on the person or authority holding the money.

Appeal from the county court will be as provided by sect. 120 of the County Courts Act, 1888, p. 123.

Sale of exhausted gravel pits wherein there are private or other interests.

1. Where land has been allotted to or otherwise acquired by a parish, whether in the name of the surveyor of highways or other trustees, or generally for the purpose of the supply of materials for the repair of the public roads and highways in such parish, and also for the repair of private roads therein, or for some other purpose, public or private, and the materials in such land shall be exhausted, or shall not be suitable or required, and the

land shall not be available for such other purpose, if any, the same shall be dealt with as land which falls within the operation of the third section of the Union and Parish Property Act, 1835, and the Parish Property and Parish Debts Act, 1842, subject to the provisions hereinafter contained. Section 1.

2. Before issuing their order for the sale of the land, the Local Government Board shall hear and decide upon every objection and claim made in writing by any person claiming an interest therein, within three months from the passing of the resolution for the sale of the land, and shall either refuse to sanction the sale, or allow it to proceed, providing, if necessary, for the interest of every person establishing the same out of the purchase money. Local Government Board to hear and decide on objections and claims.

3. If there be disputed claims to any interest in the said land, or if the person entitled to such interest be under legal disability the board shall direct that proceedings may be taken in the High Court of Justice, or, where the amount of the value in question shall not exceed fifty pounds, in the county court, for the settlement of such dispute, or for the proper disposal of such amount where there is no such dispute. Disputed claims and interests of disabled persons

4. When the board shall see fit they may order that the land shall be offered to the owner or owners, as the case may be, of the adjoining land, at a price to be settled in such manner as the board shall deem most expedient, and if such owner or owners shall be willing to purchase the same at such price the same shall be sold to such owner or owners, and not otherwise; and the declaration of such owner or owners as to their willingness to purchase shall be given within a time to be appointed by the said board. Right of pre-emption by adjoining owner.

* * * * *

COUNTY COURT RULE. ORDER L. RULE 10.

10. Where the Local Government Board directs that proceedings may be taken under sect. 3 of the Sale of Exhausted Parish Lands Act, 1876, such proceedings may be taken as follows:— Proceedings under 39 & 40 Vict. c. 62, s. 3.

(*a*) If there are disputed claims to any interest in any land or the purchase money of any land, any person claiming any such interest may take proceedings by action commenced by plaint and summons in the ordinary way against the other persons claiming any interest, and the person or authority in whom such land is vested, or in whose hands such purchase money may be. Particulars of demand shall be filed in such action, stating concisely the relief or order which the plaintiff claims. The person or authority in whose hands such purchase money may be may at any time after service of the summons pay such purchase money into court, and thereupon further proceedings against such person or authority shall be stayed. The judge at the trial of the action shall decide upon the rights of the several persons claiming any interest in the land or purchase money, and shall make such order for the purpose of giving effect to such rights, and as to costs, as may be just.

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(*b*) If any person entitled to any interest in the purchase money of any land, where there is no dispute, is under legal disability, then

51 & 52 Vict. c. 43, s. 70.

(i.) the person or authority in whose hands such purchase money may be may pay the same into court under sect. 70 of the Act, in accordance with Rule 9 of Order XXXVIII., and that rule and the subsequent rules of that Order shall apply to the payment into court and subsequent disposal of such purchase money (*a*); or

(ii.) a petition may be filed on behalf of the person under disability, asking for the directions of the court as to disposal of such purchase money. If such petition is filed, it shall be served on the person or authority in whose hands such purchase money may be, and the same procedure shall be followed and costs allowed as on any other petition to the court. The person or authority served with such petition may, at any time after service, pay the purchase money into court, and thereupon further proceedings against such person or authority will be stayed.

(*a*) For Rule 9 of Order XXXVIII., see p. 621.

THE SETTLED LAND ACTS, 1882, 1884, 1890.

[45 & 46 Vict. c. 38; 47 & 48 Vict. c. 18; 53 & 54 Vict. c. 69.]

For the most part, the powers conferred by these Acts are such as it was usual previously to insert in settlements of land. The powers of leasing had been usually conferred on the tenants for life in possession, but those of sale, exchange, and enfranchisement on trustees, at the request or with the consent of the tenant for life in possession.

Jurisdiction of the county court is by sect. 46, sub-s. 10, as regards land not exceeding in value 500*l.*, or in annual rateable value 30*l.*; as regards capital money and securities in which the same is invested, not exceeding 500*l.*; and as regards personal chattels settled or to be settled, 500*l.* It is suggested that although the wording of sect. 46, sub-s. 10, is not very clear, the jurisdiction of the county court is limited to cases where the value of the whole of the settled estate does not exceed 500*l.* (see sect. 68 of the County Courts Act, 1888, and Form 331).

Practice.]—The proceedings should be commenced by petition (see Order XXXVIII., p. 620, by which the practice is regulated). If during the course of the trial, the excess of jurisdiction appears on the evidence given, the judge ought not to strike the action or matter out, but he should do so if the want of jurisdiction appears on the petition itself (*Birks* v. *Silverwood* (1871) L. R. 14 Eq. 101; 41 L. J. Ch. 638; *Thomson* v. *Flinn*, (1881) L. R. 17 Eq. 415; 43 L. J. Ch. 256; *sed quære* if the other party consents (see sect. 114 of the County Courts Act, 1888)); the action or matter may be transferred to the High Court (see Rule 5 of the said Order, and Form 331).

Costs.]—Even where the subject-matter of proceedings does not exceed 20*l.* the judge may order costs to be taxed under column B (Order LIII. r. 12).

Section 2. Definitions.

2.—(8) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

VIII.—CONTRACTS.

Power for tenant for life to enter into contracts.

31.—(1) A tenant for life—

(i.) May contract to make any sale, exchange, partition, mortgage, or charge; and

(ii.) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act; and

(iii.) May contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act (*a*); and

NOTE.—(*a*) *Wix, In re, Hardy* v. *Lemon*, (1916) 85 L. J. Ch. 192.

(iv.) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted; and

(v.) May enter into a contract for or relating to the execution of any improvement authorised by this Act, and may vary or rescind the same; and

(vi.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

(2) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

(3) The court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

IX.—MISCELLANEOUS PROVISIONS.

Application of money paid for lease or reversion.

34. Where capital money arising under this Act is purchase money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land

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less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the court, as the case may be, and in the case of the court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

Cutting and sale of timber and part of proceeds to be set aside.

35.—(1) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the court, may cut and sell that timber, or any part thereof.

(2) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

Proceeding for protection or recovery of land settled or claimed as settled.

36. The court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

Heirloom.

37.—(1) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

(2) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3) A sale or purchase of chattels under this section shall not be made without an order of the court.

X.—Trustees.

Appointment of trustees by court.

38.—(1) If at any time there are no trustees of a settlement within the definition in this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession,

remainder, or otherwise, or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act. Section 38.

(2) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall for purposes of this Act become and be the trustees or trustee of the settlement.

39.—(1) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorises the receipt of capital trust money of the settlement by one trustee. Number of trustees to act.

(2) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

44. If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the court thinks fit. Reference of differences to court.

XI.—Court; Land Commissioners; Procedure.

46.—(1) All matters within the jurisdiction of the court under this Act shall, subject to the Acts regulating the court, be assigned to the Chancery Division of the court. Regulations respecting payments into court, applications, etc.

(2) Payment of money into court effectually exonerates therefrom the person making the payment.

(3) Every application to the court shall be by petition, or by summons at chambers.

(4) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(5) On any application notice shall be served on such persons, if any, as the court thinks fit.

(6) The court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.

(10) The powers of the court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any county court within the district whereof is situate any part of the land which is to be dealt with in the court, or from which the capital money to be dealt with in the court arises under this Act, or in connexion with which the personal chattels to be dealt with in the court are settled.

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Payment of costs out of settled property.

47. Where the court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the court thinks fit.

XII.—Restrictions, Savings, and General Provisions.

Exercise of powers; limitation of provisions, etc.

55.—(1) Powers and authorities conferred by this Act on a tenant for life or trustees or the court or the land commissioners are exerciseable from time to time.

Saving for other powers.

56.—(1) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exerciseable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises, or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exerciseable for any purpose provided for in this Act.

(3) If a question arises, or a doubt is entertained, respecting any matter within this section, the court may, on the application of the trustees of the settlement or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

See *Johnson* v. *Johnson*, (1914) 2 Ch. 134; 83 L. J. Ch. 758.

XIV.—Infants, etc.

Infant absolutely entitled to be as tenant for life.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

Tenant for life, infant.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant

for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders. Section 60.

XV.—Settlement by way of Trusts for Sale.

63. (*a*)—(1) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale (*a*) of that land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement. Provision for case of trust to sell and re-invest in land.

Note.—(*a*) See *Johnson (deceased), In re Cowley*, (1915) 1 Ch. 435; 84 L. J. Ch. 393.

(2) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say):

(i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).

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(ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorised by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorised by this Act, be applied in any mode in which capital money arising under the settlement from any such sale, or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.

(iii.) Capital money arising under this Act from the settled land and the securities in which the same is invested, shall not for any purpose of disposition, transmission, or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.

(iv.) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

47 & 48 Vict. c. 18.

As to consents of tenants for life.

6.—(1) In the case of a settlement within the meaning of section sixty-three of the Act of 1882, any consent not required by the terms of the settlement is not by force of anything contained in that Act to be deemed necessary to enable the trustees of the settlement, or any other person, to execute any of the trusts or powers created by the settlement.

(2) In the case of every other settlement, not within the meaning of section sixty-three of the Act of 1882, where two or more persons together constitute the tenant for life for the purposes of that Act, then, notwithstanding anything contained in subsection (2) of section fifty-six of that Act, requiring the consent of all those persons, the consent of one only of those persons is by force of that section to be deemed necessary to the exercise by the trustees of the settlement, or by any other person, of any power conferred by the settlement exerciseable for any purpose provided for in that Act.

(3) This section applies to dealings before, as well as after, the passing of this Act. Section 6.

7. With respect to the powers conferred by section sixty-three of the Act of 1882, the following provisions are to have effect :— Powers given by s. 63 to be exercised only with leave of the court.

(i.) Those powers are not to be exercised without the leave of the court.

(ii.) The court may by order, in any case in which it thinks fit, give leave to exercise all or any of those powers, and the order is to name the person or persons to whom leave is given.

(iii.) The court may from time to time rescind, or vary, any order made under this section, or may make any new or further order.

(iv.) So long as an order under this section is in force, neither the trustees of the settlement, nor any person other than a person having the leave, shall execute any trust or power created by the settlement, for any purpose for which leave is by the order given, to exercise a power conferred by the Act of 1882.

(v.) An order under this section may be registered and re-registered, as a *lis pendens*, against the trustees of the settlement named in the order, describing them on the register as "Trustees for the purposes of the Settled Land Act, 1882."

(vi.) Any person dealing with the trustees from time to time, or with any other person acting under the trusts or powers of the settlement, is not to be affected by an order under this section, unless and until the order is duly registered, and when necessary re-registered as a *lis pendens*.

(vii.) An application to the court under this section may be made by the tenant for life, or by the persons who together constitute the tenant for life, within the meaning of section sixty-three of the Act of 1882.

(viii.) An application to rescind or vary an order, or to make any new or further order under this section, may be made also by the trustees of the settlement, or by any person beneficially interested under the settlement.

(ix.) The person or persons to whom leave is given by an order under this section, shall be deemed the proper person or persons to exercise the powers conferred by section sixty-three of the Act of 1882, and shall have, and may exercise those powers accordingly.

(x.) This section is not to affect any dealing which has taken place before the passing of this Act, under any trust or power to which this section applies.

53 & 54 Vict. c. 69.

Mansion and Park.

10.—(1) From and after the passing of this Act section fifteen of the Act of 1882, relating to the sale or leasing of the principal mansion-house, shall be and the same is hereby repealed. Restriction on sale of mansion.

(2) Notwithstanding anything contained in the Act of 1882,

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the principal mansion-house (if any) on any settled land, and the pleasure grounds and park and lands (if any) usually occupied therewith, shall not be sold, exchanged, or leased by the tenant for life without the consent of the trustees of the settlement or an order of the court.

(3) Where a house is usually occupied as a farmhouse, or where the site of any house and the pleasure grounds and park and lands (if any) usually occupied therewith do not together exceed twenty-five acres in extent, the house is not to be deemed a principal mansion-house within the meaning of this section.

Capital money in court may be paid out to trustees.

14. All or any part of any capital money paid into court may, if the court thinks fit, be at any time paid out to the trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890.

Court may order payment for improvements executed.

15. The court may, in any case where it appears proper, make an order directing or authorising capital money to be applied in or towards payment for any improvement authorised by the Settled Land Acts, 1882 to 1890, notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval, as required by the Act of 1882, to the trustees of the settlement or to the court (*a*).

NOTE.—(*a*) Section 17 repealed (56 & 57 Vict. c. 53, s. 51).

Extension of meaning of working classes in 48 & 49 Vict. c. 72. [Now repealed.] See 53 & 54 Vict. c. 70, s. 74, *infra*.

18. The provisions of sect. 11 of the Housing of the Working Classes Act, 1885, and of any enactment which may be substituted therefor, shall have effect as if the expression "working classes" included all classes of persons who earn their livelihood by wages or salaries: Provided that this sect. shall apply only to buildings of a rateable value not exceeding 100*l*. per annum.

NOTE.—By the Act immediately following the powers to sell, exchange and lease land for the purpose of the erection on such land of dwellings for the working classes were amended and extended.

THE HOUSING OF THE WORKING CLASSES ACT, 1890.

[53 & 54 VICT. C. 70.]

Amendment of 45 & 46 Vict. c. 38, as regards erection of buildings for working classes. [See 53 & 54 Vict. c. 69, s. 18.]

74.—(1) The Settled Land Act, 1882, shall be amended as follows:—

(*a*) Any sale, exchange, or lease of land in pursuance of the said Act, when made for the purpose of the erection on such land of dwellings for the working classes, may be made at such price, or for such consideration, or for such rent, as having regard to the said purpose, and to all the circumstances of the case, is the best that can be reasonably obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

(*b*) The improvements on which capital money may be expended enumerated in section twenty-five of the said Act, and referred to in section thirty of the said Act, shall, in

addition to cottages for labourers, farm servants, and artizans, whether employed on the settled land or not, include any dwellings available for the working classes, the building of which in the opinion of the court is not injurious to the estate. Section 74.

(2) Any body corporate holding land may sell, exchange, or lease the land for the purpose of the erection of dwellings for the working classes at such price, or for such consideration, or for such rent as having regard to the said purpose and to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

NOTE.—As to sect. 75 of this Act and as to The Housing of the Working Classes Acts, 1903, see *ante*, p. 2063.

SMALL DWELLINGS ACQUISITION ACT, 1899.

[62 & 63 VICT. c. 44.]

This Act empowers the local authority for any area to advance money as specified in the Act to a resident in any house within the area to acquire the same (sect. 1, sub-s. 1). The local authority has power in certain events to take possession or without taking possession to order a sale of the house (sect. 3). Where the local authority takes possession, they are to pay either an agreed sum or a sum equal to the value of the owner's interest in the house after deducting the amount of the advance unpaid and interest (sect. 5).

Jurisdiction.]—The above-mentioned value, in the absence of a sale or in default of agreement, is to be settled by a county court judge as arbitrator, or if the Lord Chancellor so authorises, by a single arbitrator appointed by the county court judge (sect. 5 (2) (*b*)). Where the local authority may take possession of a house, possession may be recovered (whatever the value of the house) under sects. 138—145 of the County Courts Act, 1888, or under the Small Tenements Recovery Act, 1838 (sect. 5 (5)).

Practice.]—To any arbitration before the county court judge, or before an arbitrator appointed by him, the Arbitration Act, 1889, is to apply. In cases where possession is claimed, the local authority may recover as if it were the landlord and the proprietor of the house the tenant (see Part I. pp. 162—169, as to sects. 138—145, and recovery of tenements).

Conditions affecting house purchased by means of advance.

3.—(1) Where the ownership of a house has been acquired by means of an advance under this Act, the house shall, until such advance with interest has been fully paid, or the local authority have taken possession or ordered a sale under this Act, be held subject to the following conditions (in this Act referred to as the statutory conditions), that is to say:—

(*a*) Every sum for the time being due in respect of principal or of interest of the advance shall be punctually paid:

(*b*) The proprietor of the house shall reside in the house:

(*c*) The house shall be kept insured against fire to the satisfaction of the local authority, and the receipts for the premiums produced when required by them:

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(*d*) The house shall be kept in good sanitary condition and good repair:

(*e*) The house shall not be used for the sale of intoxicating liquors, or in such a manner as to be a nuisance to adjacent houses:

(*f*) The local authority shall have power to enter the house by any person, authorised by them in writing for the purpose, at all reasonable times for the purpose of ascertaining whether the statutory conditions are complied with.

(2) The proprietor of the house may with the permission of the local authority (which shall not be unreasonably withheld) at any time transfer his interest in the house, but any such transfer shall be made subject to the statutory conditions.

(3) Where default is made in complying with the statutory condition as to residence, the local authority may take possession of the house, and where default is made in complying with any of the other statutory conditions, whether the statutory condition as to residence has or has not been complied with, the local authority may either take possession of the house, or order the sale of the house without taking possession.

(4) In the case of the breach of any condition other than that of punctual payment of the principal and interest of the advance, the authority shall, previously to taking possession or ordering a sale, by notice in writing delivered at the house and addressed to the proprietor, call on the proprietor to comply with the condition, and if the proprietor—

(*a*) within fourteen days after the delivery of the notice gives an undertaking in writing to the authority to comply with the notice; and

(*b*) within two months after the delivery of the notice complies therewith,

shall not take possession or order a sale, as the case may be.

(5) In the case of the bankruptcy of the proprietor of the house, or in the case of a deceased proprietor's estate being administered in bankruptcy under section one hundred and twenty-five of the Bankruptcy Act, 1883, the local authority may either take possession of the house or order the sale of the house without taking possession and shall do so except in pursuance of some arrangement to the contrary with the trustee in bankruptcy.

46 & 47 Vict. c. 52.

Recovery of possession and disposal of house.

5.—(1) Where a local authority take possession of a house, all the estate, right, interest, and claim of the proprietor in or to the house shall, subject as in this section mentioned, vest in and become the property of the local authority, and that authority may either retain the house under their own management or sell or otherwise dispose of it as they think expedient.

(2) Where a local authority take possession of a house, they shall, save as hereinafter mentioned, pay to the proprietor either—

(*a*) such sum as may be agreed upon; or

(*b*) a sum equal to the value of the interest in the house at the disposal of the local authority, after deducting therefrom the amount of the advance then remaining unpaid and any sum due for interest; and the said value, in the absence of a sale and in default of agreement, shall be

settled by a county court judge as arbitrator, or if the Lord Chancellor so authorises, by a single arbitrator appointed by the county court judge, and the Arbitration Act, 1889, shall apply to any such arbitration. Section 5. 52 & 53 Vict. c. 49.

(3) The sum so payable to the proprietor if not paid within three months after the date of taking possession shall carry interest at the rate of three per cent. per annum from the date of taking possession.

(4) All costs of or incidental to the taking possession, sale, or other disposal of the house (including the costs of the arbitration, if any) incurred by the local authority, before the amount payable to the proprietor has been settled either by agreement or arbitration, shall be deducted from the amount otherwise payable to the proprietor.

(5) Where the local authority are entitled under this Act to take possession of a house, possession may be recovered (whatever may be the value of the house) by or on behalf of the local authority either under sections one hundred and thirty-eight to one hundred and forty-five of the County Courts Act, 1888, or under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, and in either case may be recovered as if the local authority were the landlord and the proprietor of the house were the tenant. 51 & 52 Vict. c. 43; 1 & 2 Vict. c. 74.

6.—(1) Where a local authority order the sale of a house without taking possession, they shall cause it to be put up for sale by auction, and out of the proceeds of sale retain any sum due to them on account of the interest or principal of the advance, and all costs, charges, and expenses properly incurred by them in or about the sale of the house, and pay over the balance (if any) to the proprietor. Procedure as to ordering sale.

(2) If the local authority are unable at the auction to sell the house for such a sum as will allow of the payment out of the proceeds of sale of the interest and principal of the advance then due to the authority, and the costs, charges, and expenses aforesaid, they may take possession of the house in manner provided by this Act, but shall not be liable to pay any sum to the proprietor.

7.—(1) An advance may be made to an applicant who intends to reside in a house, as if he were resident, if he undertakes to begin his residence therein within such period not exceeding six months from the date of the advance, as the local authority may fix, and in that case the statutory condition requiring residence shall be suspended during that period. Suspension of condition as to residence.

(2) The local authority may allow a proprietor to permit, by letting or otherwise, a house to be occupied as a furnished house by some other person during a period not exceeding four months in the whole in any twelve months, or during absence from the house in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him, and the condition requiring residence shall be suspended while the permission continues.

(3) Where the proprietor of a house subject to statutory conditions dies, the condition requiring residence shall be suspended until the expiration of twelve months from the death, or any earlier date at which the personal representatives transfer

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the ownership or interest of the proprietor in the course of administration; and where the proprietor of any such house becomes bankrupt, or his estate is administered in bankruptcy under section one hundred and twenty-five of the Bankruptcy Act, 1883, and in either case an arrangement under this Act is made with the trustee in bankruptcy, the condition as to residence shall, if the local authority think fit, be suspended during the continuance of the arrangement.

SMALL HOLDINGS AND ALLOTMENTS ACT, 1908.

[8 Edw. VII. c. 36; and see 10 Edw. VII. & I Geo. V. c. 34.]

Under this Act (sect. 30 (1)) rent, and possession of allotment land may be recovered by the district council as landlords, in the like manner as in any other case of landlord and tenant. By sect. 30, sub-sect. 3, upon the recovery of an allotment from any tenant, the court directing the recovery may stay delivery of possession until payment of the compensation (if any) due to the outgoing tenant has been made, or secured to the satisfaction of the court.

See County Courts Act, 1888, sect. 138, and notes.

SOLICITORS ACT, 1860.

[23 & 24 Vict. c. 127.]

By this Act (sect. 26) the penalty of 50*l.* incurred by any person who acts as an attorney or solicitor without being legally qualified can be recovered in a county court.

The county court has also jurisdiction to enforce a solicitor's lien upon property recovered or preserved by proceedings taken in such court.

Practice.]—No special procedure.

Penalty for wrongfully acting as attorney or solicitor, 50*l.*

26. Every person who acts as an attorney or solicitor contrary to the enactment in section 2 of 6 & 7 Vict. c. 73, or who in his own name or in the name of any other person, in anywise acts as a proctor in or with respect to any proceeding in the court of probate or the court for divorce and matrimonial causes, without being duly qualified so to act, shall be deemed guilty of a contempt of the court in which the action, suit, cause, matter, or proceeding in relation to which he so acts is brought, had, or taken, and may be punished accordingly (*a*), and shall be incapable of maintaining any action or suit for any fee or reward for or in respect of anything done or any disbursement made by him in the course of so acting, and shall, in addition to any other penalty or forfeiture and to any disability to which he may be subject, forfeit and pay for every such offence the sum of 50*l.*, to be recovered, with full costs of suit, by action brought with the sanction of Her Majesty's Attorney-General, in the name of the

Note.—(*a*) But not by committal: *Reg.* v. *Judge of Brompton County Court* (1893), 2 Q. B. 195; 62 L. J. Q. B. 604.

incorporated law society, in any of the superior courts of law at Westminster, or in any county court, and such penalty shall be applied in like manner as fines imposed for practising without a stamped certificate are now by law applicable. Section 26.

28. In every case in which an attorney or solicitor shall be employed to prosecute or defend any suit, matter, or proceeding in any court of justice, it shall be lawful for the court or judge before whom any such suit, matter or proceeding has been heard, or shall be depending, to declare such attorney or solicitor entitled to a charge upon the property recovered or preserved, and upon such declaration being made such attorney or solicitor shall have a charge upon and against and a right to payment out of the property, of whatsoever nature, tenure, or kind the same may be, which shall have been recovered or preserved through the instrumentality of any such attorney or solicitor, for the taxed costs, charges, and expenses of or in reference to such suit, matter, or proceeding; and it shall be lawful for such court or judge to make such order or orders for taxation of and for raising and payment of such costs, charges, and expenses out of the said property as to such court or judge shall appear just and proper; and all conveyances and acts done to defeat, or which shall operate to defeat, such charge or right, shall, unless made to a *bonâ fide* purchaser for value without notice, be absolutely void and of no effect as against such charge or right: Provided always, that no such order shall be made by any such court or judge in any case in which the right to recover payment of such costs, charges, and expenses is barred by the Statute of Limitations. Power to Court of Justice to charge property recovered with payment of costs.

No solicitor's lien exists on property or things recovered by mere negotiation and without litigation (*Meguerditchan* v. *Lightbound and Others*, (1917) 1 K. B. 297; 86 L. J. K. B. 94. On appeal, (1917) 2 K. B. 298; 86 L. J. K. B. 889.

SOLICITORS ACT, 1870.

[33 & 34 Vict. c. 28.]

By this Act solicitors are enabled to make binding agreements in writing with their clients for remuneration for their services, either by payment of a gross sum or by commission or percentage, or by salary, or otherwise; but if the agreement is made in respect of litigious business, the amount is not recoverable until the agreement has been examined and allowed by the taxing-officer of a court having power to enforce the agreement.

Jurisdiction as to work done in a county court to whatever amount, is exclusive; and as to work done otherwise than in a county court is exclusive up to 50*l.* (sect. 8).

Disputes as to Agreements for Remuneration.]—No action may be brought upon any such agreement; but every question respecting its validity or effect may be examined and determined, and the agreement enforced or set aside without action, on motion or petition of any person, or the representative of any person, or party to such agreement, being or alleged to be liable to pay, or claiming to be entitled to be paid, the costs, fees, charges, or disbursements in respect of which the agreement is made, by the court in which the business, or any part thereof, was done, or a judge thereof, or if the business was not done in any court, then where the amount payable under

the agreement exceeds 50*l.*, by the High Court, and where such amount does not exceed 50*l.*, by the county court which would have jurisdiction in an action upon the agreement (sect. 8).

Practice.]—An application under either sect. 8 or 10 must be by petition intituled in the matter of the Act and of the agreement; the same procedure shall be followed and costs allowed as in any other petition (see Order L. r. 4, *post*, p. 2261). As to procedure on petition, see Order XXXVIII. p. 620.

Interpretation of terms.

3. In the construction of this Act, unless where the context otherwise requires, the words following have the significations hereinafter respectively assigned to them; that is to say,

The words "attorney or solicitor" mean an attorney, solicitor, or proctor, qualified according to the provisions of the Acts for the time being in force, relating to the admission and qualification of attorneys, solicitors, or proctors:

"Person" includes a corporation:

"Client" includes any person who, as a principal or on behalf of another person, retains or employs, or is about to retain or employ, an attorney or solicitor, and any person who is or may be liable to pay the bill of an attorney or solicitor for any services, fees, costs, charges, or disbursements.

The Act does not apply to accounts between country solicitors and their London agents (*Ward* v. *Eyre*, (1880) 15 Ch. D. 130; 49 L. J. Ch. 657).

PART I.

Agreements between Attorneys or Solicitors and their Clients.

The remuneration of attorneys and solicitors may be fixed by agreement.

4. An attorney or solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such attorney or solicitor, whether as an attorney or solicitor or as an advocate or conveyancer, either by a gross sum, or by commission or percentage, or by salary or otherwise, and either at the same or at a greater or at a less rate as or than the rate at which he would otherwise be entitled to be remunerated, subject to the provisions and conditions in this part of this Act contained: Provided always, that when any such agreement shall be made in respect of business done or to be done in any action at law or suit in equity, the amount payable under the agreement shall not be received by the attorney or solicitor until the agreement has been examined and allowed by a taxing officer of a court having power to enforce the agreement; and if it shall appear to such taxing officer that the agreement is not fair and reasonable he may require the opinion of a court or a judge to be taken thereon by motion or petition, and such court or judge shall have power either to reduce the amount payable under the agreement or to order the agreement to be cancelled and the costs, fees, charges, and disbursements in respect of the business done to be taxed in the same manner as if no such agreement had been made.

Amount payable under agreement not to be paid until allowed by taxing officer.

An agreement as to a solicitor's costs in a police court or at quarter sessions may be examined and set aside (*In re Jones*, (C. A.) (1896) 1 Ch. 222; 65 L. J. Ch. 191); an agreement is binding though signed only by the client (*In re Thompson, Ex parte Baylis*, (1894) 1 Q. B. 462; 63 L. J. Q. B. 187). An agreement not to charge anything for costs is not within

the Act and may be made by parol (*Jennings* v. *Johnson*, (1873) L. R. 8 C. P. 425); but an agreement not in writing by a client to pay a lump sum in discharge of past costs is not binding (*In re Russell*, (1885) 30 Ch. D. 114; 54 L. J. Ch. 948). A formal agreement is not necessary, but the document relied on must be an agreement, not a mere casual letter (*Pontifex* v. *Farnham*, (1892) 62 L. J. Q. B. 344). An agreement by which the solicitor is to receive what is equivalent to a tenth part of the property recovered is clearly void (*In re Attorney and Solicitors Act*, 1870, (1875) 1 Ch. D. 573; 45 L. J. Ch. 45; see also *In re A Solicitor*, (1912) 1 K. B. 302; 81 L. J. K. B. 245).

6. Such an agreement shall be deemed to exclude any further claim of the attorney or solicitor beyond the terms of the agreement in respect of any services, fees, charges or disbursements in relation to the conduct and completion of the business in reference to which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly excepted by the agreement.

Reservation of responsibility for negligence.

7. A provision in any such agreement that the attorney or solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such attorney or solicitor, shall be wholly void.

Examination and enforcement of agreements.

8. No action or suit shall be brought or instituted upon any such agreement; but every question respecting the validity or effect of any such agreement may be examined and determined, and the agreement may be enforced or set aside, without suit or action, on motion or petition of any person, or the representative of any person, a party to such agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid, the costs, fees, charges, or disbursements in respect of which the agreement is made, by the court in which the business, or any part thereof, was done, or a judge thereof, or if the business was not done in any court, then where the amount payable under the agreement exceeds fifty pounds, by any superior court of law or equity or a judge thereof, and where such amount does not exceed fifty pounds, by the judge of a county court which would have jurisdiction in an action upon the agreement.

Sect. 8 does not apply to an action for damages for refusing to allow the solicitor to do the work, and earn the remuneration (*Rees* v. *Williams*, (1875) L. R. 10 Ex. 200; 44 L. J. Ex. 116). An appeal lies to a Divisional Court from the decision of a judge at chambers and not direct to the Court of Appeal, the matter not being one of "practice and procedure" within the meaning of the Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16, s. 1, sub-s. 4) (*In re Jackson*, (1915) 1 K. B. 371; 84 L. J. K. B. 548).

Improper agreements may be set aside.

9. Upon any such motion or petition as aforesaid, if it shall appear to the court or judge that such agreement is in all respects fair and reasonable between the parties, the same may be enforced by such court or judge by rule or order in such manner and subject to such conditions, if any, as to the costs of such motion or petition as such court or judge may think fit; but if the terms of such agreement shall not be deemed by the court or judge to be fair and reasonable, the same may be declared void, and the court or judge shall thereupon have power to order such agreement to be given up to be cancelled, and may direct the costs, fees, charges, and

Section 9.

disbursements incurred or chargeable in respect of the matters included therein to be taxed in the same manner and according to the same rules as if such agreement had not been made; and the court or judge may also make such order as to the costs of and relating to such motion or petition, and the proceedings thereon, as to the said court or judge may seem fit.

The agreement must be not only fair in the sense that it was understood by the client, but must also be reasonable in amount, having regard to the work done (*In re Stuart, Ex parte Cathcart*, (1893) 2 Q. B. 201; 63 L. J. Q. B. 623).

Agreements may be re-opened after payment in special cases.

10. When the amount agreed for under any such agreement has been paid by or on behalf of the client, or by any person chargeable with or entitled to pay the same, any court or judge having jurisdiction to examine and enforce such an agreement may, upon application by the person who has paid such amount, within twelve months after the payment thereof, if it appears to such court or judge that the special circumstances of the case require the agreement to be re-opened, re-open the same, and order the costs, fees, charges, and disbursements to be taxed, and the whole or any portion of the amount received by the attorney or solicitor to be repaid by him on such terms and conditions as to the court or judge may seem just.

Where any such agreement is made by the client in the capacity of guardian, or of trustee under a deed or will, or of committee of any person or persons whose estate or property will be chargeable with the amount payable under such agreement, or with any part of such amount, the agreement shall before payment be laid before the taxing officer of a court having jurisdiction to enforce the agreement, and such officer shall examine the same, and may disallow any part thereof, or may require the direction of the court or a judge to be taken thereon by motion or petition; and if in any such case the client pay the whole or any part of the amount payable under the agreement, without the previous allowance of such officer or court or judge as aforesaid, he shall be liable at any time to account to the person whose estate or property is charged with the amount paid, or with any part thereof for the amount so charged; and if in any such case the attorney or solicitor accept payment without such allowance, any court which would have had jurisdiction to enforce the agreement may, if it think fit, order him to refund the amount so received by him under the agreement.

Prohibition of certain stipulations.

11. Nothing in this Act contained shall be construed to give validity to any purchase by an attorney or solicitor of the interest, or any part of the interest, of his client in any suit, action, or other contentious proceeding to be brought or maintained, or to give validity to any agreement by which an attorney or solicitor retained or employed to prosecute any suit or action, stipulates for payment only in the event of success in such suit, action, or proceeding.

Not to give validity to contracts, &c., which may be void in bankruptcy.

12. Nothing in this Act contained shall give validity to any disposition, contract, settlement, conveyance, delivery, dealing, or transfer which may be void or invalid against a trustee or creditor in bankruptcy, arrangement, or composition, under the provisions of the laws relating to bankruptcy.

Section 13

Provision in case of death or incapacity of the attorney.

13. Where an attorney or solicitor has made an agreement with his client in pursuance of the provisions of this Act, and anything has been done by such attorney or solicitor under the agreement, and before the agreement has been completely performed by him, such attorney or solicitor dies or becomes incapable to act, an application may be made to any court which would have jurisdiction to examine and enforce the agreement by any party thereto, or by the representatives of any such party, and such court shall thereupon have the same power to enforce or set aside such agreement, so far as the same may have been acted upon, as if such death or incapacity had not happened; and such court, if it shall deem the agreement to be in all respects fair and reasonable, may order the amount due in respect of the past performance of the agreement to be ascertained by taxation, and the taxing officer in ascertaining such amount shall have regard so far as may be to the terms of the agreement, and payment of the amount found to be due may be enforced in the same manner as if the agreement had been completely performed by the attorney or solicitor.

As to change of attorney after agreement.

14. If, after any such agreement as aforesaid shall have been made, the client shall change his attorney or solicitor before the conclusion of the business to which such agreement shall relate (which he shall be at liberty to do notwithstanding such agreement), the attorney or solicitor, party to such agreement, shall be deemed to have become incapable to act under the same within the meaning of section thirteen of this Act; and upon any order being made for taxation of the amount due to such attorney or solicitor in respect of the past performance of such agreement, the court shall direct the taxing master to have regard to the circumstance under which such change of attorney or solicitor has taken place; and, upon such taxation, the attorney or solicitor shall not be deemed entitled to the full amount of the remuneration agreed to be paid to him unless it shall appear that there has been no default, negligence, improper delay, or other conduct on his part affording reasonable ground to the client for such change of attorney or solicitor.

Agreements shall be exempt from taxation.

15. Except as in this part of this Act provided, the bill of an attorney or solicitor for the amount due under an agreement made in pursuance of the provisions of this Act shall not be subject to any taxation, nor to the provisions of the Act of the sixth and seventh Victoria, chapter seventy-three, and the Acts amending the same respecting the signing and delivery of the bill of an attorney or solicitor.

COUNTY COURT RULES. ORDER L. RULE 4.

THE SOLICITORS ACT, 1870.

Applications under 33 & 34 Vict. c. 28, ss. 8, 10.

An application to the court under the Solicitors Act, 1870, shall be made by petition intituled in the matter of the Act and of the agreement, and the same procedure shall be followed and costs allowed as on any other petition to the court, regard being had to the amount of the subject-matter of the petition.

STANNARIES COURT (ABOLITION) ACT, 1896.

[59 & 60 VICT. C. 45.]

Transfer of Jurisdiction of Stannaries Court.]—By sect. 1 of this Act it is provided that the stannaries court is to cease to exist, except for the purpose of continuing and concluding pending proceedings, and that all the jurisdiction and powers of the court are (except as aforesaid) to be transferred to and vested in such of the county courts as the Lord Chancellor may by order direct, and are to be exercised subject to and in accordance with rules of court regulating the procedure in county courts (sub-s. 1).

County Court having Jurisdiction.]—By order of the Lord Chancellor the jurisdiction and powers have been transferred to the county courts of Cornwall; subject to special appointment the place of sitting of the judge is to be at Truro, of the registrar, at the court where proceedings may be commenced; pending proceedings were transferred to Truro (see Order, December 16th, 1896). References in any unrepealed statute to mines subject to the jurisdiction of the court of the vice-warden of the stannaries or within his cognizance are to be construed as applying to mines which would have been subject to the jurisdiction of that court if it had not been abolished (sect. 3).

Reference of Disputes to Arbitration.]—In the event of any dispute arising between (a) any two or more mining companies, or (b) any mining company and His Royal Highness the Prince of Wales and Duke of Cornwall or any person having any estate or interest in the mine worked by or leased to that company, a judge of a county court exercising the jurisdiction of the stannaries court may, on the application of any party to the dispute, order the matter to be tried before himself, or before an arbitrator agreed upon by the parties, or an officer of the court; the Arbitration Act, 1889, is to apply to any such reference (sect. 4). The repeal effected by the schedule does not affect any proceedings pending in the court or any appeal from it pending at the commencement of the Act (sect. 5).

Nature of Jurisdiction.]—With respect to the jurisdiction so transferred, it is sufficient to say that the stannaries court exercised jurisdiction both in equity and at common law. Until comparatively recent years, its equity jurisdiction was confined to questions relating to tin mines, and its common law jurisdiction to suits between tin-miners, but by divers statutory enactments this jurisdiction was extended over all mines or setts of metallic minerals and also over mines or setts in which non-metallic, as well as metallic, minerals are worked for in the same mine (see Acts 1836 and 1855).

Equity Jurisdiction.]—The original equity jurisdiction of the court, though not strictly coterminous with the powers of the High Court, is believed to be an exclusive jurisdiction, and has been generally exercised for the purpose of enforcing the custom of cost-book; this jurisdiction has been at various times enlarged by statute. Hitherto, the county courts held within the district of the stannaries court have had no concurrent jurisdiction in equity cases within the jurisdiction of the latter court.

Common Law Jurisdiction.]—The common law jurisdiction of the court in personal actions is substantially concurrent with that of the ordinary courts of law, except that under various royal charters confirming its common law jurisdiction the court appears to have had exclusive jurisdiction over tinners actually working in the mines; otherwise the stannaries court and the county court have hitherto exercised concurrent jurisdiction in common law matters.

For information as to the stannaries court and its jurisdiction, see Batten on the Stannaries Act, 1869.

Practice is governed by Order LI. (*post*, p. 2268), which deals separately with matters within the limits of county court jurisdiction and actions and matters beyond such limits.

Winding-up.]—The stannaries court in the matter of a company for working mines within the stannaries, and not shown to be actually working mines, or to be engaged in any other undertaking beyond those limits, has no limit to its jurisdiction in winding-up matters (see Companies (Consolidation) Act, 1908, ss. 130 (4), 280). In *Dunbar* v. *Harvey*, C. A., (1913) 2 Ch. 530; 82 L. J. Ch. 452; 109 L. T. 285, a partnership of two formed to work metalliferous mines in Cornwall held a company, and that the county courts of Cornwall now have exclusive jurisdiction to wind up such a company. So even though the memorandum did not limit the company to working in Cornwall (*Radium Ore Mines, Ltd.*, C. A., (1913) 110 L. T. 57; 109 L. T. 707).

THE STANNARIES COURT ACT, 1836.

[6 & 7 WILL. IV. c. 106.]

Section 4.

Original equitable jurisdiction of vice-warden confirmed and extended to matters connected with all metals and metallic minerals in the county in the same way as heretofore over tin.

4. The original equitable jurisdiction heretofore lawfully exercised by the vice-warden for the time being shall and may be henceforth exercised by the present and every future vice-warden for the time being, and the present and every future vice-warden for the time being shall have, exercise, and enjoy the same equitable jurisdiction, and the same power and authority in all matters and things brought before him, so far as relates to the working, managing, conducting, or carrying on any mine worked for any lead, copper, or other metal or metallic mineral within the said county of Cornwall, or to the searching for, working, smelting, or purifying any lead, copper, or other metal or metallic mineral within the said county, in as full and ample a manner as if the same had related to any tin, or tin ore, or tin mine, or mine worked for tin, in the said county. . . .

The courts of the stannaries consolidated and to be held before vice-warden, who is to have the same jurisdiction as the steward has had; and also similar jurisdiction in all cases connected with all metals and metallic minerals in Cornwall.

6. The courts of law of the respective stannaries heretofore held before the stewards or steward thereof shall be one court for all the stannaries, and shall be held by and before the vice-warden for the time being, who as judge thereof shall have, exercise, and enjoy the same common law jurisdiction, and the same powers, privileges, and authorities with reference thereto, and shall transact, do, and perform the same duties, matters and things in relation thereto, as have heretofore been lawfully transacted, done, performed, or to be (*sic*) exercised or enjoyed by the steward for the time being of any of the stannaries.

7. Such vice-warden for the time being shall also have, exercise, and enjoy the same common law jurisdiction, and the same power and authority in all matters and things which shall be brought before him in any way connected with the working, managing, conducting, or carrying on any mine worked for lead, copper, or any other metal or metallic mineral within the said county of Cornwall, or in any way relating to lead, copper, or any other metal or metallic mineral, or the searching for, working, smelting, or purifying lead, copper, or any other metal or metallic mineral within the said county, in as full and ample a manner as if the same had been connected with or related to any tin, or tin ore, or tin mine, or mine worked for tin, in the said county. [The remainder of the section relates to appeals, and has been repealed.]

THE STANNARIES COURT AMENDMENT ACT, 1855.

[18 & 19 Vict. c. 32.]

Section 1.

Process in case of mines of mixed minerals.

1. Where any mine or sett within the stannaries shall be worked by the same adventurers, not only for metallic minerals within the jurisdiction of the court, but also for non-metallic minerals, found in the same mine or sett, or intermixed with metallic minerals, the entire mine and works and products thereof shall be taken to be within the cognisance of the vice-warden as if the same had wholly consisted of metallic minerals, and the process of the court shall extend to the exercise over the same and all the machinery and materials thereon, as in the case of mines of metallic minerals; and the mineral called plumbago or black lead is hereby declared to be a metallic mineral.

STANNARIES COURT (ABOLITION) ACT, 1896.

[59 & 60 Vict. c. 45.]

An Act for abolishing the court of the vice-warden of the stannaries.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Abolition of vice-warden's court.

1.—(1) On the commencement of this Act the court of the vice-warden of the stannaries shall cease to exist, except for the purpose of continuing and concluding proceedings pending in that court at that date, and as from that date all jurisdiction and powers of the said court and its officers shall, except as aforesaid, be transferred to and vested in such of the county courts as the Lord Chancellor may by order direct, and be exercised subject to and in accordance with rules of court for regulating the procedure in county courts.

(2) Provision may be made by order of the Lord Chancellor—

(*a*) For determining by, to, or before what officer, or in what office, may be done anything required to be done by, to, or before any officer or in any office of the said court of the vice-warden;

(*b*) For transferring to a county court any proceedings pending in the said court at the commencement of this Act;

(*c*) For determining the place of sitting for the exercise of any jurisdiction transferred by this Act;

(*d*) With respect to the use and disposal of any property which at the commencement of this Act is held for the use of the said court or of any officer of the said court, and of any room or building which at that date is appropriated for the use of the said court or of the vice-warden, officers, and suitors thereof; and

(*e*) With respect to the custody of any records which at that date are under the custody of the said court.

Pensions and remuneration.

2. There shall be paid to the persons who are at the commencement of this Act the vice-warden and officers of the court of the

vice-warden of the stannaries such pensions, and on such conditions, and out of such funds (including the funds mentioned in section twenty-nine of the Stannaries Act, 1887, and any other funds available for the purpose), as may be fixed by the Treasury with the concurrence of His Royal Highness the Prince of Wales and Duke of Cornwall, regard being had to the date and form of appointment, and salary attached thereto, and to the nature and length of the services of those persons and to the amount and nature of the funds available for their pensions. Section 2. 50 & 51 Vict. c. 43.

3. References in any unrepealed enactment to mines subject to the jurisdiction of the court of the vice-warden of the stannaries, or within the cognizance of the said vice-warden, shall be construed as applying to mines which would have been subject to the jurisdiction of the said court if it had not been abolished. Explanation of references to stannaries court.

4.—(1) In the event of any dispute arising between— Reference of certain disputes to arbitration.

(*a*) Any two or more mining companies ; or

(*b*) Any mining company and His Royal Highness the Prince of Wales and Duke of Cornwall, or any person having any estate or interest in the mine worked by or leased to that mining company ;

a judge of a county court exercising the jurisdiction of the stannaries court may, on the application of any party to the dispute, order that the matter in dispute be tried before himself or before an arbitrator agreed on by the parties or an officer of the court, and the Arbitration Act, 1889, shall apply to any such reference. 52 & 53 Vict. c. 49.

(2) For the purposes of this section the expression "mining company" shall mean any person or body of persons engaged in or formed for working mines within the stannaries.

5. The enactments described in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule. Repeal.

Provided that nothing in this repeal shall affect any proceedings pending in the court of the vice-warden of the stannaries at the commencement of this Act, or any appeal from the said court pending at that date.

6. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-seven. Commencement of Act.

7. This Act may be cited as the Stannaries Court (Abolition) Act, 1896. Short title.

SCHEDULE.

Enactments repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
16 Chas. I. c. 15 .	An Act against diverse Incroachments and Oppressions in the Stannaries Courts.	The whole Act.
6 & 7 Will. IV. c. 106	The Stannaries Act, 1836 .	The whole Act except sections four, six, and seven.

SCHEDULE—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeal.
2 & 3 Vict. c. 58 .	An Act to make further provision for the administration of justice and for improving the practice and proceedings in the Courts of the Stannaries of Cornwall, and for the prevention of frauds by workmen employed in mines within the county of Cornwall.	The whole Act.
7 & 8 Vict. c. 65 .	An Act to enable the Council of His Royal Highness Albert Edward, Prince of Wales, to sell and exchange lands and enfranchise copyholds, parcel of the possessions of the Duchy of Cornwall, to purchase other lands, and for other purposes.	Section forty.
11 & 12 Vict. c. 83	An Act to confirm the Awards of Assessionable Manors Commissioners, and for other purposes relating to the Duchies of Cornwall and Lancaster.	Sections seven to eleven, and section thirteen.
18 & 19 Vict. c. 32	An Act to amend and extend the jurisdiction of the Stannaries Court.	The whole Act, except sections one and thirty-one.
25 & 26 Vict. c. 89	The Companies Act, 1862 .	Section eighty-three, from "and the vice-warden" to end of section, sections one hundred and eight and one hundred and sixteen, section one hundred and twenty-four from "Provided" to the end of the section, and section one hundred and seventy-two.
32 & 33 Vict. c. 19	The Stannaries Act, 1869 .	Sections twenty-seven to thirty-three, and thirty-eight to forty-four.
50 & 51 Vict. c. 43	The Stannaries Act, 1887 .	Sections eight, twenty-eight, thirty, thirty-two, and thirty-three.

ORDER UNDER THE STANNARIES COURT (ABOLITION) ACT, 1896.

DATED DECEMBER 16, 1896.

Rule 1.

I, Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, by virtue of the Stannaries Court (Abolition) Act, 1896, and all other powers enabling me in that behalf, do hereby order as follows: —

1. The county courts of Cornwall shall be the courts to and in which the jurisdiction and powers of the stannaries court are by the said Act transferred and vested.

2. Anything required to be done by, to, or before the registrar or any clerk of the stannaries court shall be done by, to, or before the registrar or any clerk of any of the county courts aforesaid.

3. All proceedings pending in the stannaries court at the commencement of the Act shall be transferred to the county court held at Truro, to be there completed in the same manner as if the said Act had not passed.

4. The place of sitting for the exercise of any of the jurisdiction—

(1) of the judge shall be at Truro, unless in any case he shall, on the ground that some other place will be more convenient for the suitors, otherwise direct;

(2) of the registrar shall be at the court where the proceedings shall have been commenced, unless in any case the judge shall, for the convenience of parties, otherwise direct.

5. Notwithstanding anything in these rules, the jurisdiction and powers of the stannaries court in regard to the winding-up of companies, and to all cases where the subject matter is not within the limits of the county court jurisdiction, shall be exclusively exercised by the court having bankruptcy jurisdiction in Cornwall.

6. The property, rooms, and building mentioned in section 1 (2) (d) of the Act shall be used and disposed of as may be agreed upon between the judge of the county courts of Cornwall and the corporation of Truro, subject to the approval of the Lord Chancellor.

7. Arrangements for the custody of the records in the same section mentioned shall be made by the corporation of Truro, in consultation with the judge of the county court, subject to the approval of the Lord Chancellor.

8. This order shall come into operation on the 1st of January 1897.

The sixteenth day of December, 1896.

HALSBURY C.

ORDER UNDER THE STANNARIES COURT (ABOLITION) ACT, 1896.

I, Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, by virtue of the Stannaries Court (Abolition) Act, 1896, and all other powers enabling me in this behalf, do hereby order as follows:—

The funds mentioned in section 29 of the Stannaries Act, 1887, that is to say, the funds standing to the credit of the accounts known as—

(1) the assessionable manors account, and

(2) the unclaimed moneys account;

and at the commencement of the Stannaries Court (Abolition) Act, 1896, held by the vice-warden and registrar of the stannaries in their joint names, shall be held by the Paymaster-General, subject to the same trusts and liabilities, and subject also to the provisions of section 2 of the last-named Act, and everything required to be done under the said section 29 by the vice-warden and registrar shall be done by the Paymaster-General.

The fifth day of February, 1897.

HALSBURY, C.

THE COUNTY COURT (STANNARIES JURISDICTION) RULES, 1903.

ORDER LI.

THE STANNARIES COURT (ABOLITION) ACT, 1896 (59 & 60 VICT. c. 45).

Proceedings under 59 & 60 Vict. c. 45.

1. Proceedings commenced in a county court under the jurisdiction and powers transferred to and vested in such court under the Stannaries Court (Abolition) Act, 1896, shall be regulated by the following rules.

Sittings of the Court.

Sittings of the court.

2. The days of the sitting of the court shall be those appointed for the transaction of the ordinary general business of the court held in the city or town mentioned in the name of the court, or such other days as the judge may from time to time appoint, either generally as days on which cases commenced under the stannaries jurisdiction will be tried, or specially for the trial of any particular action, matter, or other proceeding.

Where action may be tried.

3. The judge may try or partly try any action, matter, or other proceeding at any place within the district of the court as fixed for the purposes of the stannaries jurisdiction.

Undertaking for expenses of trial at place where court not held. [*Conf.* Form 369.]

4. Where application is made to the judge for the trial or part trial of an action, matter, or other proceeding at a place in which a court is not held, the party making the application shall file a præcipe undertaking to provide at his expense a place to the satisfaction of the judge in which the action, matter, or proceeding may be tried, and to pay the necessary expenses of the judge and officers so attending.

Pursers' and Creditors' Suits abolished. Rule 5.

5. Pursers' and creditors' suits shall be abolished. Pursers' and creditors' suits abolished.

Winding-up of Companies.

6. Proceedings for the winding-up of companies shall be regulated by, and costs in such proceedings shall be taxed under, the statutory provisions, rules, and scales of costs for the time being in force for the winding-up of companies in the county courts. Proceedings for winding up companies.

7.—(1) Solicitors practising as advocates according to the usage prevailing in the stannaries court before the first day of January, 1897, will be recognised as such, and entitled to fees as such, when they appear in the character of advocates in any winding-up proceedings before the judge in person at any sitting of the court; but charges in both characters in respect of the same matter or act done in court by the same solicitor will not be allowed. Costs of solicitors, counsel, and witnesses in winding-up cases.

(2) In attendances before the judge out of court, or before the registrar, solicitors will be considered as attending in that character only, and entitled to fees and necessary expenses as such.

(3) Upon attending as advocates they will be entitled to fees not exceeding the following:—

On the hearing of any original petition, 2*l.* 2*s.* to 5*l.* 5*s.*

On motions of course, 10*s.* 6*d.*

Other motions, 1*l.* 1*s.*

(4) On the hearing or argument of or upon a special motion in any winding-up, the registrar will be at liberty to treat it as an original petition, and allow fees of advocates accordingly.

(5) On the winding-up of companies the registrar in taxing the costs of advocates or solicitors' fees is to have regard to the solvency of the estate or fund, the importance of the matters in issue, and the pecuniary value of the interests involved.

(6) When counsel are retained to attend before the court, or before the judge out of court, or upon the examination of witnesses out of court, the usual and reasonable fees of counsel for such attendance may be allowed on taxation, if in the opinion of the court such attendance be desirable.

(7) In the allowance to witnesses the scale of allowances sanctioned by the county court rules is to be adopted.

Actions or Matters within Limits of County Court Jurisdiction.

8. Proceedings in actions or matters within the limits of the ordinary jurisdiction of the county courts under the County Courts Act, 1888, shall be regulated by, and costs in such proceedings shall be taxed under, the statutory provisions, rules, and scales of costs for the time being in force in the county courts. Proceedings in cases within limits of county court jurisdiction.

9.—(1) Where an action or matter commenced in one court is transferred for hearing to any other court, the provisions of section eighty-five of the County Courts Act, 1888, shall apply to such action or matter: but the judge may after the hearing direct the action or matter to be transferred back to the court in which it was commenced: and in that case the certified copy of the proceedings mentioned in the said section eighty-five shall be returned by post Transfer of actions from one court to another for hearing, and re-transfer after hearing.

Rule 9.

to the registrar of such last-mentioned court, with a certified copy of all the proceedings in the court in which the action or matter was heard, and of the order of transfer; and all proceedings subsequent to judgment shall be taken in the court to which such action or matter is transferred back.

51 & 52 Vict. c. 43, s. 85.

(2) When any transfer is made the costs of the copies of the proceedings, and any fees payable to the registrar of either court, shall be paid by the party on whose application the transfer is made, unless the transfer is made by the judge without any application to transfer being made to him, in which case such costs and fees shall be paid by the plaintiff in the action or matter.

(3) The registrar by whom any copies are to be transmitted may require deposit of the costs of such copies, and payment of his fees before making or transmitting such copies.

(4) The judge may in any case direct by which of the parties such costs and fees are ultimately to be borne; and if he directs them to be borne by any party other than the party by whom they are paid in the first instance, they shall be allowed to such last-mentioned party as costs in the action or matter.

Proceedings in actions under 3 Edw. VII. c. 42.

9A. Proceedings in actions within the limits of the extended jurisdiction conferred by the County Courts Act, 1903, shall be regulated by, and costs in such proceedings shall be taxed under, the statutory provisions, rules, and scales of costs for the time being in force in the county courts and applicable to such actions.

Actions or Matters beyond Limits of County Court Jurisdiction.

Proceedings in cases beyond limits of county court jurisdiction.

10. Proceedings in actions or matters exceeding the limits of the jurisdiction of the county courts under the County Courts Act, 1888, as extended by the County Courts Act, 1903 (hereinafter called proceedings under the stannaries jurisdiction), shall be regulated by the following rules.

Proceedings, how intituled.

11. The records and papers in any proceeding under the stannaries jurisdiction shall be intituled with the name of the court, and marked with the words "stannaries jurisdiction."

Actions to be commenced by plaint.

12. All actions, suits, and proceedings which before the first day of January, 1897, were called actions, and commenced in the stannaries court by writ of summons, shall be called actions, and shall be commenced by entering a plaint and issuing a summons.

Matters to be stated in præcipe and particulars.

13. The præcipe for the entry of a plaint, and the particulars, shall state an address for service, which shall be within the district of the court, and at which it shall be sufficient to leave all instruments and documents in the action required to be served upon the plaintiff.

Plaint and summons.

14. Immediately on the filing of the præcipe the registrar shall enter a plaint and issue a summons. Such summons shall be an ordinary summons, unless the claim of the plaintiff is for a debt or liquidated money demand, in which case the plaintiff may at his option cause a default summons to be issued in accordance with section 86 of the County Courts Act, 1888.

Rule 15.

15. Where an ordinary summons is issued, such summons shall be made returnable on a day not less than 30 clear days from the filing of the præcipe, unless all parties concur in asking for an earlier day to be fixed. If the judge has already appointed a day or days within two months from the date of the filing of the præcipe for the hearing of cases commenced under the stannaries jurisdiction, the summons shall be made returnable on such day or one of such days. If no such days have been appointed, the registrar shall before issuing the summons apply to the judge to fix a day on which the action will be heard, and the summons shall be made returnable on the day so fixed. Return-day of ordinary summons.

16. Particulars of demand shall be filed at the time of the entry of the plaint, and a copy thereof shall be forthwith sent to the judge. Particulars.

17.—(1) Service of an ordinary summons may be effected— Service of summons and proof thereof.

(a) by delivering the same to the defendant personally; or

(b) in the cases mentioned in Rules 12 to 22, 24, 26 and 27 (both inclusive) of Order VII., in the manner prescribed by those rules; or

(c) under an order for substituted service as prescribed by Order VII. Rule 40.

(2) Service may be effected in accordance with Order VII. Rule 33.

(3) Where the plaintiff wishes the summons to be served otherwise than by a bailiff, he shall so request in the præcipe; and the proviso to Order VII. Rule 33, shall apply.

(4) Where the service is effected otherwise than by a bailiff, a copy of the summons, with the date and place and mode of service indorsed thereon, and an affidavit of service according to the form in the Appendix, with such modifications as circumstances may require, shall within three clear days after the day of service, or such further time as may be allowed by the registrar, be delivered or transmitted to the registrar by the plaintiff. Form 37.

18. An ordinary summons shall be served twenty clear days at least before the return day, unless the defendant consents to accept shorter service. If it is not so served the plaintiff shall apply to have a fresh day fixed for the hearing, so as to admit of service being effected in accordance with this rule. Time of service of ordinary summons.

19. Where a defendant to a default summons gives notice to defend, a day shall be fixed for the trial, and the registrar shall send by post to both plaintiff and defendant notice of trial twenty clear days at least before the day so fixed. If the judge has already appointed a day or days within one month of the day on which the notice of intention to defend is received by the registrar, for the hearing of cases commenced under the stannaries jurisdiction, the registrar shall fix such day or one of such days for the trial. If no such days have been appointed, the registrar shall apply to the judge to fix a day on which the action will be tried, and shall give notice of trial for the day so fixed. Fixing trial of default summons, where notice given of intention to defend.

20. A defendant to an ordinary summons may enter an appearance in such action by filing a præcipe. Appearance to ordinary summons. [*Conf.* Form 374.]

21. Where a defendant gives notice to defend a default summons or enters an appearance to an ordinary summons, the notice of Appearance or notice of defence.

Rule 21.
Address for service.

intention to defend or of appearance shall state his name, address, and description, and if he appears or defends by a solicitor, the name of his solicitor, and shall also state an address for service, which shall be within the district of the court, and at which it shall be sufficient to leave all instruments or documents in the action required to be served on such defendant.

Settlement of issues to be tried.

22.—(1) The parties to an action may at any time before the return day agree upon and file a statement of the issues to be tried.

(2) If no such statement is filed, or if it appears to the judge that the issues of fact in dispute are not sufficiently defined by the statement filed, the judge may direct the parties to prepare and file issues or further issues, as the case may be.

(3) If the parties are unable to agree upon a statement of the issues or further issues, any party may, whether the judge has or has not directed issues or further issues to be filed, apply under Order XV. to have the issue or further issues settled by the court; and such issues or further issues shall be settled accordingly by the registrar, or, if the parties so request, by the judge.

Objection to jurisdiction.

23.—(1) Where a defendant intends to object to the jurisdiction of the court he shall file a notice of such objection, together with a concise statement of the grounds thereof, at least ten clear days before the return day; and the provisions of Order X. Rule 10, shall apply to any such notice, or any failure to give such notice.

(2) Where such notice is given, any party may apply to the judge in accordance with Order XV. for an order directing that the question of jurisdiction be decided separately before the action is brought on for trial; and the judge may make such order accordingly, or may direct that the decision of such question be reserved till the trial of the action.

Notice of demand for jury.
Forms 142—144.

24. Notice of a demand for a jury shall be given in writing to the registrar fifteen clear days at least before the return day, and the registrar shall forthwith give notice thereof to the other party, and the summonses to the intended jurors shall be delivered to the bailiff forthwith.

General provisions as to proceedings.

25. Subject to the foregoing rules, the proceedings in an action commenced under the stannaries jurisdiction shall be regulated by the statutory provisions and rules for the time being in force regulating the proceedings in actions in the county courts.

Procedure of High Court (except under Order XIV.) to apply where no other provision made.

26. Where no other provision is made by the statutory provisions or rules for the time being in force, the practice and procedure in force in the High Court shall apply to proceedings commenced in a county court under the stannaries jurisdiction. Provided that the procedure under Order XIV. of the Rules of the Supreme Court shall not be resorted to in the county court.

Provisions as to proceedings commenced under ordinary jurisdiction

27. If in the course of any action or matter which has been commenced as being within the limits of the ordinary jurisdiction of the county courts it appears that the subject-matter of such action is beyond such limits, but within the limits of the stannaries jurisdiction, the proceedings shall not be invalidated, but the action shall thenceforth proceed in all respects, as to costs and otherwise, as if it had been commenced under the stannaries jurisdiction: And in like manner, if in the course of any action

which has been commenced under the stannaries jurisdiction it appears that the subject-matter of such action is within the limits of the ordinary jurisdiction of the county courts, the proceedings shall not be invalidated, but such action shall thenceforth proceed in all respects, as to costs and otherwise, as if it had been commenced as being within the limits of the ordinary jurisdiction of the court. **Rule 27.** which should have been commenced under stannaries jurisdiction and *vice versâ*.

28. The costs of actions commenced under the stannaries jurisdiction shall be allowed and taxed according to the rules and scales of costs for the time being in force in the county courts, and applicable to the subject-matter of such actions. Costs of action under stannaries jurisdiction.

For costs and allowances to witnesses see Order LIII., pp. 636—653, and Court Fees, &c., Part II., Chap. III.

THE COUNTY COURT (STANNARIES) FEES ORDER, 1897.

DATED APRIL 20, 1897.

In pursuance of the powers given by the County Courts Act, 1888 (51 & 52 Vict. c. 43), and of all other powers enabling us in this behalf, we, the undersigned, two of the Commissioners of Her Majesty's Treasury, whose names are hereunto subscribed, do hereby, with the consent of the Lord Chancellor, order as follows:

1. This Order may be cited as the County Court (Stannaries) Fees Order, 1897.

2. The several fees or sums in the name of fees specified in the schedule hereunder written shall be taken on the proceedings therein mentioned, and shall be applied as in the said schedule mentioned.

H. T. ANSTRUTHER.
20th April, 1897. W. H. FISHER.

I approve of the annexed Schedule of Fees.

HALSBURY, C.

SCHEDULE.

(1) In proceedings in a county court under the jurisdiction and powers transferred to and vested in such court under the Stannaries Court (Abolition) Act, 1896 (59 & 60 Vict. c. 45), the like fees shall be charged, and such fees shall be received and accounted for and paid over in like manner as if such proceedings had been commenced under the County Courts Act, 1888.

In proceedings taken under the Companies (Consolidation) Act, 1908, relating to the winding-up of companies, the like fees shall be charged, and such fees shall be received and accounted for and paid over in like manner as the fees on such proceedings taken in a county court.

In proceedings under the said Act other than proceedings relating to the winding-up of companies, the fees shall be the same as those payable in respect of similar proceedings in actions or matters under the equitable jurisdiction of the county courts.

(2) Where an action or matter commenced in one court is transferred for hearing to any other court, or an action or matter transferred for hearing to another court is after the hearing transferred back to the court in which it was commenced, there shall be allowed to the registrar for

his own use the following fees, in addition to the costs of copies of documents, viz. :—

To the registrar of the court from which the transfer is made—

For drawing and filing order of transfer and transmitting order and papers . . . Ten shillings.

To the registrar of the court to which the transfer is made—

If the transfer is for hearing, for perusing and filing papers, application to judge, notice to parties, and hearing . . . . . Fifteen shillings.

If the transfer is after the hearing, for perusing and filing papers . . . . . Five shillings.

(3) Proceedings in actions and matters exceeding the limits of the ordinary jurisdiction of the county courts under the County Courts Act, 1888, shall for the purposes of fees be deemed to be equitable actions or matters, and the registrar and high bailiff shall be entitled to fees accordingly.

(4) In such last-mentioned actions and matters the registrar and high bailiff respectively shall be entitled to the following additional fees, viz. :—

	Where the subject-matter of the action or matter					
	Does not exceed 100*l.*			Exceeds 100*l.*		
Registrar's Fees.	£	*s.*	*d.*	£	*s.*	*d.*
For drawing, filing, and sealing every order on an interlocutory application for which no other provision is made	0	6	0	0	10	0
Where a special court is to be held for the trial of an action or matter—						
For the first day	1	5	0	1	15	0
And for each subsequent day	1	5	0	1	15	0
Where the court is to sit for the hearing or part hearing of an action or matter beyond three miles from the registrar's office, then in addition, per day	0	15	0	0	15	0
Mileage one way from office to place of sitting, for each mile	0	0	6	0	0	6
When the registrar cannot return the same night .	1	1	0	1	1	0
For every subpœna	0	2	0	0	3	0
For every summons for commitment	0	3	0	0	5	0
For every warrant against the body or goods (in lieu of the fee for issuing a warrant in an equitable matter)	0	5	0	0	7	6
High Bailiff's Fees.						
Attendance at a special court, if required by judge, per day	0	7	6	0	15	0
Where the court is to sit beyond three miles from the registrar's office, then in addition, per day . . .	0	10	0	0	10	0
Mileage one way to place of sitting, for each mile .	0	0	6	0	0	6
When the high bailiff cannot return the same night .	0	10	6	0	10	6
For service of summons for commitment	0	4	0	0	8	0
For execution of warrant against the body or goods (in lieu of the fee for execution in an equitable matter)	1	0	0	1	10	0

(5) Fees under the Stannaries Act, 1887 (50 & 51 Vict. c. 43).

Registrar's Fees.

	£	s.	d.
For filing every copy of a lease, grant, or licence, or assignment or contract for sale of a lease, grant, or licence, under section 20 of the Stannaries Act, 1887	0	5	0
For every inspection of any such copy	0	2	0

(6) This Order shall apply to all proceedings taken after the commencement of the Stannaries Court (Abolition) Act, 1896 (and whether before or after the date of this Order), in actions or matters pending in the stannaries court on such commencement and transferred to the county court held at Truro, as if such actions or matters had been commenced in such county court.

SUCCESSION DUTY ACT, 1853.

[16 & 17 Vict. c. 57.]

Jurisdiction.]—This statute gives the Crown certain duties on succession to property by death, and by sect. 44 declares what persons are accountable for the duty. Where any person accountable under this Act is dissatisfied with the assessment of the Commissioners, he may, by sect. 50, if the sum in dispute in respect of duty on such assessment does not exceed 50*l.*, appeal to a judge of the county court for the district in which the appellant is resident or the property is situate, and the judge has power to adjudicate upon it in the same manner as a High Court judge.

Notice of Appeal to County Court Judge.]—If any accountable person desires to appeal he must, within twenty-one days after the date of the assessment, give notice in writing to the Commissioners of his intention to appeal against the assessment; and within a further period of thirty days must furnish a statement of the grounds of such appeal (see sect. 50).

Practice.]—The appeal is by petition intituled in the matter of the Act and amending Acts, and in the matter of the particular succession; the service of and proceedings on the petition are regulated by Order XLII. r. 1, 5—9 and r. 11 (see *ante*, p. 2027). Poundage is estimated on the amount in dispute (see art. I.).

No appeal from County Court Judge is given by this statute. The appeal from the Commissioners is one to the judge, not to the county court.

Power for accountable party to appeal.

50. It shall be lawful for any accountable party dissatisfied with the assessment of the Commissioners, upon giving, within twenty-one days after the date of such assessment, notice in writing to the Commissioners of his intention to appeal against such assessment, and a statement of the grounds of such appeal, such statement to be furnished within the further period of thirty days, to appeal by petition accordingly to Her Majesty's Court of Exchequer in England, Scotland, or Ireland, according to the place in which the appellant shall be resident; and every such court, or any judge thereof sitting in chambers, shall have jurisdiction to hear and determine the matter of such appeal and the costs thereof, with power to direct, for the purposes of such appeal, any inquiry, valuation, or report to be made by any officer of the court, or other person, as such court or judge may think fit: Provided, that where the sum in dispute in respect of duty on such assessment does not exceed fifty pounds, the accountable

party may, having given notice of appeal and delivered a statement of the grounds thereof as hereinbefore directed, appeal to the judge of the county court in England, the sheriff court in Scotland, or the assistant barrister's court in Ireland, for the district, county or division in which the appellant shall be resident, or the property be situate; and every such judge shall have jurisdiction to hear and determine the matter of such last-mentioned appeal, with the like power and authority as are by this section given to a judge of Her Majesty's Court of Exchequer.

For Order XLII. rr. 5—9, 11, see pp. 2027—2028.

THE TELEGRAPH ACT, 1878.

[41 & 42 VICT. c. 76.]

See also 55 & 56 Vict. c. 59, and 6 & 7 Geo. V. c. 40.

Jurisdiction.]—By sect. 4 of this Act, should any difference arise between the Postmaster-General and the authority having the control over streets and public roads, the difference must be referred to the police or stipendiary magistrate having jurisdiction within the district, and *if there be no such magistrate, to the judge of the county court for the district.*

Practice is governed by Order L. r. 11 (p. 2277), which points out how the application to the judge is to be initiated, and how it is to be prosecuted.

Appeal from the award of the judge lies to the Railway Commissioners; either party to the reference, if dissatisfied with the award, may, within twenty-one days, require that the difference be referred to the said Commissioners (sect. 4). *Postmaster-General* v. *Hutchings*, (1916) 85 L. J. K. B. 1008.

In the *National Telephone Co.* v. *Tunbridge Wells Corporation*, (1901) 48 W. R. 686; 83 L. T. 525; (C. A.), 85 L. T. 368, it was held that a *licensee* from the Postmaster-General cannot exercise any powers under sect. 4 of the 1878 Act without the consent in London of the county council, and in any urban sanitary district outside London, of the urban sanitary authority and elsewhere of the county council, and that the licensee is subject to any terms and conditions which such authority may attach to its consent without appeal; and that prohibition will lie against a judge attempting to act as referee.

Costs to be taxed under column B, unless the judge otherwise directs.

Differences relating to a street or public road to be determined by stipendiary magistrate, county court judge, or sheriff.

4. Where any difference (*a*) arises under this Act or the Telegraph Act, 1863, between the Postmaster-General and any body or person having any power, jurisdiction, or control over (*b*) or relating to a street or public road, or having power under the last-mentioned Act to give or withhold a consent to the placing of telegraphs and posts in, under, upon, along, or across a street or public road, such difference shall in England or Wales and Ireland be referred to the police or stipendiary magistrate having jurisdiction within the district in which the difference has arisen, or if there be no such magistrate, then to the judge of the county court having

(*a*) As to "difference," see 6 & 7 Geo. V. c. 40, sect. 1[illegible].

(*b*) An urban district council not being liable to repair the road, and which can require the frontagers to make it good under s. 150 of the Public Health Act, 1875, is not the body "having the control of" the road (*Postmaster-General* v. *Hendon Urban District Council*, (1914) 1 K. B. 564; 83 L. J. K. B. 618). See also *Postmaster-General* v. *Hutchings*, (1916) 85 L. J. K. B. 1008.

jurisdiction within such district, and in Scotland to the sheriff, and such magistrate, judge, and sheriff are respectively empowered and required to hear and determine such difference, and sections thirty to thirty-three, both inclusive, of the Regulation of Railways Act, 1868, shall apply to every difference so referred to such magistrate, judge, or sheriff (as the case may be) in like manner as if he were an arbitrator appointed pursuant to those sections, and as if the Postmaster-General, body, or person between whom the difference has arisen were companies within the meaning of those sections. 31 & 32 Vict. c. 119.

Provided always, that in case either the Postmaster-General or the body or person between whom the difference has arisen shall be dissatisfied with the award or decision of such magistrate, judge, or sheriff, the party so dissatisfied may within twenty-one days after such award or decision, require, by a notice in writing given to the other party, that the difference shall be referred to the Railway Commissioners.

COUNTY COURT RULES. ORDER L. RULE 11.

Rule 11.

11.—(1) Any difference referred to the judge under sect. 4 of the Telegraph Act, 1878, may be so referred by either of the parties to the difference filing with the registrar an application to the judge to hear and determine such difference, which application shall be intituled in the matter of the Act and of the difference, and shall be entered and numbered and reckoned as a plaint. Applications under 41 & 42 Vict. c. 76, s. 4.

(2) Particulars shall be appended or annexed to the application, containing— Particulars and affidavit.

(*a*) a concise statement of the grounds on which the application is made, and of the relief or order which the applicant claims;

(*b*) the full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor;

and the application shall be supported by an affidavit setting forth the circumstances in which and the grounds on which the application is made.

(3) The applicant shall deliver to the registrar with the application, particulars, and affidavit, a copy thereof for the judge, and a copy for each respondent to be served. Copies for judge and respondents.

(4) On the filing of the application the registrar shall fix the hearing thereof before the judge for any court appointed to be held within twenty-eight days from the date of the application, but the date of hearing shall be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents ten clear days at least before the date so fixed. Fixing day of hearing by registrar.

(5) If there is no such court available, the registrar shall send notice of the application to the judge, who shall, as soon as conveniently may be, appoint a day for the hearing of the application. Such day shall be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents ten clear days at least before the date so fixed. Fixing day of hearing by judge.

(6) On the day for the hearing of the application being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and Notice to parties.

Rule 11.

[*Conf.* Forms 419, 420.]

at which the application will be heard, and shall issue the copies of the application, particulars, and affidavit, under the seal of the court, for service on the respondents, together with notices signed by the registrar himself and under the seal of the court, stating the place at which and the day and hour on and at which the application will be heard, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

Service on respondents.

(7) The copies and notices mentioned in the last preceding paragraph shall be served on each respondent ten clear days at least before the day fixed for the hearing, unless such respondent, or his solicitor on his behalf, agrees to accept shorter service.

By whom service may be effected.

(8) Such copies and notices may be served—

(*a*) by a bailiff of a court;

or, at the request of the applicant or his solicitor,

(*b*) by the applicant, or some clerk or servant in his permanent and exclusive employ; or

(*c*) by the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them.

Mode of service.

(9) Service may be effected either in accordance with the rules as to service of default summonses, or by registered post.

Where service effected otherwise than by bailiff.

(10) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service indorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant or his solicitor. The applicant or his solicitor shall also deliver or transmit to the registrar an affidavit of the service of such document, according to the form in the Appendix, with such variations as the circumstances of the case may require.

Form 37.

Affidavits by respondents.

(11) Any affidavit intended to be used by any respondent on the hearing of the application shall be filed, and a copy thereof shall be served on the applicant four clear days at least before the hearing of the application, or, if short service of the notice of the application has been accepted, in such reasonable time before the hearing as the date of service will allow.

Attendance for cross-examination.

(12) A deponent to an affidavit shall on notice from the other side attend the hearing for cross-examination, and witnesses may be orally examined on hearing of the application in the same manner as on the hearing of an action.

Procedure on application.

(13) Subject to the provisions of sect. 4 of the Telegraph Act, 1878, and the enactments therein referred to, the procedure on an application shall be the same as the procedure in an action commenced in the court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such application accordingly; and in the application of such provisions and rules the application shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the application shall be deemed to be the return day, and the applicant and respondent shall be deemed to be plaintiff and defendant respectively.

(14) The award of the judge shall be prepared by the registrar and signed by the judge, and shall be sealed, filed, and served on all persons affected thereby, and shall be enforceable in the same manner as a judgment or order of the court. Rule 11. Award.

(15) The judge shall have power at any time to correct any clerical mistake or error in such award arising from any accidental slip or omission.

(16) Costs awarded by the judge shall be taxed on such scale as the judge shall direct, and in default of such direction shall be taxed under column B. Costs.

THE TENANTS' COMPENSATION ACT, 1890.

[53 & 54 Vict. c. 57.]

The only remaining operative section of this Act is sect. 2, which is repealed by the Agricultural Holdings Act, 1908, except so far as it relates to compensation under the Allotments and Cottage Gardens (Compensation for Crops) Act, 1887 (see p. 1764).

1. This Act shall be construed as one with the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (in this Act referred to as the principal Act), and this Act may be cited as the Tenants' Compensation Act, 1890. Construction and short title.

2. Where a person occupies land under a contract of tenancy with the mortgagor, whether made before or after the passing of this Act, which is not binding on the mortgagee of such land, then— Compensation to tenants, when mortgagee in possession.

(1) The occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or would but for the mortgagee taking possession be due to the occupier from the mortgagor as respects crops, improvements, tillages, or other matters connected with the land, whether under the principal Act or the custom of the country, or agreements sanctioned by the principal Act;

Provided that any sum ascertained to be due to the occupier for such compensation or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the land, and recovered as compensation under the principal Act, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance only with section thirty-one of the Agricultural Holdings Act, 1883, as if the mortgagee were the landlord within the meaning of that section.

(2) Before the mortgagee deprives the occupier of possession of the land otherwise than in accordance with the said contract, he shall give to the occupier six months' notice in writing of his intention so to deprive him, and if he so deprives him compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of holding the land for the full term of his contract of tenancy, in so far as

any improvement resulting therefrom is not exhausted at the time of his being so deprived, and such compensation shall be determined in like manner as compensation under the principal Act, and shall be set off, charged, and recovered in manner before provided in this section. This sub-section shall only apply where the said contract is for a tenancy from year to year or for a term of years not exceeding twenty-one, at a rack-rent.

[Sects. 3 and 4 are repealed by the Agricultural Holdings Act, 1908.]

THE TITHE ACT, 1891.

[54 & 55 VICT. C. 8.]

THE TITHE RENTCHARGE (RATES) ACT, 1899.

[62 & 63 VICT. C. 17.]

Jurisdiction Exclusive.]—Payment of tithe rentcharge can be enforced against the owner by proceedings in the county court, and in no other manner (sect. 2, sub-s. 1; *R.* v. *Paterson*, (1895) 1 Q. B. 31; 64 L. J. Q. B. 20). The court having jurisdiction is the court of the district in which the lands, or any part thereof, out of which the tithe rentcharge issues, are situate (*Ib.*).

To be paid by the Owner.]—By virtue of this Act tithe rentcharge is in all cases to be paid by the owner of the lands (sect. 1, sub-s. 1), if it becomes payable after the passing of the Act (sect. 10, sub-s. 1). Proceedings must be commenced within two years from the date on which it becomes payable, but not until it has been in arrear for not less than three months (sect. 2, sub-s. 1).

The Act imposes no personal liability on occupier or owner in respect of tithe. No judgment summons could issue for non-payment of tithe.

Contracts made after the Act for payment of tithe rentcharge by the occupier are void, as are contracts to reimburse the landlord money paid by him for tithe rentcharge (sect. 1, sub-s. 1; *Ludlow* v. *Pike*, (1904) 1 K. B. 531; 73 L. J. K. B. 274, followed in *Tuff* v. *Guild of Drapers*, (1913) 1 K. B. 40; 82 L. J. K. B. 174); subsisting contracts bind to this extent, that the occupier will be bound to repay to the owner the amount which he properly pays. The owner may in such case enforce the repayment by distress in accordance with the Tithe Act, 1836 (sect. 1, sub-s. 3).

Practice.]—To enforce payment the procedure is special, and is governed by the Act and rules. The tithe-owner must apply to the registrar, and file with him a notice of application with as many copies as there are persons to be served (Rule 2; Forms 1, 2, 3). The registrar must fix a day for the hearing, and cause one of the above copies and a prescribed notice to be served on the owner (Rule 4; Form 4). Service may apparently be made in one of the modes prescribed by Rules 44 to 50; and must be made at least ten clear days before the day appointed for the hearing (Rules 4, 54).

When Occupier liable to repay Owner.]—When the occupier is liable to repay the owner, in the cases before mentioned, the landowner is bound to give notice of such liability to the tithe-owner. If he fails to do so he cannot afterwards recover from the occupier without a special certificate from the court (sect. 2, sub-s. 6; Rules 36, 37, 38; Forms 28, 29, 30; see *Hughes* v. *Rimmer*, (1893) 2 Q. B. 314). If the occupier's liability notice has been served on the tithe-owner before he applies to the county court, he must file with his notice of application a copy of the occupier's liability notice (Rule 3).

The registrar must then cause the occupier to be served in the same

manner as the landowner with a notice of application, and also with the prescribed notice.

If the tithe-owner is served with the occupier's liability notice after filing his application, he must file a copy with the registrar, who must then cause notices as aforesaid to be served on the occupier (Rule 6). If filed too late for ten days' notice to be given to the occupier, the registrar must appoint another day for the hearing, and give notice to the tithe-owner and the landowner (Rule 7; Form 7).

Limitation of Time.—Tithe rent charge is apparently "rent" within the meaning of the Rent Property Limitation Act, 1833 (3 & 4 Wm. IV. c. 27) and its recovery is barred if unpaid for sixty years (*Asplen* v. *Pullin* (1917) 86 L. J. K. B. 237.

When Owner of Lands Unknown.]—Where the tithe-owner states in his notice of application that he does not know the landowner, or if service cannot be effected by post on the person named as landowner, proceedings may be taken without naming him (sect 2, sub-s. 7; Rule 13).

Additional Service.]—If the tithe-owner states in his notice of application that additional service is required, it may be made as prescribed (Rules 14, 48).

Applications by Agents.]—The agent of the tithe-owner may apply on his behalf although not a solicitor. If required, he must prove his authority (sect. 5, sub-s. 1; Rule 12).

Notice of Opposition.—Order by Default.]—A respondent intending to oppose must, five clear days, at least, before the hearing, file a notice with the registrar, who must send notice to the applicant on the same day (Rules 5, 54; Forms 5, 6). If no notice is given, the court, after the expiration of the five days, unless the amount is paid into court, will make an order as hereinafter mentioned forthwith (Rules 8, 56); this order may, under the general or special directions of the judge, be made by the registrar (Rule 56).

Leave to Oppose.]—If the respondent files notice of opposition too late, but before an order has been made, the court may, on terms, give him leave to oppose, and fix a day for the hearing, notice of which must be given to all parties (Rule 9).

Hearing.—When no Appearance.]—If the respondent does not appear, the application may be granted without proof, but costs will be allowed as if he had appeared (Rule 10).

When Respondent Appears.]—If the respondent appears, the case will be heard in the ordinary way, and such evidence must be called and taken as is necessary (Rule 57). The proceeding not being commenced by plaint is a "matter," the evidence ought, it is believed, to be given *vivâ voce*.

Grounds of Opposition.]—Grounds of opposition not mentioned in the notice of opposition will not be entertained, except by consent, or by leave of the court, on such terms as it thinks fit (Rule 11).

Order.—Where Land not Occupied by Owner.]—If the lands are not occupied by the owner, the order must find the amount due, and appoint a receiver of the rents and profits (sect. 2, sub-ss. 1, 3; Form 8).

If it appears that the lands are held at one rent together with lands in another parish, the court must apportion it. Notice must be given by the registrar, and then objections to the apportionment may be made to and heard by the court (Rules 25, 26, 27, 28; Forms 18 to 21).

The person appointed receiver must, in the absence of special reason to the contrary, be the person, if any, named by the applicant in his notice of application. If none is named, or the court does not appoint him, the court must appoint a fit and proper person (Rule 17).

When Lands Occupied by Owner.]—If the lands, *i.e.*, the whole of the lands (*Ecclesiastical Commissioners* v. *Upjohn*, (1913) 1 K. B. 501; 82 L. J. K. B. 435) are occupied by the owner, the court, instead of appoint-

ing a receiver, must appoint an officer to distrain in accordance with sect. 85 of the Tithe Act, 1836 (sect. 2, sub-s. 2; Form 9). If he finds that there is not sufficient distress, he must report to the applicant and to the court. The applicant's remedy will then be under sect. 82 of the Tithe Act, 1836 (sect. 2, sub-s. 2; Rule 24; Form 17).

When the fact that the owner is occupier is discovered by a receiver after appointment he must report the fact to the court (Form 12). The court may then appoint an officer to distrain as above. The receiver must be appointed, unless for special reason the court otherwise orders. The order must be suspended for at least ten days (Rule 23; Form 13).

Notice of the order must be given to the alleged owner, and he may, by notice filed with the registrar within the period of suspension, object to the order. The registrar must then fix a day for the hearing of the objection, and give notice to the owner. He must also suspend the order until the hearing (Rule 23; Forms 14, 15, 16).

When Lands let at Insufficient Rent.]—If the receiver discovers that the lands are let at such a rent as will not enable him to recover the requisite sum from the occupier, he must make a report to the court (Rule 29). The court, if satisfied that there is a *primâ facie* case, may give notices to owner and occupier to appear in not less than ten clear days (Rule 30).

On the return-day the court may appoint an officer to distrain. The receiver must be appointed in the absence of any special reasons (Rule 31).

Receivers.—Security.]—Any receiver, not a permanent officer of the court, must give such security, if any, as the court directs (Rule 17). Subject to the special rules, the court will have the same power over receivers as in ordinary cases, but the court may not order a sale of land (sect. 2, sub-s. 4).

Moneys received by the receiver must be paid into court after certain deductions (Rule 21), and the registrar must pay them out to the applicant until his claim is satisfied (Rule 22).

The receiver must give notice to the occupier of his appointment, and if the occupier refuses to attorn to him, may obtain an order from the court authorising him to distrain in the name of the owner (Rule 18; Forms 10, 11).

Remission of Tithe.]—Where the court is satisfied that if the sum claimed for tithe is paid, the total amount paid for twelve months will exceed two-thirds of the annual value of the lands, it must order the remission of the excess, and it will not then be recoverable. This provision applies only to lands used solely for agricultural or pastoral purposes, or for the growth of timber or underwood (sect. 8; Forms 26, 27).

Recovery of Rates on Tithes.]—If the ordinary methods of recovery of rates on tithes fail, the collector may apply to the court for an order for payment by the owner of the land out of the tithe payable by him. The order may be enforced by appointment of a receiver or of an officer to distrain, as the case may be (sect. 6; Rules 40, 41; Form 35).

Redemption Money.]—Sect. 10, sub-s. 4, of the Act applies to redemption money, and therefore the county court has, under sect. 2, jurisdiction to make an order for the recovery of the consideration money and expenses incident on the redemption of tithes (*Reg.* v. *Paterson*, (1895) 1 Q. B. 31; 64 L. J. Q. B. 20).

Appeal.]—An appeal lies to the High Court in the same manner as in other cases for error in point of law or equity, or in the admission or rejection of evidence. The right of appeal is not limited by any condition as to amount, and is conferred upon "any party in any action or matter under the Act," who is aggrieved (see sect. 120, County Courts Act, 1888, and sect. 7, *post*, p. 2286).

Costs and Fees.]—No costs of solicitor or witness will be allowed where the amount claimed is paid without further proceedings. As to costs, see sect. 5, sub-s. 2; Rules 42, 43, 52; fees may not exceed those named in the

schedule to the Act; fees, charges, and expenses incidental to any distress under the Act are the same as are payable under the Law of Distress Amendment Act, 1888 (see *ante*, pp. 2017—2018).

All costs must be paid by or apportioned between the parties as the court thinks just (Rule 42); costs must be taxed by the registrar, and subject to the Act and rules, the ordinary scales as well as allowances to witnesses will have effect (Rule 43).

54 & 55 VICT. c. 8.

Liability of owner to pay tithe rentcharge, and modification of contracts with tenants

1.—(1) Tithe rentcharge as defined by this Act issuing out of any lands shall be payable by the owner of the lands, notwithstanding any contract between him and the occupier of such lands, and any contract made between an occupier and owner of lands, after the passing of this Act, for the payment of the tithe rentcharge by the occupier shall be void.

(2) Where the occupier is liable under any contract made before the passing of this Act to pay the tithe rentcharge, then he shall cease to be bound by that part of his contract, but he shall be liable to pay to the owner such sum as the owner has properly paid on account of the tithe rentcharge which such occupier is liable under his said contract to pay, exclusive of any costs incurred or paid by the owner in respect of such tithe rentcharge, and every receipt given for such sum shall state expressly that the sum paid is in respect of that tithe rentcharge: Provided that where the lands, out of which any tithe rentcharge issues, are occupied by several occupiers who have contracted to pay the tithe rentcharge, any of such occupiers shall be liable only to pay such proportion of the sum paid by the owner of the lands on account of that tithe rentcharge as the rateable value of the lands occupied by him bears to the rateable value of the whole of the lands occupied by such occupiers.

(3) Such sum shall be recoverable from the occupier by distress in like manner as is provided by sections eighty-one and eighty-five of the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter seventy-one, and the enactments amending those sections, and not otherwise.

Recovery of tithe rentcharge through county court.

2.—(1) Where any sum due on account of tithe rentcharge issuing out of any lands is in arrear for not less than three months, the person entitled to such sum may, whatever is the amount, apply to the county court of the district in which the lands or any part thereof are situate, and the county court, after such service on the owner of the lands as may be prescribed, and after hearing such owner if he appears and desires to be heard, may order that the said sum, or such part thereof as appears to the court to be due, be, together with the costs, recovered in manner provided by this Act, and tithe rentcharge as defined by this Act shall not be recovered in any other manner.

(2) Where it is shown to the court that the lands are occupied by the owner thereof, the order shall be executed by the appointment by the court of an officer who, subject to the direction of the court, shall have the like powers of distraint for the recovery of the sum ordered to be paid as are conferred by the Tithe Acts on the owner of a tithe rentcharge for the recovery of arrears of tithe rentcharge, and no greater or other powers; and if there is no sufficient distress the person entitled to the sum ordered to be

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recovered may proceed to obtain possession of the lands under section eighty-two of the Tithe Act, 1836.

6 & 7 Will. IV. c. 71

This sub-section applies only when the owner is in occupation of the whole of the lands (*Ecclesiastical Commissioners* v. *Upjohn*, (1913) 1 K. B. 501; 82 L. J. K. B. 435).

(3) In any other case the order shall be executed by the appointment by the court of a receiver of the rents and profits of the lands, and of any other lands which would be liable to be distrained upon for the tithe rentcharge to which the order refers under the provisions of section eighty-five of the Tithe Act, 1836, and where any of such lands are held at one rent together with other lands in another parish, the court shall apportion the rent between the said lands and the lands in the other parish in proportion to their rateable value, in which case the payment of such apportioned rent by the occupier to the receiver shall in every respect, as between the occupier and the owner of the lands, be deemed to be a payment on account of the total rent payable to the owner of such lands.

(4) Subject to the prescribed regulations, the county court shall have the same powers over receivers as in any other case, and may confer on the person appointed receiver any powers which the court can confer upon persons appointed receivers, but the court shall not have power to order the sale of lands.

(5) Any sum ordered by the court under this section to be recovered shall be payable by a trustee in bankruptcy, sheriff, or officer of a court who is in possession of the lands, in like manner as if it were tithe rentcharge recoverable under the Tithe Acts.

(6) Where the occupier of the lands out of which the tithe rentcharge issues is liable under any contract made before the passing of this Act to pay the tithe rentcharge, and is consequently liable by virtue of this Act to pay the amount thereof to the owner of the lands, the owner of the lands shall serve notice of such liability on the owner of the tithe rentcharge, and thereupon, before an order under this section is made, there shall be such service on the occupier in addition to the owner as may be prescribed, and a hearing of such occupier if he appears and desires to be heard. Any owner of the lands who fails to serve such notice as aforesaid on the owner of the tithe rentcharge, shall not be entitled to recover from the occupier any sum which he has paid on account of tithe rentcharge as aforesaid, unless and until he has, after notice to the occupier of his application for the same, obtained from the county court a certificate that there was good and sufficient cause for the failure to give such notice, and that the occupier has not been prejudiced thereby.

(7) Rules under this Act may regulate the procedure, practice and costs under this Act in county courts, and may direct what service shall be good service for the purposes of this Act on the owner or occupier of any lands or the owner of any tithe rentcharge, and may provide that, if the owner of any lands is not known, any proceeding under this Act may be taken against the owner of the lands without naming the person who is the owner.

(8) The fees payable on the proceedings under this section shall not exceed those set forth in the schedule to this Act, and the fees,

charges, and expenses in or incidental to any distress under this Act shall be the same as are for the time being payable under the Law of Distress Amendment Act, 1888. Section 2.

(9) Nothing in this Act shall impose or constitute any personal liability upon any occupier or owner of lands for the payment of any tithe rentcharge, or any other sum recoverable or payable under this Act, and the court shall not, by virtue of this Act, or of the County Courts Act, 1888, have any power to imprison any such occupier or owner by reason only of the non-payment of such tithe rentcharge or other sum, and shall in any other case have no other or greater powers of fine or imprisonment than are conferred by the County Courts Act, 1888. 51 & 52 Vict. c. 21. 51 & 52 Vict. c. 43.

3.—(1) The Lord Chancellor may, after consultation with the rule committee of county court judges, make rules for carrying this Act into effect, and for regulating, providing, and prescribing any matter authorised by this Act to be regulated, provided, or prescribed by rules under this Act. In framing such rules regard shall be had to making the procedure as simple and inexpensive as is practicable. Rules.

(2) Every rule under this Act shall be laid before each House of Parliament within forty days next after it is made, if Parliament is then sitting, or, if not, within forty days after the commencement of the then next ensuing session, and if an address is presented to Her Majesty by either House of Parliament within the next subsequent forty days on which the said House shall have sat, praying that any such rule may be annulled, Her Majesty may thereupon, by Order in Council, annul the same; and the rule so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

4. Where a receiver appointed under this Act of the rents and profits of any lands satisfies the county court that the lands are let on such terms as not to reserve a rent sufficient to enable the receiver to recover from the owner thereof the sum ordered to be recovered, the court, after such service on the owner and occupier of the lands as may be prescribed, and after hearing such owner and occupier if they appear and desire to be heard, may direct that the order for such recovery shall be executed as if the occupier were the owner of the lands: Provided that any such occupier shall be entitled in addition to any other remedy, unless he would have been liable to pay the tithe rentcharge under any contract made before the passing of this Act, to deduct from any sums at any time becoming due from him to the landlord under whom he holds, any amount which shall have been recovered from him under this section in respect of tithe rentcharge or costs, with interest thereon at the rate of four per centum per annum: Provided further, that such occupier shall be entitled, notwithstanding anything in this Act, to recover from such landlord by action at law any such amount which shall have been recovered from him under this section as aforesaid as money paid on the account of such landlord. Lands occupied rent free, etc.

5.—(1) An application to a county court for an order under this Act may be made on behalf of the tithe-owner by his agent, although not a solicitor. Restrictions as to costs.

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(2) On any application to a county court for an order under this Act, no costs either of a solicitor or of a witness shall be allowed in any case where the amount claimed is paid without further proceedings, nor where notice of intention to apply for time to pay the tithe-owner's claim has been given (except in cases where costs could be allowed by the court on a judgment summons), and when notice of opposition has been given within the prescribed time, the costs of a solicitor shall only be allowed for work done subsequent to the notice.

Rating of owner of tithe rent-charge.

6.—(1) Any rate to which tithe rentcharge is subject shall be assessed on and may be recovered from the owner of the tithe rentcharge, in the like manner and by the like process as on and from any occupying ratepayer; and so much of any Act as authorises any rate on tithe rentcharge to be assessed on or recovered from the occupier of any lands out of which the tithe rentcharge issues is hereby repealed (*a*).

(2) If the collector of the rate satisfies the county court that he is unable to recover in manner aforesaid any rate assessed on the owner of any tithe rentcharge, the court may, after such service on the owners of the tithe rentcharge, and of the lands out of which the tithe rentcharge issues, as may be prescribed, and after hearing such owners, if they appear and desire to be heard, order the owner of the lands to pay such tithe rentcharge to the collector until the amount of the rate, and any costs allowed by the court, are fully paid; and the order may be executed as if it were an order under this Act for the payment of a sum due on account of the tithe rentcharge.

(3) The court may, if satisfied that the circumstances justify it, make such order as aforesaid in respect of any future rate, either generally or during the time limited by the order.

(4) The expression "rate" in this section means a poor rate, highway rate, general district rate, borough rate, and every other rate assessed on an owner of tithe rentcharge by a public authority for public purposes; and the expression "collector" means the overseer, surveyor of highways, rate-collector, or other person authorised, for the time being, to collect the rate.

Power of appeal.

7. If any party in any action or matter under this Act shall be dissatisfied with the determination or direction of the judge of the county court in point of law or equity, or upon the admission or rejection of any evidence, the party aggrieved by the judgment, direction, decision, or order of the judge may appeal from the same to the High Court, in such manner and subject to such conditions as may be for the time being provided by the rules of the Supreme Court regulating the procedure on appeals from inferior courts to the High Court.

Remission of tithe rent-charge when exceeding two-thirds

8.—(1) Where a sum is claimed on account of tithe rentcharge issuing out of any lands, and the county court is satisfied that, if the sum claimed is paid, the total amount paid on account of the tithe rentcharge for the period of twelve months next preceding

(*a*) By the Tithe Rentcharge (Rates) Act, 1899 (62 & 63 Vict. c. 17), s. 1, the owner of tithe rent-charge attached to a benefice is liable to pay only one half of any rate to which the Act applies, which is assessed on him as owner of that tithe rent-charge, the other half to be paid by the Commissioners of Inland Revenue.

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the day on which the sum claimed became payable, will exceed two-thirds of the annual value of the lands as ascertained and entered in the assessment for the purpose of Schedule B. to the Income Tax Act, 1853, or as certified as herein-after mentioned, the court shall order the remission of so much, whether the whole or part of the sum claimed, as is equal to the excess, and the amount so ordered to be remitted shall not be recoverable; and if the court is satisfied that neither such remission, nor the liability thereto, has been taken into account in estimating the rateable value of the tithe rentcharge, the court may remit such amount of any then current rate assessed on the owner of the tithe rentcharge as appears to the court to be proportionate to the amount of the remission of tithe rentcharge.

annual value of land.

16 & 17 Vict. c. 34.

(2) Where the lands out of which any tithe rentcharge issues are assessed for the purposes of the said Schedule B. together with other lands, the surveyor of taxes for the parish in which the lands are so assessed, on the application of the owner or occupier of the lands, shall divide the annual value in such assessment between the lands out of which any tithe rentcharge issues and the other lands, and give notice of the annual value of the lands as determined on such division to the applicant and to the owner of the tithe rentcharge; and if either of them is dissatisfied with the annual value so determined, he may appeal to the general commissioners of income tax for the division in which the lands are assessed, and those commissioners, after due notice to and hearing the parties or their agents if any of them wishes to be so heard, shall finally determine the proper division of the annual value; and the annual value of lands so determined as aforesaid shall, for the purposes of this section, be the annual value of the lands as ascertained for the purpose of the said Schedule B.

(3) For the purposes of this section the owner of tithe rentcharge shall have the same right of appeal as the owner of lands, whether under the enactments relating to the said assessment or under this section.

(4) If in any case the annual value of any lands is not ascertained and entered in the assessment for the purpose of the said Schedule B., the general commissioners of income tax for the division in which the lands are situate shall, on the application of the owner or occupier of the lands, ascertain the annual value of the lands for the purpose of the said Schedule B., and inform the applicant of the same.

(5) The commissioners of taxes shall on demand and payment of one shilling give a certificate of the amount of the annual value of any lands under this section.

(6) Where it appears from any award that a special apportionment has been made in pursuance of section fifty-eight of the Tithe Act, 1836, whereby tithe rentcharge has been charged specially upon certain closes of land in different proportions, and to the exclusion of certain of them, the court shall not grant a remission under this section unless satisfied that the applicant would have been entitled to such remission if no such special apportionment had been made.

6 & 7 Will. IV. c. 71.

(7) Where two or more tithe rentcharges issue out of the same lands, and a remission of tithe rentcharge has been made by a county court under this section, the amount paid by the owner of

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the lands on account of tithe rentcharge shall be divided between the owners of such tithe rentcharges in proportion to the amount thereof as fixed by the apportionment or any altered apportionment.

(8) This section shall not apply to any lands other than those used solely for agricultural or pastoral purposes or for the growth of timber or underwood.

Definitions.

9.—(1) A reference in this Act to the "owner" of lands or tithe rentcharge—

(*a*) if the ownership of the lands or rentcharge is vested in the Queen in right of her crown, means the commissioners of woods, in substitution for the Queen; and

(*b*) if the ownership of the lands or rentcharge is vested in the Duke of Cornwall, means the keeper of the records of the duchy of Cornwall, in substitution for the Duke of Cornwall; and

6 & 7 Will. IV. c. 71, ss. 12, 13.

(*c*) in any other case, means the same officers or persons as are mentioned in the Tithe Act, 1836.

(2) In this Act, unless the context otherwise requires—

The expression "tithe rentcharge" means tithe rentcharge issuing out of lands and payable in pursuance of the Tithe Acts, and includes any rentcharge into which a corn rent has, either before or after the passing of this Act, been converted under the Tithe Act, 1860, and which is subject to the like incidents as such tithe rentcharge as aforesaid; but does not include a rentcharge payable under the Extraordinary Tithe Redemption Act, 1886, nor a rentcharge payable under the Tithe Act, 1860, in respect of the tithes on any gated or stinted pasture, nor a sum or rate payable for each head of cattle or stock turned on land subject to common rights or held or enjoyed in common.

23 & 24 Vict. c. 93.

49 & 50 Vict. c. 54.

23 & 24 Vict. c. 93.

The expression "prescribed" means prescribed by rules under this Act.

Commencement and application of Act and saving.

10.—(1) This Act shall extend to every sum on account of tithe rentcharge which first becomes payable on or after the half-yearly day of payment of such tithe rentcharge which occurs next after the passing of this Act, whether such sum accrued before or after that day, and shall not extend to sums due on account of tithe rentcharge which were in arrear before the passing of this Act, nor, except so far as relates to the assessment and recovery of rates, shall it extend to tithe rentcharge issuing out of the lands of a railway company.

(2) A sum on account of tithe rentcharge shall not be recoverable under this Act unless proceedings for such recovery have been commenced before the expiration of two years from the date at which it became payable.

(3) Nothing in this Act shall alter the priority of any tithe rentcharge in relation to any other charge or incumbrance upon any lands.

(4) Any enactment in the Tithe Acts or in the Extraordinary Tithe Redemption Act, 1886, directing any expenses, rentcharge, or other sums to be recovered as tithe rentcharge, shall, as respects any sum becoming due after the passing of this Act, be construed to refer to the recovery of tithe rentcharge under this Act, save that the owner of the lands shall not be entitled to obtain any remission under this Act.

11. Section eighty-four of the Tithe Act, 1836, is hereby repealed. Section 11. Repeal.

12.—(1) This Act shall not extend to Scotland or Ireland.

(2) This Act may be cited as the Tithe Act, 1891.

(3) The Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter seventy-one, intituled "An Act for the commutation of tithes in England and Wales," is in this Act referred to and may be cited as the Tithe Act, 1836, and that Act and the enactments amending the same passed before the passing of this Act are in this Act referred to and may be cited as the Tithe Acts. Extent of Act and short titles.

(4) The Act of the session of the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter ninety-three, intituled "An Act to amend and further extend the Acts for the commutation of Tithes in England and Wales," is in this Act referred to and may be cited as the Tithe Act, 1860.

(5) The Act of the session of the sixteenth and seventeenth years of the reign of her present Majesty, chapter thirty-four, intituled "An Act for granting to her Majesty duties on profits arising from property, professions, trades, and offices," is in this Act referred to and may be cited as the Income Tax Act, 1853.

SCHEDULE.

Fees under Section 2 of the Tithe Act, 1891.

Where the sum claimed does not exceed five pounds:

For notice of application to the court	One shilling.
For making the order	One shilling and sixpence.

Where the sum claimed exceeds five pounds:

For notice of application to the court	One shilling for every five pounds and fraction above five pounds or any multiple of five pounds of the sum claimed.
For making the order	One shilling and sixpence for every five pounds and fraction above five pounds or any multiple of five pounds of the sum claimed.

But the total fee in any one case shall not exceed—

For notice of the application	Ten shillings.
For making the order	Fifteen shillings.

RULES UNDER THE TITHE ACT, 1891.

(Power derived from Section 3 of this Act.)

Dated April, 1891.

1. The following rules may be cited as "The Tithe Rentcharge Recovery Rules, 1891," and shall apply so far as may be practicable to all proceedings under the Tithe Act, 1891 (in these rules referred to as the Act). Short title.

Procedure on Application for Recovery of Tithe Rentcharge.

2. A person claiming to be entitled to a sum due on account of tithe rentcharge, who desires to obtain an order of court for the recovery thereof, in these rules called the applicant, shall file with the registrar of the court a notice of application according to the form in the Appendix which is applicable to the case, and as many duplicates or copies thereof as there may be persons to be served therewith. Application for order for recovery. Forms 1, 2, 3.

Rule 2. No proceedings shall be invalid by reason only that the applicant has filed a notice of application according to one of the forms in the Appendix and that form proves not to be the form applicable to the case.

Filing by applicant of occupier's liability notice.

3. Where a notice under sub-section 6 of section 2 of the Act, that the occupier of the lands is liable to pay the amount of the tithe rentcharge to the owner of the lands (in these rules called an occupier's liability notice) has been served before the notice of application has been filed the applicant shall on filing his notice of application file at the same time a copy of the occupier's liability notice.

Service of notice of application. Form 4.

4. The registrar of the court shall appoint a day for the hearing of the application, and shall cause to be served on the owner of the lands out of which the tithe rentcharge issues, and, where an occupier's liability notice has been filed, on that occupier, one of the notices of application together with a notice according to the form in the Appendix. The service shall be made at least ten clear days before the day appointed for the hearing of the application.

Any owner and any occupier of lands on whom a notice of application is to be served is in these rules referred to as a respondent.

Notice of opposition. Form 5. Form 6.

5. A respondent desirous of opposing an application shall, at least five clear days before the day appointed for the hearing, file with the registrar of the court notice of his opposition according to the form in the Appendix, and the registrar shall on the same day send notice thereof to the applicant according to the form in the Appendix.

Filing of occupier's liability notice where served after notice of application.

6. Where an applicant is served with an occupier's liability notice, after he has filed a notice of the application and before an order has been made he shall file a copy of the notice with the registrar as soon as possible after the receipt thereof, and the registrar shall thereupon cause a notice of the application to be served on the occupier as hereinbefore provided.

Change of day fixed for hearing on service of occupier's liability notice after application. Form 7.

7. Where a copy of an occupier's liability notice has been filed with the registrar so short a time before the day originally appointed for the hearing that the ten clear days' notice required by these rules cannot be given to the occupier of the lands, then the registrar shall appoint another day for the hearing in lieu of that originally appointed, and shall name that day in his notice to the occupier, and give notice of the change of day to the applicant and the owner of the lands.

Order made without hearing where no notice of opposition. See Forms 8 and 9.

8. Where no notice of opposition is given, the court will, after the expiration of five clear days from the time limited for giving such notice, unless before that time the amount ordered to be recovered is paid into court, make an order without a hearing, either appointing a receiver, or, if the applicant has stated in his notice of application that the lands are occupied by the owner thereof, appointing an officer of the court to distrain.

Notice of opposition out of time.

9. Where a respondent files notice of opposition after the time limited by these rules for such notice, but before an order is made by the court, the court may allow that respondent an opportunity

of being heard on such terms as to payment into court or otherwise as the court thinks fit; and in that case the court shall appoint a day for the hearing, and cause notice to be given to the applicant and the respondent of the day so appointed. Rule 9.

10. Where notice of opposition has been given but no respondent appears at the hearing of the application, the application may be forthwith granted without proof of the applicant's title to the tithe rentcharge claimed, but the same costs of solicitors and witnesses shall be allowed as if a respondent had appeared. Order where no appearance after giving notice of opposition.

11. A ground of opposition not mentioned in the notice of opposition shall not be entertained by the court except with the consent of the applicant, or by the leave of the court, and the court may grant that leave on such terms as to adjournment, payment of costs, or otherwise as the court thinks fit. Grounds of opposition not entertained unless mentioned in notice.

12. Where a notice of application is filed with the registrar by anyone as agent for a person claiming to be entitled to a sum due on account of the rentcharge, that agent shall, if required, produce a written authority from the person so claiming, or satisfy the registrar that he has general authority to collect tithe rentcharge on behalf of such person. Proof of authority by agent making application.

13. Where the applicant states in his notice of application that he does not know, or cannot ascertain, the owner of the lands, or where it is found that service on the person named in the application as owner of the lands cannot be effected by post as hereinafter provided, any proceeding under the Act may be taken against the owner of the lands without naming him, and notices and documents may be served accordingly. Proceedings against owner of lands without naming him.

14. Where an applicant in his notice of application states his desire that in addition to service on the person named in the notice of application as owner of the lands there shall also be service on the owner of the lands, through the occupier or through the person receiving the rents and profits of the lands for or on behalf of the owner, and states the name of the occupier or person, then such additional service shall be made as in these rules provided, and such service shall be deemed to be good service on the owner of the lands, though the person named in the application as owner of the lands is not such owner. Additional service when desired by applicant.

Provisions as to Receiver.

15. The appointment of a receiver shall extend to any other land, which would be liable to be distrained upon for the tithe rentcharge to which the order refers under section eighty-five of the Tithe Act, 1836. Appointment of receiver. See Form 8.

16. An applicant may in his notice of application specify, by their names and situation or other sufficient description, the lands which would be liable to be distrained on under the said section eighty-five other than those out of which the tithe rentcharge issues, and in that case the lands so specified shall be added to the schedule to the order appointing a receiver; but if the lands have not been so specified, or have been specified inaccurately, it shall be the duty of the receiver as soon as possible to specify such lands to the court, or to make any corrections which may be necessary in the specification of the lands given by the applicant. Identification of lands liable to be distrained on under s. 85 of the Tithe Act, 1836. See Form 8, and Forms 2, 3.

Rule 17.

Person to be appointed receiver.

17. Where an applicant in his notice of application states that he desires a certain person therein named to be receiver, the court shall appoint that person to be receiver unless for special reasons the court otherwise determines.

Where no such statement is made in the notice of application, or where the court does not appoint the person named in the notice of application to be receiver, the court shall appoint such person to be receiver as the court thinks fit.

The receiver, if not a permanent officer of the court, shall give such security (if any) as may be required by the court.

Notice by receiver to occupiers of land of his appointment.

18. The receiver shall, on his appointment, give notice as soon as possible of his appointment to the occupiers of the lands of which he is receiver, and shall require them to attorn as tenants to him, and to give him such particulars as he may require with respect to their tenancies.

Form 10.

Ascertainment of particulars of tenancy from occupier.

19. Where an occupier of lands refuses to give to the receiver such particulars as he may require with respect to his tenancy, the receiver shall apply to the court to issue a summons requiring the attendance of such occupier as a witness, and, if necessary, requiring the production of any books, deeds, papers, and writings in his possession or control.

Where tenant refuses to attorn, receiver to apply to court.

20. Where an occupier of lands refuses to attorn tenant to a receiver, and it becomes necessary to enforce the payment of rent in arrear, the receiver shall apply to the court to make an order authorising the receiver to distrain in the name of the owner of the lands, or such other order as the court thinks just under the circumstances of the case.

Form 11.

Payments by receiver.

21. The receiver shall pay into court without delay any sums received by him on account of the rents and profits of the lands, but may deduct therefrom the costs of any distress made by him, and also as remuneration for his services such amount as may have been allowed by the court not exceeding in any case five per cent. on the amount of the rents and profits received by him.

Application of money paid into court by receiver.

22. The registrar shall pay to the applicant any sums so paid into court by the receiver until the amount ordered by the court to be recovered is fully satisfied. When that amount has been so satisfied, the registrar shall discharge the order for a receiver, and pay the balance, if any, of any sums paid into court by the receiver to the person entitled to the rents and profits of the lands on the application of that person.

Procedure where receiver finds that lands are occupied by the owner.

Forms 12 and 13.

23. Where the receiver finds that any of the lands of which he is appointed receiver are occupied by the owner thereof, he shall, unless the owner pays the sum ordered to be recovered or attorns tenant to the receiver, make a report thereon to the court, and on any such report the court may make an order directing that the order for recovery be executed against the lands in question in manner provided by the Act where the lands are occupied by the owner thereof, but the operation of the order shall be suspended for ten clear days, or, if the owner gives notice of objection, for such further time as the court directs.

Forms 14 and 15.

Notice of the order shall be given to the person whom the receiver alleges to be the owner, stating that unless he files with

the registrar notice of objection before that time, the order will take effect ten clear days after the day on which it was made. Rule 23.

If notice of objection is filed, the registrar shall cause a day to be fixed for the hearing of the objection and give notice thereof to the person who has filed notice of objection, and the registrar shall further suspend the operation of the order accordingly. Form 6.

Where an order is made under this rule the court shall appoint the person who has been appointed receiver to be the officer to distrain upon the lands, unless for special reasons the court otherwise determines.

REPORT THAT THERE IS NO SUFFICIENT DISTRESS.

24. Where the officer appointed by the court to distrain on lands occupied by an owner finds that there is no sufficient distress on the lands, and that it would be useless to attempt any further distress, he shall make a report in writing to that effect to the applicant and to the court. Report of result of distress by officer. Form 17.

APPORTIONMENT OF RENT WHERE A RECEIVER IS APPOINTED.

25. Where it appears to the court either from the notice of application, or at the hearing of an application, that any of the lands of the rents and profits of which a receiver is to be appointed are held at one rent together with other lands in another parish, the court shall, on the appointment of a receiver or as soon thereafter as possible, apportion the rent in proportion to the rateable value of the lands as appearing in the valuation list, or if none, in the then last poor rate, and the apportionment shall take effect immediately it is made. Apportionment of rent on making order for recovery. Form 8, and see Forms 2, 3.

26. Where no order of apportionment has been made and a receiver finds that any lands of the rent and profits of which he is appointed receiver are held at one rent together with other lands in another parish, he shall apply to the court to apportion that rent, and the court shall make an apportionment accordingly. Apportionment where rent not apportioned on making order.

27. Notice of an apportionment made under the last preceding rule shall be given by the registrar to the applicant and the respondent, and if neither applicant nor respondent before the expiration of five clear days of the service of the notice file a notice of objection, the apportionment shall take effect. Form 18. Notice to applicant and respondent of apportionment.

28. Where an applicant or respondent before the expiration of five clear days files a notice of objection to the apportionment so made, the registrar shall appoint a day not less than ten days after the filing of the notice of objection for the hearing thereof, and on the hearing the court shall make such order in relation thereto as the court thinks just. Notice shall be given to the respondent and applicant of the day appointed for hearing the objections at least six clear days before the time appointed. Form 18. Hearing of objection to apportionment. Forms 19—21.

PROCEDURE WHERE LANDS ARE LET AT A RENT NOT SUFFICIENT TO ENABLE THE RECEIVER TO RECOVER THE SUM ORDERED TO BE PAID.

29. Where a receiver appointed under the Act finds that the lands or any of them are let on such terms as not to reserve a rent sufficient to enable him to recover the sum ordered to be recovered, Report by receiver, that lands

Rule 29. are not let at sufficient rent.

he shall make a report in writing to the court to that effect, together with a statement stating the terms on which the lands are let and showing the sum ordered to be recovered, the costs to be recovered, the sum, if any, already recovered, and the sum remaining due in respect of the sum ordered to be recovered and costs, and also showing whether under the order of recovery he is receiver of any lands besides those in respect of which he made such report.

Notice of report and opportunity for hearing. Forms 22 and 23.

30. The court, if satisfied on such report that a *primâ facie* case is made out for making an order under section four of the Act shall cause notice to be given—

(i.) to the occupier of the lands, naming a day for the hearing of the matter, and informing him that, unless the sum due is sooner paid, the order for recovery may be directed to be executed against him as if he was owner of the lands, and that if he has any objection to urge against such direction, he may appear and be heard on the day named, but that if he does not appear, the direction may be given in his absence;

(ii.) to the applicant and the owner of the lands, naming the day fixed for the hearing and informing them that they may appear and be heard on that day.

The notice shall be given not less than ten clear days before the day named for the hearing.

Order of court on hearing. Form 24.

31. The court, after hearing the occupier of the lands, the respondent, and the applicant, if they or any of them appear and wish to be heard, may make an order appointing an officer to distrain on the said lands for the amount mentioned in the order, and in any such order shall give such directions as to the continuance of the receiver or otherwise as the court thinks fit.

The order of distress shall include such sum on account of the costs incurred, either in respect of the duties of the receiver or otherwise, up to the date of the order as may be allowed by the court.

Where an order is made under this rule, the court shall appoint the person who has been appointed receiver to be the officer to distrain upon the lands, unless for special reasons the court otherwise determines.

Remission of Tithe Rentcharge under Section 8 of the Act.

Notice of intention to apply for a remission. See Forms 25 and 26.

32. Where a respondent desires to obtain a remission in respect of his tithe rentcharge under section eight of the Act, he shall, in his notice of opposition, specify his intention to apply for such remission, and shall also state whether there is more than one tithe rentcharge issuing out of the lands.

The respondent shall produce on the hearing of the application the certificate of the annual value of the lands.

Notice of application for remission to other owner of

33. Where it appears to the registrar from the statement of the respondent or otherwise, that there is more than one tithe rentcharge issuing out of the lands in respect of which the application for remission is to be made, he shall cause notice to be served on

the owner of any tithe rentcharge issuing out of the lands, other than that in respect of which the application is made, before an order for remission is made. Rule 33.

tithe rentcharge on same land.

34. If on the hearing of an application by the owner of one tithe rentcharge issuing out of any lands, an order for remission is made, and the owner of another tithe rentcharge issuing out of those lands appears and applies at the hearing for an order for the recovery of any sum due on account of his tithe rentcharge, the court may, if the respondent appears at the hearing, make an immediate order for the recovery of any sum due on account of such other tithe rentcharge, and direct that the orders for the recovery of the two tithe rentcharges be simultaneously executed. Form 25.

Order of recovery of second tithe rentcharge on the same lands granted on hearing of application.

35. The registrar shall at the cost of the applicant send to the overseers of the parish a certified copy of any order for the remission of a rate affecting that parish, and any collector of rates shall be entitled on application to obtain from the court a certified copy of any order for remission made by that court within the year last past in respect of rates assessed on an applicant.

Certificate of remission of rates.

See Form 27.

CERTIFICATE WHERE OCCUPIER'S LIABILITY NOTICE HAS NOT BEEN SERVED.

36. Where an owner of land has failed to serve an occupier's liability notice, and wishes to obtain a certificate from the court under sub-section six of section two of the Act, he shall send an application to the registrar according to the form in the Appendix, and shall at the same time send a copy or duplicate of the application to the occupier in respect of whose liability to pay the tithe rentcharge the notice has not been served.

Application for certificate where occupier's liability notice not served.

Form 28.

37. The registrar shall appoint a day for the hearing of the application, and shall send notice of the day appointed to the said owner and occupier, and in the notice to the occupier shall state that he may appear and be heard on that day in opposition to the granting of a certificate.

The notice shall be given not less than ten clear days before the day named for the hearing.

Day to be appointed for hearing of application for certificate.

Forms 29 and 30.

38. All costs of any such application shall be paid by the owner of land making the same, unless the court is of opinion that the opposition to the application is frivolous or vexatious.

Costs of application.

PROCEDURE FOR THE RECOVERY OF RATES.

39. Where a collector is unable to recover any rate assessed on the owner of tithe rentcharge by proceeding against such owner as against an occupying ratepayer, and desires to obtain an order of the court under sub-section two, or under sub-sections two and three of section six, of the Act, he shall send to the registrar a notice of such application according to the form in the Appendix, and as many duplicates or copies thereof as there are persons to be served therewith.

Notice of application by collector of rates.

Form 31.

On the filing of such application the same procedure shall be followed, as far as applicable, as to the serving of notice of the

See Forms 32, 33 and 34.

Rule 39.

application, as to notice of opposition, as to the hearing of the application and the making of an order, as on an application for recovery of tithe rentcharge, with the substitution of the rate collector for the applicant, and the owner of the tithe rentcharge and the owner of the lands out of which the tithe rentcharge issues for the respondent, and of an order for the recovery of rates under section six of the Act for an order for the recovery of tithe rentcharge.

Application by collector for enforcement of order.

See Form 35.

40. An order on the owner of lands to pay the tithe rentcharge to the collector until the amount of the rate and any costs allowed by the court are fully paid shall further order that, if any sum due on account of tithe rentcharge is not within three months paid to the collector by the owner of the lands, the order will be enforced on the *ex parte* application of the collector, either by appointing a receiver or by appointing an officer of the court to distrain upon the lands as the case may be.

Order as to rates where order has been obtained for recovery of tithe rentcharge.

41. Where a collector makes an application for the enforcement of an order on the owner of the lands to pay the tithe rentcharge to him, and an order has already been made in respect of arrears of tithe rentcharge on the application of the person entitled thereto, the court, instead of making the order provided in the foregoing rule, may order that any money recovered, either by a receiver or by an officer of the court appointed to distrain, shall be applied first in payment of the costs allowed by the court, and of the amount due on account of the rates.

Costs.

Costs at discretion of court.

42. Subject to the provisions of the Act and these rules, all costs of and incident to any application to the court or any proceeding under the Act or these rules shall be paid by or apportioned between the parties to the application in such manner as the court thinks just, and, in the absence of any special direction, shall abide the event of the application.

Taxation of costs.

43. Subject to the provisions of the Act and these rules, all costs shall be taxed by the registrar of the court, and the same scale of costs shall have effect, and the same allowances shall be made to witnesses as in similar proceedings under the County Courts Act, 1888.

Service of Notices and Documents.

Address for service.

44. Any person other than an applicant may give an address for service by sending a copy of an address in England or Wales to the registrar stating that it is to be an address for service.

The address given in an applicant's notice of application shall, if an address in England or Wales, be taken to be his address for service.

Service of notices, etc.

45. Any notice or other document may be served on an applicant, owner, or occupier of lands, or any other person by sending the notice or other document by registered letter through the

post to the address for service of the person to be served, or if no address for service has been given, to his last known address in England or Wales. Rule 45.

Service where proceedings taken without naming owner of land.

46. Where any proceeding under the Act is taken against an owner of lands without naming him, then service of any notice or document may be sufficiently effected as follows:—

(i.) A copy of the notice or document shall be delivered at the house of the occupier of the lands, if one can be found on the lands, with a direction to such occupier to forward the same to the person to whom he pays rent; and

(ii.) One or more copies of the notice or document shall be posted on some conspicuous part or parts of the lands.

Substituted service by order of court.

47. Where, from any cause, the service of a notice or document cannot be made according to the foregoing provisions of these rules, the court may, upon an affidavit showing sufficient grounds, make such order for substituted service, or for the substitution for service of notice by advertisement or otherwise as the court thinks fit.

Service where additional service is desired.

48. Where service is required under these rules to be made on an owner of lands through the occupier or through the person receiving the rents and profits of the lands for or on behalf of the owner, the registrar shall send a copy of the document to be served by registered letter through the post to that occupier or person, having previously endorsed on the copy a request to that occupier or person to send the same to the person to whom he pays rent or for whom he receives rent, as the case may be.

Service of owner in receipt of rents and profits good service on other owners.

49. Where land is owned by two or more owners of land, either as joint owners or otherwise, service of a notice or document on one of such owners who is in receipt of the whole or part of the rents and profits of the land shall, unless the court otherwise directs, be deemed to be good service on all the owners, other than an owner in possession.

Provision as to service of notice to apply to giving of notice, etc.

50. The foregoing provisions as to the service of any notice or document shall apply where any notice or document is to be given, delivered, or sent under these rules.

SUPPLEMENTAL.

Joinder of new parties.

51. Where any proceedings are taken by a joint owner of a tithe rentcharge, or against a joint owner of lands when such proceedings should, in the opinion of the court, have been taken by or against all the joint owners, then on application by any such joint owner, the court may adjourn the proceedings in order that the other owners may be joined as parties, on such conditions as to payment of costs or otherwise as the court thinks fit.

Applications in same court to be made at the same time.

52. Where an applicant has several applications to make in the same court for the recovery of tithe rentcharge in the same parish, he shall so far as possible file notices of such applications simultaneously, so that the court may deal with them at the same time,

Rule 52. and if an applicant neglects to file such notices simultaneously the court may disallow any extra costs which in the opinion of the court have been occasioned by such neglect on the part of the applicant.

Conduct of proceedings.

53. Where there are joint owners of a tithe rentcharge or of lands out of which tithe rentcharge issues, or where more than one application is made in respect of tithe rentcharge issuing out of the same lands, the court may order any proceedings taken to be taken jointly, and may order which person shall have the conduct of the proceedings.

Clear days.

54. In these rules the expression "clear days" means that in all cases where any particular number of days is prescribed for the doing of any act or for any other purpose, the same is to be reckoned exclusive both of the first and of the last day.

Non-compliance with rules not to render proceedings void.

55. Non-compliance with any of these rules, or any rules incorporated therewith, or with any rule of practice for the time being in force, shall not render any proceedings void unless the court shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court shall think fit.

Exercise of powers of court.

56. The registrar may, under the general or special directions of the judge, exercise any powers or perform any duties of the court under these rules, and in these rules the expression "court" includes a judge or registrar exercising the powers of the court in chambers as well as in open court, but the registrar shall not deal with or decide any matter which is opposed or in which notice of opposition has been given and the person who has given notice of opposition appears, except on the application of the persons appearing in the matter.

County court procedure to apply where no procedure provided.

57. Where any matter or thing is not specially provided for under these rules, the same procedure shall be followed and the same provisions shall apply so far as practicable as in a similar matter or thing under the County Courts Act, 1888, and the rules made in pursuance of that Act.

Forms in Appendix.

58. The forms in the Appendix where applicable, and where they are not applicable forms of the like character with such variations as circumstances may require, shall be used.

APPENDIX.—FORMS.

1.

Notice of Application where the Owner of the Lands is also Occupier.

Tithe Act, 1891.

In the county court of . . . holden at . . . . . .

I [*insert name, address, and description of applicant, or if application be made by agent, his name, address, and description, and statement that he is*

the agent for A. B., *the person entitled to the sum due (address and description)*], give notice that I apply for an order for the recovery of the sum of pounds shillings and pence, due in respect of the tithe rentcharge issuing out of the lands described in the first part of the schedule to this application for the period of [*insert period*], and which became payable on the day of 19 .

The owner of the said lands is [*insert name, address, and description of owner of the lands*], and the owner is himself the occupier thereof [*or* I do not know *or* cannot ascertain the owner of the lands].

I shall apply that the order for recovery be executed by the appointment of an officer to distrain under subsection 2 of section 2 of the Act.

[*This paragraph, and also the second part of the schedule which corresponds to it, should be struck through if the applicant is unable to give the required particulars.*] The lands in the same parish as those described in the first part of the schedule and occupied by the same person as those lands as owner thereof, are described in the second part of the schedule.]

Dated this day of 19 .

A. B.

[*or* E. F., agent for A. B., the person entitled to the sum due.]

SCHEDULE OF LANDS.

PART I.—Lands out of which tithe rentcharge issues.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

PART II.—Lands in the same parish occupied and owned by the same person as those in Part I.

Name or Description of Lands.	Parish in which situate.	County in which situate.

2.

Notice of Application where Owner of Lands is not the Occupier.

Tithe Act, 1891.

In the county court of holden at .

I [*insert name, address, and description of applicant, or if application be made by agent, his name, address, and description, and statement that he is the agent for A. B., the person entitled to the sum due (address and description)*], give notice that I shall apply for an order for the recovery

of the sum of pounds shillings and pence, due in respect of the tithe rentcharge issuing out of the lands described in the first part of the schedule to this application, for the period of [*insert period*] and which became payable on the day of 19 .

The owner of the said lands is [*insert name, address, and description of owner of the lands*] [*or* I do not know *or* cannot ascertain the owner of the lands] and the occupier thereof is M. N. (*insert name and address*), [*these words should be struck out, unless the applicant can give the required information:* who holds the lands at one rent together with lands in the parish of].

[*If these words are struck out or no name inserted an officer of the court will be appointed receiver*] : [I shall apply that the order for recovery be executed by the appointment of X. Y. (*insert name and address*) as the receiver under subsection three of section two of the Act.]

I have received no notice under subsection six of section two of the Act, that the occupier is liable to pay the amount of the tithe rentcharge to the owner of the lands.

[*Where additional service is required insert these words*] : [I desire that additional service on the owner of the lands be made through M. N., the occupier thereof, *or* through P. Q. (*insert name and address*) the person who receives the rents and profits of the lands for or on behalf of the owner of the lands.]

[*This paragraph, and also the second part of the schedule which corresponds to it should be struck out if the applicant is unable to give the required particulars.*] [The lands described in the second part of the schedule are in the same parish as those described in the first part of the schedule, and are occupied by M. N. either as owner or as tenant under the same landlord under whom he occupies the lands described in the first part of the schedule.]

Dated this day of 19 .

A. B.

[*or* E. F., agent for A. B., the person entitled to the sum due.]

SCHEDULE OF LANDS.

PART I.—Lands out of which the tithe rentcharge issues.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

PART II.—Lands occupied by M. N. in the same parish as those in Part I.

Name and Description of Lands.	Parish in which situate.	County in which situate.

3.

Notice of Application where Occupier's Liability Notice is Filed.

Tithe Act, 1891.

In the county court of holden at .

I [*insert name, address, and description of applicant, or if application be made by agent, his name, address, and description, and statement that he is the agent for A. B., the person entitled to the sum due (address and description)*], give notice that I shall apply for an order for the recovery of the sum of pounds shillings and pence, due in respect of the tithe rentcharge issuing out of the lands described in the first part of the schedule to this application, for the period of [*insert period*], and which became payable on the day of 19 .

The owner of the said lands is [*insert name, address, and description of owner of the lands*] [*or* I do not know *or* cannot ascertain the owner of the lands], and the occupier thereof is M. N. [*insert address and description*], [*these words should be struck out unless the applicant can give the required information:* who occupies the lands at one rent together with lands in the parish of].

[*If these words are struck out or no name inserted an officer of the court will be appointed receiver*] : [I shall apply that the order for recovery be executed by the appointment of X. Y. (*insert name and address*) as the receiver under subsection three of section two of the Act.]

Where additional service is required insert these words] : [I desire that additional service on the owner of the lands be made through M. N., the occupier thereof *or* through P. Q. (*insert name and address*) the person who receives the rents and profits of the lands for or on behalf of the owner of the lands.]

[*This paragraph and also the second part of the schedule which corresponds to it should be struck through if the applicant is unable to give the required particulars.*] [The lands described in the second part of the schedule are in the same parish as those described in the first part of the schedule, and are occupied by M. N. either as owner or as tenant under the same landlord under whom he occupies the lands described in the first part of the schedule.]

Dated this day of 19 .

A. B., owner of the tithe rentcharge

[*or* E. F., agent for A. B., the person entitled to the sum due.]

SCHEDULE OF LANDS.

PART I.—Lands out of which the tithe rentcharge issues.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

PART II.—Lands occupied by M. N. in the same parish as those in Part I.

Name or Description of Lands.	Parish in which situate.	County in which situate.

4.

Notice to Respondent to be served with the Duplicate Notice of Application.

Tithe Act, 1891.

No. of application .

In the county court of holden at .

A. B., applicant (*insert address and description*).

[C. D.], owner of the lands (*insert, if known, address and description.*) [not known]

[M. N., occupier of the lands (*insert address and description*).] } Respondents.

To [*insert name, address, and description of owner of the lands, if known*], the owner of the land out of which the tithe rentcharge mentioned in the notice of application sent herewith issues.

[*To be inserted where occupier's liability notice has been filed.*] [And to M. N. occupier of the said lands.]

Take notice that the application by A. B., of which a copy is sent herewith will be heard at the sitting of the court to be holden at (*insert courthouse*) on the day of 19 at the hour of in the noon, and that if you wish to oppose the application you must, five clear days before the day appointed for the hearing, file with the registrar of this court the notice of opposition given below.

And take notice that if you intend to apply for time to pay, or for a remission in respect of the tithe rentcharge, you must in giving notice of opposition specify that intention.

Dated this day of 19 .

Registrar.

	£	s.	d.
Amount of tithe rentcharge claimed			
Costs of this notice			
Amount upon the payment of which you will incur no further costs			

If you do not give notice of opposition or do not appear on the day appointed for the hearing, the court may make an order against you in your absence.

5.

Notice of Opposition.

Tithe Act, 1891.

No. of application .

In the county court of holden at .

In the matter of the application of A. B.

To the registrar of the county court of .

Take notice that I wish to oppose the application of A. B., of which I have received notice, on the ground [*here state grounds, e.g.*, that I am not the

owner of the lands in respect of which the application is made ; *or* that the applicant is not the owner of the tithe rentcharge mentioned in the notice of application ; *or* that the amount claimed in respect of the tithe rentcharge has been paid ; *or any other grounds that are intended to be relied on*] [*or* (and) I intend to apply for a remission in respect of such tithe rentcharge or (and) for time to pay the claim].

[*Here, if the owner of the lands, state name, address, and description of the occupier.*] [And I state that M. N. is the occupier of such land.]

[*This paragraph should be struck out except where an order for remission is applied for.*] [And I state that there is no other tithe rentcharge issuing out of the lands except that in respect of which the application is made *or* that there is, besides the tithe rentcharge in respect of which the application is made, a tithe rentcharge issuing out of the lands in respect of (*e.g., great or small*) tithe of which P. Q. (*insert name and address*), is owner.]

Dated the day of 19 .

C. D., owner of the lands
(*or* G. K., solicitor of C. D.)
or M. N. occupier of the lands
(*or* G. K., solicitor of M. N.)

6.

Notice to Applicant of Notice of Opposition.

No. of application .

Tithe Act, 1891.

In the county court of , holden at .

A. B., Applicant.

[C. D.], owner of the lands [*not known*]
[M. N., occupier of the lands] } Respondents.

To A. B., applicant.

Take notice that C. D., owner of the lands in respect of which the application is made [*or* M. N., occupier of the lands in respect of which the application is made] has given notice of opposition in the above matter on the ground that [*insert ground stated in notice of opposition*] [*or* (and) that he intends to apply for a remission in respect of the tithe rentcharge *or* (and) for time to pay the claim].

The application will be heard at the sitting of the court to be holden at (*insert courthouse*) on the day of 19 , at the hour of in the noon.

Dated this day of .

Registrar.

7.

Notice of Change of Day appointed for hearing Application.

[*Heading as in Form* 6.]

To A. B., applicant [*or* to C. D., owner of the lands in respect of which the application is made].

Take notice that for the purpose of giving M. N., the occupier of the lands in respect of which the application is made, an opportunity of being heard, the day for hearing the above application is changed, and the application will now be heard at the sitting of the court to be holden at (*insert courthouse*) on the day of 19 , at the hour of in the noon.

Dated this day of 19 .

Registrar.

8.

Order on Application where Lands not occupied by the Owner.

[*Heading as in Form* 6.]

It is this day ordered that the sum of pounds shillings and pence be recovered, together with costs in respect of tithe rentcharge issuing out of the lands described in [the first part of] the schedule to this order, due for the period of ; and for the purpose of recovering that sum, together with costs. X. Y. [*here insert name, address, and description of person appointed receiver*] is hereby appointed to receive the rents and profits of these lands, and also the rents and profits of any other lands [*insert these words if a description of the lands can be given*] [*or* of the lands described in the second part of the said schedule], which would have been liable to be distrained upon for the tithe rentcharge under the provisions of section 85 of the Tithe Act, 1836; and that the tenants of the said lands are to attorn and pay their rents in arrear and growing rents to the receiver.

(*To be added where apportionment of rent is made at the time of making the order.*)

And whereas it appears that the above-mentioned lands [*or* a certain part of the above-mentioned lands, namely those known as [*insert description of lands*]] are held at one rent together with other lands, situate in a different parish, it is further ordered that out of the total rent payable in respect of the lands situate in the two parishes, the sum of [15*l.*] shall be taken as payable for the purpose of the Tithe Act, 1891, in respect of the lands situate in the parish of of which X. Y. is appointed receiver.

By the court.

Dated the day of 19 .

Registrar of the court.

SCHEDULE OF LANDS.

PART I.—Lands out of which the tithe rentcharge issues.

Name or Description of Lands.	Name of Parish in which situate.	Name of County in which situate.	Number on Parish Apportionment.

PART II.—Lands which would be liable to be distrained on under section 85 of the Tithe Act, 1836.

Name or Description of Lands.	Parish in which situate.	County in which situate.

9.

Order for Distress where the Owner of the Lands is in Occupation.

[*Heading as in Form* 6.]

It is this day ordered that the sum of pounds shillings and pence, be recovered, together with costs in respect of tithe rentcharge issuing out of the lands described in the [first part of the] schedule to this order, due for the period of , and for the purpose of such recovery X. Y., an officer appointed by this court, shall distrain upon those lands and also on the lands [*insert these words if a description of the lands can be given :* described in the second part of the same schedule] which are liable to be distrained on under section 85 of the Tithe Act, 1836, for the said sum together with pounds shillings and pence for costs, and also the costs of the distress, and that for the making of such distress this order shall be such officer's warrant.

By the court.

Dated the day of 19 .

Registrar of the court.

SCHEDULE OF LANDS.

PART I.—Lands out of which the tithe rentcharge issues.

Name or Description of Lands.	Name of Parish in which situate.	Name of County in which situate.	Number on Parish Apportionment.

PART II.—Lands liable to be distrained on under section 85 of the Tithe Act, 1836, other than those described in Part I.

Name or Description of Lands.	Parish in which situate.	County in which situate.

10.

Notice to Occupier of Lands of Receiver's Appointment.

[*Heading as in Form* 6.]

To M. N., occupier of the lands described in the schedule.

I, X. Y. [*insert name and address*], hereby give you notice that under an order of court made in the above matter on the day of , I have been appointed receiver of the rents and profits of the lands described in the schedule and occupied by you, and I require you, within days, to attorn tenant to me, and to give me information as to the following

matters with regard to your tenancy [*insert matter as to which information is required*].

Dated this day of 19 .

X. Y., Receiver.

Note.—A form of attornment is sent herewith.

SCHEDULE OF LANDS.

[Here describe the lands, *e.g.*, Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. , Road, in the parish of , in the county of .]

Form of Attornment.

[*Heading as in Form* 6.]

I, M. N., hereby attorn and become tenant to you X. Y., of the land described in the schedule according to the terms and conditions contained in [*here insert description, date, and particulars of instrument under which the lands are held*] and at the rent of £ thereby reserved.

In witness whereof I have hereunto set my hand this day of 19 .

M. N.,

O. P. [*insert name and description*]
witness to the signature of the said M. N.

SCHEDULE OF LANDS TO ATTORNMENT.

[As in Receiver's notice of appointment.]

11.

Order for Distress in Name of Owner of Lands.

[*Heading as in Form* 6.]

It is this day ordered that X. Y., the receiver of the rents and profits of the lands described in the schedule to this order, be at liberty to distrain upon those lands for the rent due in respect thereof, and that such distraint may be made in the name of the owner of the lands.

By the court.

Dated the day of 19 .

Registrar of the court.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish, &c., in which situate.	County in which situate.	Name of Occupier.

12.

Report of Receiver that Lands of which he is appointed Receiver are Occupied by the Owner thereof.

[*Heading as in Form* 6.]

To the registrar of the county court of holden at

I, X. Y., who have been appointed receiver of the lands described in the schedule [together with other lands] by an order of the court dated the day of 19 , report to the court that the lands described in the schedule are occupied by the owner thereof, and the owner has not paid the sum ordered to be recovered to me, and has not attorned tenant to me.

The name of the owner is (*insert name and address*), *or* is not known.

Dated the day of 19 .

X. Y.,
Receiver.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.

13.

Order where Receiver reports that Lands of which he is appointed Receiver are Occupied by the Owner.

[*Heading as in Form* 6.]

It is this day ordered that the order made in this matter on the day 19 , appointing X. Y. to be receiver of certain lands described in the schedule shall be discharged [so far as regards the lands described in the schedule], and the said X. Y. [*or* R. S. an officer appointed by the court] shall distrain upon those lands for the amount of pounds shillings and pence ordered to be recovered together with the sum of pounds shillings and pence for costs, and also the costs of distress, and that for the making of such distress this order shall be such officer's warrant.

By the court.

Dated the day of 19 .

Registrar of the court.

The operation of this order is suspended till day the day of , 19 .

Dated the day of 19 .

Registrar of the court.

SCHEDULE OF LANDS.

[*Schedule of Lands as in last Form.*]

14.

Notice to Owner of Lands that an Order has been made on Receiver's Report that Lands of which he has been appointed Receiver are Occupied by the Owner.

[*Heading as in Form* 6.]

To [C. D.] the owner of the lands described in the schedule to this notice.

Take notice that the order, a copy of which is sent herewith, has been made in the above matter, and that if you have any objection to make against that order you must file notice thereof with me before the day of 19 .

A form of notice of objection is sent herewith.

Dated the day of 19 .

Registrar.

SCHEDULE OF LANDS.

[*Schedule of Lands as in last Form.*]

15.

Notice of Objection by Owner of Lands.

[*Heading as in Form* 6.]

To the registrar of the county court of holden at .

Take notice that I, C. D., owner of the lands referred to in the order of court dated the day of 19 , of which I have received notice, object to that order on the ground that [*insert grounds on which order is objected to*].

C. D.

Dated this day of 19 .

16.

Notice of Day Appointed for Hearing Objection.

[*Heading as in Form* 6.]

To C. D.

Take notice that the objection to the order of the court, dated the day of , of which you have given notice, will be heard at the sitting of the court to be holden at (*insert courthouse*) on the day of 19 , at the hour of in the noon.

Dated this day of 19 .

Registrar.

17.

Report by Officer ordered to Distrain that there is no sufficient Distress.

[*Heading as in Form* 6.]

To the registrar of the court, and to A. B., applicant.

I, X. Y., the officer appointed to distrain under an order made on the day of on the lands described in the order, report that there is no sufficient distress upon the lands, and that it would be useless to attempt any further distress.

X. Y.

Dated the day of 19 .

18.

Notice of Apportionment of Rent.

[*Heading as in Form* 6.]

To A. B., applicant, and to C. D., owner of the lands described in the schedule [(*insert this if M. N. is a respondent*) and to M. N. occupier of those lands.]

Take notice that whereas a receiver has been appointed of the rents and profits of the said lands [together with other lands] under an order of this court dated the day of , made upon the application of the said A. B., and whereas it is found that those lands are held at the same rent with other lands situate in a different parish, and X. Y., the receiver appointed as aforesaid, has applied to the court to make an apportionment of rent; Now the court has apportioned the rent so that out of the total rent payable in respect of the lands situate in the two parishes the sum of £ shall for the purpose of the Tithe Act, 1891, be taken to be payable in respect of the lands of which the said X. Y. has been appointed receiver, situate in the parish of and described in the schedule.

Further take notice that, if within five clear days of the service of this notice you do not file with me notice of objection, the above apportionment will take effect.

Dated this day of 19 .

Registrar.

SCHEDULE OF LANDS.

Name or Description of Lands.	Name of Parish in which situate.	Name of County in which situate.	Number on Parish Apportionment.

19.

Notice of Objection to Apportionment of Rent.

[*Heading as in Form* 6.]

To the registrar of the county court of holden at .

I, A. B., C. D., *or* M. N., hereby give notice that I object to the apportionment of rent made for the purpose of the Tithe Act, 1891, of which you have given me notice, dated the day of .

Dated this day of 19 .

A. B., C. D., *or* M. N.

20.

Notice of Day fixed for Hearing of Objection by Respondent to Apportionment of Rent.

[*Heading as in Form* 6.]

To A. B., applicant, and to C. D., owner of the lands [or M. N., occupier of the lands.]

Take notice that the objection to the apportionment, of which you have given notice [*or* of which A. B., C. D., *or* M. N. has given notice] dated the day of , will be heard at the sitting of the court to be holden at (*insert courthouse*) on the day of 19 , at the hour of in the noon.

Dated this day of 19 .

Registrar.

21.

Order of Court where Apportionment is objected to.

[*Heading as in Form* 6.]

It is this day ordered that the apportionment of rent made in this matter dated the day of , [is hereby varied (*here state variation*), and as varied] shall take effect from this date.

By the court.

Dated this day of 19 .

Registrar of the court.

22.

Notice to Occupier of Lands that Order under Section 4 of the Act may be made upon him.

[*Heading as in Form* 6.]

To M. N., occupier of the lands described in the schedule to this notice.

Whereas X. Y. was, by an order of this court, dated the day of 19 , appointed receiver of the rents and profits of the said lands of which you are occupier, for the purpose of recovering the sum of pounds shillings and pence ordered by the court to be recovered on account of the tithe rentcharge thereon with costs, and he has satisfied the court that the lands are let on such terms as not to reserve a rent sufficient to enable him to recover that sum and costs.

Take notice that the court may direct the order for recovery to be executed as if you were the owner of the lands, and if you have any objection to urge against such direction being given, you must appear before the court, holden at (*insert courthouse*) on the day of 19 , at the hour of in the noon, and such objection will be heard by the court, but that if you do not appear the court may make such direction in your absence.

Dated this day of 19 .

Registrar.

SCHEDULE OF LANDS.

[Here describe the lands, *e.g.*, Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. , Road, in the parish of in the county of .]

23.

Notice to Owner of Lands that Order under Section 4 of the Act may be made upon the Occupier.

[*Heading as in Form* 6.]

To [*C. D.*], the owner of the lands described in the schedule to this notice.

Whereas X. Y. was, by an order of this court dated the day of appointed receiver of the rents and profits of the lands described in the schedule to this notice for the purpose of recovering the sum of pounds shillings and pence ordered by the court to be recovered on account of the tithe rentcharge thereon with costs, and he has satisfied the court that the lands are let on such terms as not to reserve a rent sufficient to enable him to recover that sum and costs.

Take notice that the court may direct the order for recovery to be executed against M. N., the occupier of the said lands, as if he were owner, and that if you wish to be heard in reference to that matter you must appear before the court holden at (*insert courthouse*) on the day of 19 , at the hour of in the noon, and the court will hear you, but that if you do not appear the court may make such order in your absence.

Dated this day of 19 .

Registrar.

SCHEDULE OF LANDS.

[Here describe the lands, *e.g.*, Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. , ad, in the parish of , in the county of .]

24.

Order of Court under Section 4 of the Act.

[*Heading as in Form* 6.]

It is this day ordered that X. Y.. as officer appointed by this court [*or* R. S., an officer appointed by this court] shall distrain upon the lands described in the schedule to this order for the sum of pounds shillings and pence [the balance] due on an order for the recovery of tithe rentcharge made by this court the day of , together with pounds shillings and pence for costs, and also the costs of distress, and that for the making of such distress this order shall be such officer's warrant.

[It is also ordered that X. Y. shall continue to be receiver of the lands till the day of], *or* shall cease to be receiver of the lands *or any direction the court gives in the matter.*]

By the court.

Dated this day of 19 .

Registrar of the court.

SCHEDULE OF LANDS.

[Here describe the lands, *e.g.*, Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. Road, in the parish of , in the county of .]

25.

Notice to Owner of Second Tithe Rentcharge of Application for Remission.

[*Heading as in Form* 6.]

To O. P., owner of the tithe rentcharge issuing out of the lands described in the schedule in respect of (*e.g., great or small*) tithe.

Take notice that an application has been made by A. B. for the recovery of the sum of pounds shillings and pence due on account of the tithe rentcharge issuing out of the lands described in the schedule in respect of (*e.g., small or great*) tithe, and that C. D. (or M. N.) a respondent, has given notice that he will apply for a remission in respect of such tithe rentcharge.

The application will be heard at the sitting of the court to be holden at (*insert courthouse*) on the day of 19 , at the hour of in the noon.

Dated this day of

Registrar.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment.

26.

Order of Remission in respect of Tithe Rentcharge.

[*Heading as in Form* 6.]

It is ordered this day that, of the sum of pounds shillings and pence claimed by A. B. on account of the tithe rentcharge issuing out of the lands described in the schedule to this order, the sum of pounds shillings and pence is hereby remitted and shall not be recoverable.

By the court.

Dated this day of 19 .

Registrar.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

27.

Order of Remission of Rates in respect of Tithe Rentcharge.

[*Heading as in Form* 6.]

It is ordered that the amounts mentioned in the third column of the schedule below shall be remitted and not recoverable in respect of the rates mentioned in the second column of that schedule assessed on the person mentioned in the first column thereof.

By the court.

Dated the day of 19 .

Registrar.

SCHEDULE.

Owner of Tithe Rentcharge.	Name of Rate.	Amount remitted.

28.

Application by Owner of Lands for Certificate in respect of Failure to give Occupier's Liability Notice.

Tithe Act, 1891.

In the county court of , holden at .

I, C. D. (*insert name and address*), owner of the lands described in the schedule to this application, give notice that I shall apply for a certificate from the court that there was good and sufficient cause for my failure to give an occupier's liability notice in respect of the said lands to M. N. the occupier thereof, and that M. N. (*insert name and address*) has not been prejudiced thereby.

Dated this day of 19 . A. B.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.

29.

Notice to Occupier of Owner's Application to the Court in respect of Failure to serve Occupier's Liability Notice.

Tithe Act, 1891.

In the county court of , holden at

In the matter of the application of C. D.

To M. N., occupier of the lands described in the schedule.

Take notice that C. D. has given notice of an application to this court for a certificate that there was good and sufficient cause for his failure to give

an occupier's liability notice to you, M. N., in respect of the said lands, and that you, M. N., have not been prejudiced thereby.

If you wish to be heard with reference to the granting of such certificate, you must appear at the court holden at (*insert courthouse*) on the day of 19 , at the hour of in the noon, and the court will hear you, but if you do not appear no costs will be charged against you, but the court may grant such certificate in your absence.

Dated this day of 19 .

Registrar.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.

30.

Certificate of Court in respect of Failure to give Occupier's Liability Notice.

Tithe Act, 1891.

In the county court of , holden at .

In the matter of the application of C. D.

It is hereby certified that there was good and sufficient cause for the failure of C. D. to give an occupier's liability notice in respect of the land described in the schedule to this order to M. N., the occupier thereof, and that M. N. has not been prejudiced thereby.

By the court.

Dated this day of .

Registrar.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.

31.

Form of Application to Court by Rate Collector.

Tithe Act, 1891.

To the registrar of the county court of , holden at .

I, A. B., collector of rates for the [*insert name of area for which the collector collects*], apply to the above court for an order under sub-section (2)

[and sub-section (3)] of section six of the Tithe Act, 1891, in respect of [*insert name of rate or rates*] rate due from the owner of the tithe rentcharge issuing out of the lands described in the schedule.

The owners of the lands are [*insert names and addresses of owners*].

The owner of the tithe rentcharge is [*insert name and address of owner*].

The rate due amounts with costs to £ .

I have taken the following proceedings for the recovery of the rate [*insert description and date of proceeding, e.g.*, distress under warrant of justices].

Dated the day of 19 .

C. D., collector.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

32.

Notice to Owner of Tithe Rentcharge or Owner of Lands to be served with the Duplicate Notice of Rate Collector's Application.

Tithe Act, 1891.

No. of application .

In the county court of , holden at .

A. B., applicant [collector of rates for the of , whose address is].

[E. F.], owner of land (*insert, if known, name, address, and description*).

C. D., owner of the tithe rentcharge (*insert address and description*).

To E. F., the owner of the tithe rentcharge issuing out of the lands mentioned in the notice of application sent herewith.

Or

To [C. D.], the owner of land out of which the tithe rentcharge mentioned in the notice of application sent herewith issues.

Take notice that the application by A. B., of which a copy is sent herewith, will be heard at the sitting of the court to be holden at (*insert court-house*) on the day of 19 , at the hour of in the noon, and that if you wish to oppose the application you must, five clear days before the day appointed for the hearing, file with the registrar of this court the notice of opposition given below.

Dated this day of 19 ,

Registrar.

	£	*s.*	*d.*
Amount of rate claimed			
Costs of this notice			
Amount upon payment of which you will incur no further costs			

If you do not give notice of opposition or appear on the day appointed for the hearing, the court may make an order against you in your absence.

33.

Notice of Opposition.

Tithe Act, 1891.

No. of application .

In the county court of , holden at .
In the matter of the application of A. B. rate collector.
To the registrar of the county court of .
Take notice that I wish to oppose the application of A. B., of which I have received notice, on the ground [*here state grounds, e.g.*, that I am not the owner of the land in respect of which the tithe rentcharge issues ; *or* that I am not the owner of the tithe rentcharge mentioned in the notice of application ; *or* that the amount claimed in respect of the rate has been paid ; *or any other grounds that are intended to be relied on*].
Dated the day of 19 .

E. F., owner of the tithe rentcharge
(*or* G. K., solicitor of E. F.).
C. D., owner of the lands
(*or* G. K., solicitor of C. D.).

34.

Notice to Rate Collector of Notice of Opposition.

No. of application .

Tithe Act, 1891.

In the county court of holden at .
A. B., rate collector, applicant.
E. F., owner of tithe rentcharge.
C. D., owner of the lands.
To A. B., rate collector.
Take notice that E. F., owner of the tithe rentcharge in respect of which the application is made [*or* C. D., owner of the lands out of which the tithe rentcharge issues] has given notice of opposition in the above matter on the ground that [*insert ground stated in notice of opposition*].
The application will be heard at the sitting of the court to be holden at (*insert courthouse*) on the day of , 19 , at the hour of in the noon.
Dated this day of .

Registrar.

35.

Order under Section 6 of the Tithe Act, 1891, for Recovery of Sum due on account of Rates.

Tithe Act, 1891.

In the county court of , holden at , the day of 19 .

A. B., rate collector.
E. F., owner of tithe rentcharge.
[C. D.], owner of lands [*not known*].

It is this day ordered that C. D. pay to A. B. any sum which is now due or which may become due on account of the tithe rentcharge owned by E. F. issuing out of the lands described in the schedule to this order until

the sum of pounds shillings and pence, the amount due in respect of the [*insert name of rate*] rates assessed on the said C. D. in respect of that tithe rentcharge and costs [and any sum which may become due in respect of any such rate] [until the day of 19], is fully paid.

And further it is ordered that should default be made by the said C. D. in obeying this order the said A. B. may apply to this court for the appointment of a receiver or of an officer to distrain as the case may be.

By the court.

Dated this day of 19 .

Registrar.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.

TITHE COMMUTATION, &c., ACT, 1868.

[31 & 32 VICT. C. 89.]

By sect. 3, Disputes as to costs incurred in the enfranchisement of tithe, or as to compensation to be paid to the steward, are to be referred to the Commissioners of Tithe. The costs incurred by them in ascertaining the same may be recovered in the county court.

By sect. 4, Where an enclosure has been authorised by Parliament and a valuer appointed, the commissioners may require such valuer or other person who shall have charge of or be in possession of any documents relating to the enclosure to deliver the same to them at their office. In case of neglect or default the commissioners may summon such person before the county court judge for the county in which the lands are situated.

TRADE UNION ACT, 1913.

[2 & 3 GEO. 5, C. 30.]

Sect. 3, sub-s. 1, places restrictions on any trade union (defined by sect. 2) from applying the funds of the union to certain political purposes; also provides for making rules, to be approved by the Registrar of Friendly Societies, with that object. Sect. 3, sub-s. 2, provides for any complaint of a breach of these rules being heard and remedied by an order of the Registrar of Friendly Societies, final as between the parties to the dispute, and which order *on being recorded in the county court* can be enforced as an order of that Court.

Registrar's duties are defined by rr. 3—6, *infra*.

Judge's duty is confined to a discretion as to the costs of the proceedings for enforcement of the order.

Practice is governed by Order XLIB, *post*, p. 2318.

Section 3.

Restriction on application of funds for certain political purposes.

3.—(1) The funds of a trade union shall not be applied, either directly or in conjunction with any other trade union, association, or body, or otherwise indirectly, in the furtherance of the political objects to which this section applies (without prejudice to the furtherance of any other political objects), unless the furtherance of those objects has been approved as an object of the union by a resolution for the time being in force passed on a ballot of the members of the union taken in accordance with this Act for the purpose by a majority of the members voting; and where such a resolution is in force, unless rules, to be approved, whether the union is registered or not, by the Registrar of Friendly Societies, are in force providing—

(*a*) That any payments in the furtherance of those objects are to be made out of a separate fund (in this Act referred to as the political fund of the union), and for the exemption in accordance with this Act of any member of the union from any obligation to contribute to such a fund if he gives notice in accordance with this Act that he objects to contribute; and

(*b*) That a member who is exempt from the obligation to contribute to the political fund of the union shall not be excluded from any benefits of the union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund) by reason of his being so exempt, and that contribution to the political fund of the union shall not be made a condition for admission to the union.

(2) If any member of a trade union alleges that he is aggrieved by a breach of any rule made in pursuance of this section, he may complain to the Registrar of Friendly Societies, and the Registrar of Friendly Societies, after giving the complainant and any representative of the union an opportunity of being heard, may, if he considers that such a breach has been committed, make such order for remedying the breach as he thinks just under the circumstances; and any such order of the Registrar shall be binding and conclusive on all parties without appeal and shall not be removable into any court of law or restrainable by injunction, and on being recorded in the county court, may be enforced as if it had been an order of the county court. In the application of this provision to Scotland the sheriff court shall be substituted for the county court, and "interdict" shall be substituted for "injunction."

(3) [Set out the political objects to which this section applies.]

COUNTY COURT RULES. ORDER XLIB. (*a*).

THE TRADE UNION ACT, 1913, SECTION 3.

Certificate of order under 2 & 3 Geo. 5, c. 30, s. 3. Form 431A.

1. Where on the complaint of a member of a trade union (in these rules referred to as "the complainant") that he is aggrieved by a breach by the union of any rule made in pursuance of section three of the Trade Union Act, 1913, an order for remedying the breach has been made by the Registrar of Friendly Societies

under the said section, the Registrar shall, upon application made by or on behalf of the complainant, grant a certificate of the order made by him, signed by him and sealed with the seal of the registry, according to the form in the Appendix. Rule 1.

2. If a solicitor is employed for the purpose by the complainant, there shall be allowed to such solicitor for the costs of obtaining the certificate five shillings, and such costs shall be entered on the certificate by the Registrar. Costs of obtaining certificate.

3. On the presentation of the certificate to the registrar of the county court in the district of which the complainant resides, or to the registrar of the county court in which the registered office of the trade union, if registered, or the general office of the trade union, if unregistered, is situate, with a note of presentation appended thereto according to the form in the Appendix and a copy of the certificate written on foolscap paper, the registrar, shall on payment of the prescribed fee (if any) seal the certificate and record the same by pasting it into the then current minute book of the Court on or about the last page of such book, and shall seal and date the copy of the certificate, and return it to the person presenting the certificate. Presentation and recording of certificate.

4. If a solicitor is employed for the purpose by the complainant, there shall be allowed to such solicitor for the costs of recording a certificate five shillings, which, with the fee (if any) for recording the certificate, shall be entered by the registrar on the certificate and the copy thereof. Costs of recording certificate.

5.—(1) Where a certificate of an order made by the Registrar of Friendly Societies has been recorded under these rules, then, in case of non-compliance with the order, execution may issue out of the court in which the certificate is recorded against the goods and chattels of the union in default, in the same or the like manner as if the order of the Registrar of Friendly Societies had been made by the court in which the certificate has been recorded. Execution on default of compliance with order.

(2) The party applying for execution shall satisfy the registrar as to the amount in payment of which default has been made. Proof of amount due.

(3) The entry on the certificate of the costs, if any, allowed for obtaining the certificate, and of the costs and fee (if any) allowed for recording the certificate, shall be an authority for the registrar to add the said costs and fee to the amount to be recovered by execution. Cost of obtaining and recording certificate.

(4) The warrant of execution shall be according to the form in the Appendix, *post*, p. 2321. Form of warrant. Form 432B.

6.—(1) The County Court Rules for the time being in force as to proceedings for the recovery of money due under judgments or orders of the county court otherwise than by execution, or for the enforcement of such judgments or orders otherwise than by execution, shall, with the necessary modifications, apply to proceedings for the recovery of money due under, or the enforcement of, any order of the Registrar of Friendly Societies of which a certificate has been recorded pursuant to these rules. Other proceedings for enforcement of order.

(2) For the purposes of any such proceedings the certificate of the order shall be deemed to be a judgment or order of the county Complainant and trade union

Rule 6.

court in which the certificate has been recorded, and the complainant shall be deemed to be the plaintiff and the trade union or the trustees or any other officer of the union authorised by the rules thereof to bring or defend or cause to be brought or defended any legal proceedings on behalf of the union shall be deemed to be defendants.

deemed to be plaintiff and defendants.

Costs.

(3) The costs of any such proceedings shall be in the discretion of the judge; and if the union are ordered to pay such costs the judge may order the costs and fee (if any) allowed for obtaining and recording the certificate to be included in the costs so ordered to be paid. The costs shall be taxed on such scale as the judge shall direct.

Payment out of court. Where certificate lost or destroyed.

7. No money shall be paid out of court without production of the sealed copy of the certificate. Provided that in the event of such copy being lost or destroyed another copy may be sealed and given to the proper person, upon proof by affidavit or otherwise to the satisfaction of the registrar of the county court that the person applying is the proper person, and that he is entitled to the money in court, and upon payment of the fee of one shilling.

FORMS.

431A.

THE TRADE UNION ACT, 1913, SECTION 3.

Certificate to be given by Registrar of Friendly Societies.

I hereby certify that on the day of , 19 , the Registrar of Friendly Societies, on the complaint of [*here state name and address of complainant*] against [*here state name of trade union*] whose registered or general office is situated at that he was aggrieved by a breach by the said union of a rule made in pursuance of section 3 of the Trade Union Act, 1913, made an order pursuant to the said section in the following terms, viz., [*here set out the order made by the Registrar*].

Costs of obtaining this certificate .

Dated this day of 19 .

(Signed.)

Registrar of Friendly Societies.

Note of Presentation to be Appended.

The above certificate is presented by me to be recorded in the County Court of holden at in accordance with the provisions of section 3 of the Trade Union Act, 1913, and the rules made thereunder.

Signature of complainant or his solicitor.

Address.

Date.

432B.

THE TRADE UNION ACT, 1913, SECTION 3.

Warrant of Execution.

In the County Court of holden at .

In the matter of an order made by the Registrar of Friendly Societies under section 3 of the Trade Union Act, 1913, on the complaint of A.B. of [*address*] complainant against The [*name of trade union*] of [*registered (or general) office*].

Whereas on the day of the Registrar of Friendly Societies on the complaint of the above-named complainant against the above-named trade union made an order pursuant to section 3 of the Trade Union Act, 1913, in the following terms, viz. : [*here set out the order made by the Registrar*].

And whereas a certificate of the said order has been duly registered in this court pursuant to section 3 of the said Act and the rules made thereunder :

And whereas default has been made by the said union in payment according to the said order :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said union, wheresoever they may be found within the district of this court, the sum stated at the foot of this warrant, being the amount due to the complainant under the said order, together with the costs of this execution ; and to seize and take any money or bank notes (whether of the Bank of England or of any other Bank) and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the said union which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this day of 19 .

By the Court .

Registrar.

To the High Bailiff of the said Court, and others the bailiffs thereof

	£ *s.* *d.*
Amount for which order was obtained . . .	
Paid since date of order	
Costs of obtaining and registering certificate of order .	
Remaining due	
Poundage for issuing this warrant	
Total amount to be levied (with fees for execution of warrant as indorsed hereon) . . .	

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the trade union.

Application was made to the Registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

Here state for the information of the high bailiff the place, &c., where the goods are stated to be.

SEE BACK.

[*For indorsement of fees for execution of warrant*, see *Form* 163.]

THE TRUSTEE ACT, 1893.

[56 & 57 Vict. c. 53.]

By sect. 67 of the County Courts Act, 1888, jurisdiction was conferred on county courts under the Trustee and Trustees Relief Acts then in force, in cases in which the trust estate or fund to which the action or matter relates did not exceed in amount or value 500*l.* The Trustee Act, 1893, practically repealed the whole of these Acts, and does not directly confer any jurisdiction on the county courts under the new Act. The only reference to a county court is to be found in sect. 46, which says that the provisions of the Act with respect to the High Court shall, in "their application to cases within the jurisdiction of a county court, include that court"; but it is confidently submitted that that section, assisted by sect. 38 of the Interpretation Act, 1889, which enacts that "where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted," gives the county courts jurisdiction in all those cases up to 500*l.* in which the provisions of the repealed Acts, which formerly applied, are substantially re-enacted.

Jurisdiction under sect. 67, County Courts Act, 1888, has been extended by sect. 25 of this Act to the appointment of a new trustee or trustees either in substitution for or in addition to any existing trustee; by sects. 26 to 31, to the making of vesting orders as to land in the cases set out in those sections; by sect. 35, to making of vesting orders as to stock and choses in action; and by sect. 42, as to the payment into court by trustees, provided in all these cases the value of the property does not exceed 500*l.* By sect. 70 of the County Courts Act, 1888, trustees may pay money into court, but that power is extended by sect. 42 of this 1893 Act to the majority of the trustees as if the same had been made on the authority of all the trustees.

Practice.]—The court in which to take proceedings is determined by sect. 75 to be that within the district of which the persons making the application or any of them reside; the proceedings are governed by Order XXXVIII., p. 620; all matters, except those under sect. 42 of the 1893 Act, shall be commenced by filing a petition (Rule 1); but in those under sect. 42 an affidavit containing particulars mentioned in Rule 9 shall be filed with the registrar.

Costs.]—In proceedings under sects. 67 and 70 of the County Courts Act, 1888, or under the equitable jurisdiction of the court, the judge may order the costs to be taxed under column B, where the subject-matter does not exceed 20*l.* See Ord. LIII., r. 12, p. 646.

Appeal for error in point of law or equity lies under sect. 120 of the County Courts Act, 1888 (see Part I. p. 123).

Various Powers and Duties of Trustees.

Appointment of New Trustees.

Power of appointing new trustees.

10.—(1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal

representatives of the last surviving or continuing trustee, may by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, as aforesaid (*a*). Section 10.

NOTE (*a*).—As to appointment by surviving trustee of solicitor who had acted in a dispute between the trustees, see *Cotter, In re; Jennings* v. *Nye*, (1915) 1 Ch. 307; 84 L. J. Ch. 337. See *Sichel's Trusts, In re*, (1916) 85 L. J. Ch. 285.

(2) On the appointment of a new trustee for the whole or any part of trust property—

(*a*) the number of trustees may be increased; and

(*b*) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part; and

(*c*) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and

(*d*) any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

For the practice of the court in discharging a trustee where there is a continuing trustee, see *Re Gardiner*, (1886) 33 Ch. D. 590; 55 L. J. Ch. 714; *Re Batho*, (1888) 39 Ch. D. 189; 58 L. J. Ch. 32; for definition of continuing trustee, see *Re Coates to Parsons*, (1887) 34 Ch. D. 370; 56 L. J. Ch. 242.

(3) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(4) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(5) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(6) This section applies to trusts created either before or after the commencement of this Act.

Retirement of trustee.

11.—(1) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the

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trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4) This section applies to trusts created either before or after the commencement of this Act.

See sect. 5, Public Trustee Act, 1906.

Vesting of trust property in new or continuing trustees.

12.—(1) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates.

(3) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner directed by or under Act of Parliament.

(4) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5) This section applies only to deeds executed after the thirty-first of December one thousand eight hundred and eighty-one.

Purchase and Sale.

Power of trustee for sale to sell by auction, &c.

13.—(1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit,

with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss. Section 13.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3) This section applies only to a trust or power created by an instrument coming into operation after the thirty-first of December one thousand eight hundred and eighty-one.

Power to sell subject to depreciatory conditions.

14.—(1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon the ground aforesaid.

(4) This section applies only to sales made after the twenty-fourth day of December one thousand eight hundred and eighty-eight.

Power to sell under 37 & 38 Vict. c. 78.

15. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section two of the Vendor and Purchaser Act, 1874.

Married woman as bare trustee may convey.

16. When any freehold or copyhold hereditament is vested in a married woman as a bare trustee she may convey or surrender it as if she were a *feme sole*.

For meaning of bare trustee, see *Christie* v. *Ovington*, (1875) 1 Ch. D. 279; *Re Cunningham & Co.*, (1891) 2 Ch. 567; 60 L. J. Ch. 591.

Power to insure building.

18.—(1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(3) This section applies to trusts created either before or after the commencement of this Act, but nothing in this section shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Power of trustees of

19.—(1) A trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or con-

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renewable leaseholds to renew and raise money for the purpose.

tract, or by custom or usual practice, may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future, or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite: Provided that, where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

(2) If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose, he may raise the money required by mortgage of the hereditaments to be comprised in the renewed lease, or of any other hereditaments for the time being subject to the uses or trusts to which those hereditaments are subject, and no person advancing money upon a mortgage purporting to be under this power shall be bound to see that the money is wanted, or that no more is raised than is wanted for the purpose.

(3) This section applies to trusts created either before or after the commencement of this Act, but nothing in this section shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Section is only to protect trustee, not to alter the law as between tenant for life and remainderman (*Re Baring*, (1893) 1 Ch. 61; 62 L. J. Ch. 50).

Power of trustee to give receipts.

20.—(1) The receipt in writing of any trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section applies to trusts created either before or after the commencement of this Act.

Power for executors and trustees to compound, &c.

21.—(1) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2) An executor or administrator, or two or more trustees, acting together, or a sole acting trustee where by the instrument, if any, creating the trust a sole trustee is authorised to execute the trusts and powers thereof, may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of

composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith. Section 21.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

(4) This section applies to executorships, administratorships and trusts constituted or created either before or after the commencement of this Act.

22.—(1) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being. Powers to two or more trustees.

(2) This section applies only to trusts constituted after or created by instruments coming into operation after the thirty-first day of December one thousand eight hundred and eighty-one.

23. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying. Exoneration of trustees in respect of certain powers of attorney.

Provided that nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made, and that the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

24. A trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss unless the same happens through his own wilful default; and may reimburse himself, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his trusts or powers. Implied indemnity of trustees

Powers of the Court.

Appointment of New Trustees and Vesting Orders.

25.—(1) The High Court, may whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the court, make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing Power of the court to appoint new trustees.

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provision, the court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt.

NOTE.—By 4 & 5 Geo. V. c. 47, s. 18, power is given to any bankruptcy court to appoint a new trustee of any deed of arrangement.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3) Nothing in this section shall give power to appoint an executor or administrator.

Vesting orders as to land.

26. In any of the following cases, namely :—

(i.) Where the High Court appoints or has appointed a new trustee ; and

(ii.) Where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person,—

(*a*) is an infant, or

(*b*) is out of the jurisdiction of the High Court, or

(*c*) cannot be found ; and

(iii.) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land ; and

(iv.) Where, as to the last trustee known to have been entitled to or possessed of any land, it is uncertain whether he is living or dead ; and

(v.) Where there is no heir or personal representative to a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead ; and

(vi.) Where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement ;

the High Court may make an order (in this Act called a vesting order), vesting the land in any such person in any such manner and for any such estate as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct.

Provided that—

(*a*) Where the order is consequential on the appointment of a new trustee the land shall be vested for such estate as the court may direct in the persons who on the appointment are the trustees ; and

(*b*) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the High Court or cannot be found, the land or right shall be vested in such other person, either alone or with some other person.

Section 27.

Orders as to contingent rights of unborn persons.

27. Where any land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of the land on any trust, the High Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Vesting order in place of conveyance by infant mortgagee.

28. Where any person entitled to or possessed of land, or entitled to a contingent right in land, by way of security for money, is an infant the High Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee.

Vesting order in place of conveyance by heir, or devisee of heir, &c., or personal representative of mortgagee.

29. Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last-mentioned person consents to any order for the reconveyance of the land, then the High Court may make an order vesting the land in such person or persons in such manner and for such estate as the court may direct in any of the following cases, namely,—

(*a*) Where an heir or personal representative or devisee of the mortgagee is out of the jurisdiction of the High Court or cannot be found; and

(*b*) Where an heir or personal representative or devisee of the mortgagee on demand made by or on behalf of a person entitled to require a conveyance of the land has stated in writing that he will not convey the same or does not convey the same for the space of twenty-eight days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled; and

(*c*) Where it is uncertain which of several devisees of the mortgagee was the survivor; and

(*d*) Where it is uncertain as to the survivor of several devisees of the mortgagee or as to the heir or personal representative of the mortgagee whether he is living or dead; and

(*e*) Where there is no heir or personal representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or personal representative or devisee.

Vesting order consequential on judgment for sale or mortgage of land.

30. Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of the land, or entitled to a contingent right therein (*a*), and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act; and the High Court may, if it thinks expedient, make an order vesting the land or any part thereof or such estate as that court thinks fit in the purchaser or mortgagee or in any other person.

NOTE.—(*a*) Words omitted repealed by 57 & 58 Vict. c. 10, s. 1.

Section 31.

Vesting order consequential on judgment for specific performance, &c.

31. Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange, of any land, or generally where any judgment is given for the conveyance of any land either in cases arising out of the doctrine of election or otherwise, the High Court may declare that any of the parties to the action are trustees of the land or any part thereof within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and thereupon the High Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

Effect of vesting order.

32. A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such estate as the High Court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate as the court directs, and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Power to appoint person to convey.

33. In all cases where a vesting order can be made under any of the foregoing provisions, the High Court may, if it is more convenient, appoint a person to convey the land or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

Effect of vesting order as to copyhold.

34.—(1) Where an order vesting copyhold land in any person is made under this Act with the consent of the lord or lady of the manor, the land shall vest accordingly without surrender or admittance.

(2) Where an order is made under this Act appointing any person to convey any copyhold land, that person shall execute and do all assurances and things for completing the assurance of the land; and the lord and lady of the manor and every other person shall, subject to the customs of the manor and the usual payments, be bound to make admittance to the land and to do all other acts for completing the assurance thereof, as if the persons in whose place an appointment is made were free from disability and had executed and done those assurances and things.

Vesting orders as to stock and choses in action.

35.—(1) In any of the following cases, namely:—

(i.) Where the High Court appoints or has appointed a new trustee; and

(ii.) Where a trustee entitled alone or jointly with another person to stock or to a chose in action—

(*a*) is an infant, or

(*b*) is out of the jurisdiction of the High Court, or
(*c*) cannot be found, or
(*d*) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled, or
(*e*) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for twenty-eight days next after an order of the High Court for that purpose has been served on him ; or

(iii.) Where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a chose in action is alive or dead,

the High Court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the court may appoint :

Provided that—

(*a*) Where the order is consequential on the appointment by the court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees ; and
(*b*) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the court may appoint.

(2) In all cases where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Act, may transfer the stock to himself or any other person, according to the order, and the Banks of England and Ireland and all other companies shall obey every order under this section according to its tenor.

(4) After notice in writing of an order under this section it shall not be lawful for the Bank of England or of Ireland or any other company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5) The High Court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised.

(6) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock.

Persons entitled to apply for orders.

36.—(1) An order under this Act for the appointment of a new trustee or concerning any land, stock, or chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or chose in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Act concerning any land, stock, or chose in action subject to a mortgage may be made on the application

Section 36. of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

A person with a contingent interest is beneficially interested (*Re Shepperd*, (1863) 32 L. J. Ch. 23).

Powers of new trustee appointed by court.

37. Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Power to charge costs on trust estate.

38. The High Court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal estate in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

Trustees of charities.

39. The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock, or chose in action in any trustee of a charity or society over which the High Court would have jurisdiction upon action duly instituted whether the appointment of the trustee was made by instrument under a power or by the High Court under its general or statutory jurisdiction.

Orders made upon certain allegations to be conclusive evidence.

53 & 54 Vict. c. 5.

40. Where a vesting order is made as to any land under this Act or under the Lunacy Act, 1890, or under any Act relating to lunacy in Ireland, founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or personal representative or devisee of a mortgagee is out of the jurisdiction of the High Court or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the survivor, or whether the last trustee or the heir or personal representative or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section shall not prevent the High Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained.

Application of vesting order to land out of England.

41. The powers of the High Court in England to make vesting orders under this Act shall extend to all land and personal estate in Her Majesty's dominions, except Scotland.

Payment into Court by Trustees.

Payment into court by trustees.

42.—(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into the High Court; and the same shall, subject to rules of court, be dealt with according to the orders of the High Court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court. Section 42.

(3) Where any moneys or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the High Court may order the payment into court to be made by the majority without the concurrence of the other or others ; and where any such moneys or securities are deposited with any banker, broker, or other depositary, the court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into court, and every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid, or delivered.

Miscellaneous.

43. Where in any action the High Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the court, and that he cannot be found, the court may hear and determine the action and give judgment therein against that person in his character of a trustee, as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character. Power to give judgment in absence of a trustee.

44.—(1) Where a trustee (*a*) is for the time being authorised to dispose of land by way of sale, exchange, partition, or enfranchisement, the High Court may sanction his so disposing of the land with an exception or reservation of any minerals, and with or without rights and powers of or incidental to the working, getting, or carrying away of the minerals, or so disposing of the minerals, with or without the said rights or powers, separately from the residue of the land. Power to sanction sale of land or minerals separately.

(2) Any such trustee (*a*), with the said sanction previously obtained, may, unless forbidden by the instrument creating the trust or direction, from time to time, without any further application to the court, so dispose of any such land or minerals.

(3) Nothing in this section shall derogate from any power which a trustee may have under the Settled Land Acts, 1882 to 1890, or otherwise.

Note.—(*a*) Add " or other person," 57 & 58 Vict. c. 10, s. 3.

45.—(1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary the High Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation, make such order as to the court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him. Power to make beneficiary indemnity for breach of trust.

"In writing" refers only to consent and not to instigation or request *Griffith* v. *Hughes*, (1892) 3 Ch. 105; 62 L. J. Ch. 135).

Section 45.

(2) This section shall apply to breaches of trust committed as well before as after the passing of this Act, but shall not apply so as to prejudice any question in an action or other proceeding which was pending on the twenty-fourth day of December one thousand eight hundred and eighty-eight, and is pending at the commencement of this Act.

Jurisdiction of palatine and county courts.

46. The provisions of this Act with respect to the High Court shall, in their application to cases within the jurisdiction of a palatine court or county court, include that court, and the procedure under this Act in palatine courts and county courts shall be in accordance with the Acts and rules regulating the procedure of those courts.

MISCELLANEOUS AND SUPPLEMENTAL.

Application to trustees under Settled Land Acts of provisions as to appointment of trustees.

47.—(1) All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, are to apply to and include trustees for the purposes of the Settled Land Acts, 1882 to 1890, whether appointed by the court or by the settlement, or under provisions contained in the settlement.

(2) This section applies and is to have effect with respect to an appointment or a discharge and retirement of trustees taking place before as well as after the commencement of this Act.

(3) This section is not to render invalid or prejudice any appointment or any discharge and retirement of trustees effected before the passing of this Act, otherwise than under the provisions of the Conveyancing and Law of Property Act, 1881.

44 & 45 Vict. c. 41.

Trust estates not affected by trustee becoming a convict.

48. Property vested in any person on any trust or by way of mortgage shall not, in case of that person becoming a convict within the meaning of the Forfeiture Act, 1870, vest in any such administrator as may be appointed under that Act, but shall remain in the trustee or mortgagee, or survive to his co-trustee or descend to his representative as if he had not become a convict; provided that this enactment shall not affect the title to the property so far as relates to any beneficial interest therein of any such trustee or mortgagee.

33 & 34 Vict. c. 23.

Indemnity.

49. This Act, and every order purporting to be made under this Act shall be a complete indemnity to the banks of England and Ireland, and to all persons for any acts done pursuant thereto; and it shall not be necessary for the bank or for any person to inquire concerning the propriety of the order, or whether the court by which it was made had jurisdiction to make the same.

Definitions.

50. In this Act, unless the context otherwise requires,—

The expression "bankrupt" includes, in Ireland, insolvent:

The expression "contingent right," as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest, or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent:

The expressions "convey" and "conveyance" applied to any person include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land

Section 50.

whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of the Acts for abolition of fines and recoveries in England and Ireland respectively, and also including surrenders and other acts which a tenant of customary or copyhold lands can himself perform preparatory to or in aid of a complete assurance of the customary or copyhold land:

The expression "devisee" includes the heir of a devisee and the devisee of an heir, and any person who may claim right by devolution of title of a similar description:

The expression "instrument" includes Act of Parliament:

The expression "land" includes manors and lordships, and reputed manors and lordships, and incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land:

The expressions "mortgage" and "mortgagee" include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee:

The expressions "pay" and "payment" as applied in relation to stocks and securities, and in connexion with the expression "into court" include the deposit or transfer of the same in or into court:

The expression "possessed" applies to receipt of income of, and to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in, any land:

The expression "property" includes real and personal property, and any estate and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not:

The expression "rights" includes estates and interests:

The expression "securities" includes stocks, funds, and shares; and so far as relates to payments into court has the same meaning as in the Court of Chancery (Funds) Act, 1872: 35 & 36 Vict. c. 44.

The expression "stock" includes fully paid up shares; and, so far as relates to vesting orders made by the court under this Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein:

The expression "transfer" in relation to stock, includes the performance, and execution of every deed, power of attorney, Act, and thing on the part of the transferor to effect and complete the title in the transferee:

The expression "trust" does not include the duties incident to an estate conveyed by way of mortgage; but with this exception the expressions "trust" and "trustee" include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person.

Section 51.

Repeal.

51. The Acts mentioned in the schedule to this Act are hereby repealed except as to Scotland to the extent mentioned in the third column of that schedule.

Extent of Act.

52. This Act does not extend to Scotland.

Short title.

53. This Act may be cited as the Trustee Act, 1893.

Commencement.

54. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four.

SCHEDULE.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
36 Geo. III. c. 52.	The Legacy Duty Act, 1796.	Section thirty-two.
9 & 10 Vict. c. 101.	The Public Money Drainage Act, 1846.	Section thirty-seven.
10 & 11 Vict. c. 32.	The Landed Property Improvement (Ireland) Act, 1847.	Section fifty-three.
10 & 11 Vict. c. 96.	An Act for better securing trust funds, and for the relief of trustees.	The whole Act.
11 & 12 Vict. c. 68.	An Act for extending to Ireland an Act passed in the last session of Parliament, entitled "An Act for better securing trust funds, and for the relief of trustees."	The whole Act.
12 & 13 Vict. c. 74.	An Act for the further relief of trustees.	The whole Act.
13 & 14 Vict. c. 60.	The Trustee Act, 1850 .	Sections seven to nineteen, twenty-two to twenty-five, twenty-nine, thirty-two to thirty-six, forty-six, forty-seven, forty-nine, fifty-four and fifty-five; also the residue of the Act except so far as relates to the court exercising jurisdiction in lunacy in Ireland.
15 & 16 Vict. c. 55.	The Trustee Act, 1852 .	Sections one to five, eight, and nine; also the residue of the Act except so far as relates to the court exercising jurisdiction in lunacy in Ireland.
17 & 18 Vict. c. 82.	The Court of Chancery of Lancaster Act, 1854.	Section eleven.
18 & 19 Vict. c. 91.	The Merchant Shipping Act Amendment Act, 1855.	Section ten, except so far as relates to the court exercising jurisdiction in lunacy in Ireland.

SCHEDULE—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeal.
20 & 21 Vict. c. 60.	The Irish Bankrupt and Insolvent Act, 1857.	Section three hundred and twenty-two.
22 & 23 Vict. c. 35.	The Law of Property Amendment Act, 1859.	Sections twenty-six, thirty and thirty-one.
23 & 24 Vict. c. 38.	The Law of Property Amendment Act, 1860.	Section nine.
25 & 26 Vict. c. 108	An Act to confirm certain sales, exchanges, partitions, and enfranchisements by trustees and others.	The whole Act.
26 & 27 Vict. c. 73.	An Act to give further facilities to the holders of Indian stock.	Section four.
27 & 28 Vict. c. 114	The Improvement of Land Act, 1864.	Section sixty so far as it relates to trustees; and section sixty-one.
28 & 29 Vict. c. 78.	The Mortgage Debenture Act, 1865.	Section forty.
31 & 32 Vict. c. 40.	The Partition Act, 1868 .	Section seven.
33 & 34 Vict. c. 71.	The National Debt Act, 1870.	Section twenty-nine.
34 & 35 Vict. c. 27.	The Debenture Stock Act, 1871.	The whole Act.
37 & 38 Vict. c. 78.	The Vendor and Purchaser Act, 1874.	Sections three and six.
38 & 39 Vict. c. 83.	The Local Loans Act, 1875	Sections twenty-one and twenty-seven.
40 & 41 Vict. c. 59.	The Colonial Stock Act, 1877.	Section twelve.
43 & 44 Vict. c. 8 .	The Isle of Man Loans Act, 1880.	Section seven, so far as it relates to trustees.
44 & 45 Vict. c. 41.	The Conveyancing and Law of Property Act, 1881.	Sections thirty-one to thirty-eight.
45 & 46 Vict. c. 39.	The Conveyancing Act, 1882.	Section five.
46 & 47 Vict. c. 52.	The Bankruptcy Act, 1883	Section one hundred and forty-seven.
51 & 52 Vict. c. 59.	The Trustee Act, 1888 .	The whole Act, except sections one and eight.
52 & 53 Vict. c. 32.	The Trust Investment Act, 1889.	The whole Act, except sections one and seven.
52 & 53 Vict. c. 47.	The Palatine Court of Durham Act, 1889.	Section eight.
53 & 54 Vict. c. 5 .	The Lunacy Act, 1890 .	Section one hundred and forty.
53 & 54 Vict. c. 69.	The Settled Land Act, 1890.	Section seventeen.
55 & 56 Vict. c. 13.	The Conveyancing and Law of Property Act, 1892.	Section six.

THE TRUSTEE ACT, 1893, AMENDMENT ACT, 1894.

[57 VICT. c. 10.]

Section 4.

Liability of trustee in case of change of character of investment.

4. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the instrument of trust or by the general law.

Sub-ss. 1 and 3 amend the Trustee Act, 1893, and are noted on that Act.

(See also 63 & 64 Vict. c. 62.)

THE WATERWORKS CLAUSES ACT, 1863.

[26 & 27 VICT. c. 93.]

Sect. 21.

Water rates may be recovered in any court of competent jurisdiction.

The expression "court of competent jurisdiction" is to be read and have effect as if a debt due by statute were an ordinary contract debt (see 34 & 35 Vict. c. 41, s. 4).

NOTE.—Similar provisions for recovering gas rents are contained in 34 & 35 Vict. c. 41, s. 4. Also electric light rents, see Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), Appendix (c) 41.

[For Workmen's Compensation Act, 1906, see Part IV. Chap. IV.]

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